

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 24, 2021

+ + + + +

-----:
IN THE MATTER OF: :
 :
Office of Planning - :
 Reorganization of Subtitles :
 :
 :
 :
-----:

Wednesday,
February 24, 2021

Video Teleconference

The Public Hearing by the District of Columbia Zoning Commission convened at 9:38 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA JOHN, Vice-Chair
CHRISHAUN SMITH, Board Member
MICHAEL TURNBULL, Member
ROBERT MILLER, Member
ANTHONY HOOD, Member

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist
SARA A. BARDIN, Director
ALEXANDRA CAIN, Esquire
JACK RICE, Esquire

The transcript constitutes the minutes from the
Regular Public Hearing held on February 24, 2021

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

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

Case No. 20391 - Application of DMV Property, LLC	14
Case No. 20386 - Application of Simone Management, LLC	35
Case No. 20389 - Application of Samuel Medeiros and Jessica Ellis	52
Case No. 20374 - Application of Mathew and Alicia Amling..	127

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

***** 20:32:46*****

Does the ~~Applicant~~applicant have any questions for the Office of Planning?

~~COMMISSIONER TURNBULL~~ MR. SULLIVAN: No.
Thank you.

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

MR. YOUNG: Yes. We have one person signed up who is calling in, and that's Wendy King. So I will unmute her now.

CHAIRPERSON HILL: Okay.

MS. KING: Hello. This is Wendy King. Before I begin, can I ask a point of clarification? The letters and things that came to the owners nearby Red Lake, the ~~eight-plex~~eightplex had not been approved, not that this was just for decks. Can somebody please clarify whether or not the eight plex has already been approved?

CHAIRPERSON HILL: Hi, Ms. King. I love it. You asked me if you could ask a question, but you didn't wait for me to say yes or no. First, can you introduce yourself for the record?

MS. KING: Sorry. This is Wendy King, and I am one of the owners on the 1400 block of Clifton Street.

CHAIRPERSON HILL: Okay. No problem. So they are here -- and I guess I'll let the Office of Planning just help me clarify that -- they're here for the apartment building but also, the special exception is for the lot occupancy, correct?

1 MS. BROWN-ROBERTS: Special exception is for the lot
2 occupancy.

3 CHAIRPERSON HILL: So to answer your question, yeah,
4 they're here for the decks.

5 MS. KING: I'm sorry. I can't hear you. There's some
6 feedback. Can you repeat that, please?

7 CHAIRPERSON HILL: They're here for the decks, the
8 special exception for the decks, and then also their ability to
9 construct the eight-unit apartment house.

10 MS. KING: Okay. So for both?

11 CHAIRPERSON HILL: Right.

12 MS. KING: All right. Well, now that I have that
13 straight, I would like to thank the Board for allowing me the
14 opportunity to --

15 CHAIRPERSON HILL: Okay. Give me one second. Give me
16 one second, Ms. King. Now, I actually have to clarify because I
17 always get kind of sometimes confused with the caption. Again,
18 Ms. Maxine -- Ms. Brown-Roberts, they're constructing the eight-
19 unit apartment house, but the only relief they're here for is the
20 lot occupancy, correct?

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

22 CHAIRPERSON HILL: Right. The rest is matter of right,
23 correct?

24 MS. BROWN-ROBERTS: The rest is?

25 CHAIRPERSON HILL: The eight-unit apartment house is

1 matter of right?

2 MS. BROWN-ROBERTS: Yes, but -- right. That's correct.

3 CHAIRPERSON HILL: Okay. All right. Ms. King, you
4 want to go ahead and give your testimony? You'll have three
5 minutes.

6 MS. KING: Okay. Hold on. I'm sorry. I didn't hear
7 anything that the lady just said. I think it was a woman that
8 was speaking. Can you clarify what she said?

9 CHAIRPERSON HILL: Sure. She said that -- I'm sorry.
10 Ms. Brown-Roberts.

11 MS. BROWN-ROBERTS: No, I was just going to say in the
12 RA-2 -- it's in RA-2, so apartments are allowed in that zone,
13 and what they're asking for is the special exception just because
14 it doesn't meet the lot occupancy requirement, and they're
15 allowed to do the special exception under Section 5201.

16 MS. KING: And the special exception is for eight?

17 MS. BROWN-ROBERTS: No, the special exception is for
18 the lot occupancy.

19 CHAIRPERSON HILL: All right, everybody's going to --
20 all right. Give me a second. So again, Ms. King, they're
21 allowed to do the apartment house, right? They're here for the
22 additional five percent for the decks, okay? So you can go ahead
23 and give -- you can give your testimony on anything you like
24 though, Ms. King. So go ahead and give --

25 MS. KING: Yeah, our -- sorry. I will --

1 CHAIRPERSON HILL: I'm just letting you know I'm about
2 to start the clock.

3 MS. KING: Okay.

4 CHAIRPERSON HILL: Okay. Go ahead.

5 MS. KING: I'm concerned with the eight-unit complex
6 on a very teeny-tiny street that is congested beyond belief
7 anyway, but it sounds like that ship has sailed. And so I will
8 refrain from speaking any further.

9 CHAIRPERSON HILL: No. Go ahead, Ms. King. Go ahead
10 and give -- you can tell us your concern on anything you like.

11 MS. KING: All right. Well, it's a really small street.
12 It's a really small section of Clifton Street. And everything
13 around us is very apartment complex, but our little street is
14 mostly rowhouses on the one side, and it gives it a
15 nice little community feel. Also, however, given the last three
16 years, the parking around there is more absurd than it is by
17 normal. And people are parking in alleys, people are
18 blocking the alleyways, they're blocking the streets. Like,
19 literally, it is just -- I am waiting for the day when the fire
20 department and the ambulance, who seems to be called at least
21 once a week, (indiscernible). Also, the west side of the street
22 is not going to make it because of all of the congestion that's
23 in that area.

24 So our concern was an additional eight people and
25 potentially, eight cars. And even though I realize there's

1 probably not eight, there could be married couples with 16 people
2 and a lot of cars, and all of us are concerned because like the
3 other day, I had to park at 12th and Florida and walk home in
4 the dark. Three years ago, I could either park on Clifton or I
5 could park maybe one or two streets over and get home much
6 quicker. We have neighbors that have kids that also have to park
7 from far away and come back over. So we were mostly concerned
8 about the ~~eight-plex~~eightplex with the amount of people in a
9 congested area, in addition with all of the problems going on
10 Euclid Street where it now takes some days 20 minutes to get from
11 16th to 14th. People are getting frustrated, so they fly down
12 the alley by the community garden, and they started driving the
13 wrong way down University to get off Euclid. Like just an
14 intensive amount of craziness in the area right now.

15 And so those were our concerns. We were hoping that
16 it would be a nice little fourplex. You know, less
17 people, less cars, less congestion.

18 CHAIRPERSON HILL: Okay. Okay. All right. Thank you,
19 Ms. King. Thank you for your testimony. Okay. Hang on one
20 second. Does the Board have any questions for the witness? No.
21 Okay. Does the Applicant?

22 MR. SULLIVAN: No. Thank you.

23 CHAIRPERSON HILL: Okay. All right. Thank you, Ms.
24 King.

25 MS. KING: All right. Good luck with the build.

1 CHAIRPERSON HILL: Thanks. Bye-bye. Okay. We haven't
2 approved it yet, but okay. So all right. All right. Mr. Young,
3 is there anybody else?

4 MR. YOUNG: We had no one else signed up.

5 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have
6 anything else you'd like to add?

7 MR. SULLIVAN: No. Thank you.

8 CHAIRPERSON HILL: Okay. Can you talk to me again --
9 and maybe you mentioned this, I'm sorry -- about the ANC and the
10 questions they had about the penthouse or their concerns about
11 the penthouse?

12 MR. SULLIVAN: They had a lot of questions at the ANC
13 committee meeting about the -- a lot of them, I think, were
14 building code questions. They had questions about egress, and
15 they had questions -- one of the committee members asked whether
16 we were permitted to have a penthouse. That's the only comments
17 that I recall.

18 CHAIRPERSON HILL: Okay.

19 MR. SULLIVAN: But the penthouse is not -- obviously,
20 is not part of the relief at all.

21 CHAIRPERSON HILL: Okay. Okay. All right. Okay. If
22 anybody has anything, raise your hand. All right. I'm going to
23 go ahead and close the hearing and the record and excuse everyone.
24 Thank you very much. All right. Okay. ~~Did~~Does somebody else
25 want to go first for a minute because I'm kind of getting my head

1 around a couple of things? Mr. Turnbull, are you ready?

2 COMMISSIONER TURNBULL: Sure. I think there was a lot
3 of last-minute comments that came in from neighbors about a lot
4 of different things, but the -- as the previous witness was
5 talking, about she's worried about the additional people
6 coming in and the additional cars. And unfortunately, the way
7 the regulations are set up, they're allowed to do exactly what
8 they're doing. So there's nothing really -- I mean, maybe that's
9 something that the Office of Planning should look at and they can
10 make allowances for more parking on an eight-unit structure. But
11 right now, they're totally within the regulations to do what they
12 want -- what they need to do.

13 I think it's funny how the neighbors don't want to go
14 on record on either side as to not being in opposition, but that's
15 just -- we're on record now that by the applicant, by
16 the owner, that they're in support of it, but it's a strange way
17 to go about doing it but, I guess, that's what we have. So other
18 than the fact that both neighbors don't seem to be opposed to it
19 and there's no issues of light and air on either one of them,
20 it's -- basically, I mean, what the relief they're looking for is
21 very minimal in one sense so, I guess, I would be in support of
22 approving it. So that's where I stand.

23 CHAIRPERSON HILL: Okay. Mr. Smith?

24 MR. BOARD MEMBER SMITH: I agree with Turnbull that it
25 seems that there may have been some miscommunication or a change

1 in understanding of what was requested so, just in case Ms. King
2 is still on the line, and I understand the complexity of zoning
3 regulations. The request before us, we have a use, and we have
4 the development standards for that use. What is, by ~~the~~ right,
5 is the use? They can have an eight-unit apartment complex.
6 They don't have to do this expansion, ~~so~~. So what's triggering
7 this special exception is the expansion, the physical expansion
8 of the building for the decks and a rear addition, smaller scale
9 ~~re-rear~~ addition that's enclosing a courtyard there. They don't
10 have to go forward with that expansion; they can still construct
11 or convert the existing building into a eight-unit apartment. So
12 that is not before us, so I just wanted to provide some context
13 and some clarification.

14 So what's before us is the special exception to expand,
15 So what's before
16 us is the special exception to expand, and we have criteria that
17 we're obligated to review when it comes down to that expansion.
18 The expansion before us for lot occupancy, it deals with lot
19 occupancy, how much that building can cover a lot. And based on
20 that criteria, I do believe that the -- that this proposed
21 addition does meet the criteria for us to grant this special
22 exception.

23 One of the criteria is to ensure that the property is
24 in harmony or the expansion is in harmony with the zoning
25 regulations and adjacent properties. They are existing on

1 adjacent properties; they are three-story open decks. And that's
2 what is being proposed here. So that is not out of character
3 with any of the adjacent property owners. I do not believe that
4 -- or I do believe that the ~~Applicant~~applicant has sufficiently
5 demonstrated that it would not adversely affect -- when I say
6 adversely affect, the question is not about the number of units
7 because again, that's not before us. Adversely affect as in the
8 addition in regards to light and air. So I do believe that the
9 ~~Applicant~~applicant has, in his design, has mitigated those
10 concerns, and I would be in support of the request.

11 CHAIRPERSON HILL: Okay. Ms. John?

12 VICE CHAIR JOHN: Thank, Mr. Chairman. After that
13 excellent summary of the relief and how the applicant
14 meets the criteria, I really have nothing to add, so I'll just
15 note that the ANC 1B is, I believe, they're in support, and they
16 have no conditions. And I think that the relief for the decks
17 is really quite minimal, and I agree that there's no impact --
18 adverse impact of light and air and privacy, so I would support
19 the application.

20 CHAIRPERSON HILL: Okay. Thank you. No, I appreciate
21 the -- not only the analysis, the zoning lesson ~~therethat~~ Mr.
22 Smith kind of ~~help~~helped point out which is great. Thank you so
23 much, Mr. Smith. And so that was very helpful, I'm sure, for
24 Ms. King, if she ~~is~~was still listening. I have nothing to add,
25 and so I'm going to make a motion to approve Application No.

1 20383 as captioned and ~~can~~read by the secretary and ask for a
2 second. Ms. John?

3 VICE CHAIR JOHN: Second.

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

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

11 COMMISSIONER TURNBULL: Yes.

12 MR. MOY: Mr. Smith?

13 BOARD MEMBER SMITH: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: We have a Board seat vacant. Staff would
19 record the vote as 4 to 0 to 1. And this is on the motion made
20 by Chairman Hill to grant the relief requested. The motion was
21 seconded by Vice Chair John. Also in support of the motion is
22 Mr. Smith and Zoning Commissioner Michael Turnbull. Motion
23 carries 4 to 0 to 1.

24 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
25 Give me all one second again, I'm sorry.

1 (Pause.)

2 CHAIRPERSON HILL: Okay. Do you guys want to try to
3 do another one and then break, or how do you guys feel? Because
4 my lunch is on its way, so it's not here yet. I got
5 Ben's Chili Bowl coming and so like, you know, it's not good
6 if it's not, you know, not hot so.

7 VICE CHAIR JOHN: We can do another one, Mr. Chairman.

8 CHAIRPERSON HILL: Okay. All right. Mr. Turnbull, are
9 you with us? Maybe not.

10 (Pause.)

11 CHAIRPERSON HILL: Okay. Great. Mr. Moy, if you want
12 to go ahead and call our next case.

13 MR. MOY: Yes, sir. This would be Application No.
14 20391 of DMV Property, LLC. And this is captioned and
15 advertised for -- let's see -- for relief under Subtitle G
16 Section 1201.1. It's a special exception from the rear
17 yard requirements of Subtitle G Section 405.2, as I should say.
18 And it would construct a second-story rear addition to an
19 existing, non-conforming, two-story building in the MU-4 Zone.
20 And it is located at premises 5320 through 5322 Georgia Avenue
21 Northwest, Square 2931, Lot 812.

22 And in the record, there are affidavits of posting and
23 of maintenance under Exhibits 40 and 41. So those are in the
24 record.

25 CHAIRPERSON HILL: Okay. Great. Thank you. Mr. Keys,

1 are you there? Mr. Keys, can you hear me? Mr. Keys? Maybe
2 you're on mute.

3 MR. KEYS: Mr. Chairman?

4 CHAIRPERSON HILL: Can you hear me?

5 MR. KEYS: Yes, I can.

6 CHAIRPERSON HILL: Okay. Great. Could you introduce
7 yourself for the record, Mr. Keys?

8 MR. KEYS: Yes. I'm George Keys. I'm counsel for DMV
9 Property, LLC, the owner of the subject property.

10 CHAIRPERSON HILL: All right, Mr. Keys. All right.
11 Mr. Keys, if you could go ahead and walk us through your client's
12 application, and how you believe they're meeting the criteria to
13 grant the relief requested? And you can begin whenever you like.

14 MR. KEYS: Thank you. This is a two-story commercial
15 property on Georgia Avenue on the west side between
16 Ingraham and Jefferson Street. This property was acquired by my
17 client in December of 2019. And at the time he acquired it,
18 there was an attempt by the prior owner to complete an addition
19 of the second floor without a permit. My client tried to rectify
20 that; he wanted to finish the construction. He was told by
21 Zoning that he would have to get BZA relief. And that's
22 the basis of the application.

23 The ~~Applicant~~applicant seeks to finish the second floor
24 by completing an addition to the rear of the property. The
25 property has no alley access. It abuts the rear yard of a

1 residential property on Jefferson Street. And in order to finish
2 the second--floor addition, which would eliminate the rear yard,
3 the Applicant requires relief from the Subtitle G, Section 405.4,
4 that would require a 15-foot rear yard at the rear of the
5 property.

6 The rear yard was provided by the setback on the second
7 floor. And so by finishing the second floor, we are eliminating
8 effectively the rear yard as calculated under the zoning
9 regulations.

10 There are two sets of standards that we're required to
11 meet in order to obtain a special exception. Those standards
12 relate to the rear yard adjustment. Those standards are Subtitle
13 G Section 1201. The thing to note about the addition is it will
14 have no windows in the rear, and so that really addresses the
15 Section 1201 standards. There are no windows in the rear so that
16 none of the 1201 (a), (b), or (c) all relate to windows and
17 the position of windows at the rear, and we have none.

18 The general provisions for a special exception relief
19 ~~related~~relate to consistency with the zone plan. I would note
20 that this is a commercial building on a street of commercial
21 buildings. The buildings to the north of this property have
22 finished second floors that -- and we will simply replicate that
23 same pattern of development. We're aware of no opposition. And
24 the neighbors, we have submitted this application to ~~DNC~~the ANC
25 as required. We met several times with the ANC commissioner of

1 4C01, Vanessa Rubio. And I believe Ms. Rubio has placed
2 ~~ANC's~~ANC's 4C01's letter in the record. There is no official ANC
3 report due to a procedural problem internal to the ANC that they
4 could not meet their own requirements ~~ex~~for delivering a report.

5 CHAIRPERSON HILL: All right, Mr. Keys. Is that it?

6 MR. KEYS: That's all of the information. It's really
7 ~~--~~ I'm replicating what's in the record already.

8 CHAIRPERSON HILL: Okay. All right, Mr. Keys.

9 MR. KEYS: I think my client is on -- he should be in
10 the audience, Mr. Abdallah. I've been looking for him, and I
11 don't -- I don't see him on the --

12 CHAIRPERSON HILL: All right. Well, let's see, Mr.
13 King, whether we have any questions for your client or not.

14 MR. KING: Okay.

15 CHAIRPERSON HILL: But Mr. Young, you can look for Mr.
16 Abdallah?

17 MR. KEYS: Abdallah, yes.

18 CHAIRPERSON HILL: Okay. Does the Board have any
19 questions for Mr. Keys?

20 BOARD MEMBER SMITH: I have one.

21 CHAIRPERSON HILL: Mr. Smith.

22 ~~MR.~~BOARD MEMBER SMITH: Mr. Keys, in your presentation,
23 you spoke to the rear yard relief criteria for a special exception
24 under 1201.1. But also, I don't think I heard you really talk
25 to the general special exception standards of 901.2. And the one

1 that I'm particularly referencing is 901.2--(d), "will not tend
2 to affect adversely the use of neighboring properties". You
3 are proposing a fairly sizable addition that may have some light
4 and shadowing effects on the property. Could you speak to them
5 inand how your request would address those issues?

6 MR. KEYS: The impact of the second-floor addition,
7 we believe would be minimal. The neighbor most likely affected
8 is 1202 Jefferson Street, and my client has spoken with that
9 gentleman and presented a description of the plan to
10 him, and he had no objection to that. The ANC commissioner of
11 4C01, Ms. Rubio, made special efforts to visit this
12 gentleman several times to confirm that fact and was
13 never able to establish contact with him.

14 BOARD MEMBER SMITH: Okay. Thank you.

15 CHAIRPERSON HILL: All right. Anyone else? All right.
16 I'm going to turn to the Office of Planning.

17 MS. FOTHERGILL: Good afternoon Chairman Hill and
18 members of the Board. I'm Anne Fothergill from the Office of
19 Planning for Case 20391. And the Office of Planning rests
20 on the record in support of the application, and I'm happy to
21 take any questions.

22 CHAIRPERSON HILL: Okay. Does anybody have any
23 questions for the Office of Planning?

24 COMMISSIONER TURNBULL: I just had -- I'm trying to
25 read the Office of Planning report and just -- and with what the

1 ~~Applicant's~~ applicant's attorney had said. The Office of Planning
2 report says it's at 86 percent lot occupancy? It sounds like
3 that takes up the whole lot.

4 MS. FOTHERGILL: The -- I think the
5 applicant's zoning chart that they provided, and the
6 first floor is the whole footprint, and the second floor is not,
7 and the 86 percent, perhaps, was for the second floor.

8 COMMISSIONER TURNBULL: So the second floor is really
9 86 percent of the -- the first floor is at 100 percent?

10 MS. FOTHERGILL: I think it's 99 or something like
11 that. MR. KEYS: It's not exactly, Mr. Turnbull.
12 There's a -- we had some difficulty with the official plat we
13 were provided when we requested it from the surveyor's office.
14 The dimensions were wrong. We adjusted and found the plat that
15 had the correct dimensions and cited the building.
16 There's probably a one-and-a-half-foot side yard on the
17 south side of the building. But the building, like the other
18 buildings on lots, pretty much occupies the entire lot.

19 COMMISSIONER TURNBULL: Okay.

20 MR. KEYS: And that's typical of the commercial
21 properties on the west side of Georgia Avenue in that 5200 block
22 -- or 5300 block. I think if you look at the photographs in the
23 record --

24 CHAIRPERSON HILL: Mr. Keys, let me just let Mr.
25 Turnbull ask the Office of Planning there. Mr. Turnbull --

1 Commissioner Turnbull, did you get your question answered?

2 COMMISSIONER TURNBULL: Yeah. I guess I was confused
3 by the way it's stated in the OP report. The public
4 tech is almost at 100 percent lot occupancy. The footprint of
5 the building itself, it's the second floor that they're looking
6 for the relief on to complete to match the first floor.

7 CHAIRPERSON HILL: Yes.

8 COMMISSIONER TURNBULL: So I think Ms. Fothergill would
9 get --

10 CHAIRPERSON HILL: Mr. Keys, give me a second. We're
11 talking to the Office of Planning.

12 MS. FOTHERGILL: That's correct. And they're not
13 asking for lot occupancy relief, it's just for the rear yard.
14 And I see what you're looking at, and I would concur that that's
15 -- that was confusing.

16 COMMISSIONER TURNBULL: Okay. Thank you.

17 CHAIRPERSON HILL: Okay. Anyone else for the Office
18 of Planning?

19 VICE CHAIR JOHN: Yes. Quick question. Can you explain
20 why this is a request for a rear yard relief and not occupancy?

21 MS. FOTHERGILL: So this is the MU-4 Zone, and the lot
22 occupancy requirement is for residential use. These two
23 buildings, including the expanded second floor, are to be
24 entirely commercial. The relief they need is for the rear yard
25 requirement, and the rear yard is measured -- ~~and the mete~~(audio

1 interference) rear yard currently is because it's not measured
2 at the first story, it's measured there. So by expanding their
3 second story to the rear property line, they need part of this
4 expansion because they will have zero rear yard.

5 MS. JONES: And that's what gave me difficulty.
6 Why is it measured at the second floor?

7 MS. FOTHERGILL: Well, that is cited in the
8 OP report. It's specific regulation (audio
9 interference) Subsection 405.3 on how to measure rear yard in
10 the MU-4 zone.

11 VICE CHAIR JOHN: Okay.

12 ~~MS. FOTHERGILL: MU-4 is in.~~

13 CHAIRPERSON HILL: Okay. Mr. Keys, do you have any
14 questions for the Office of Planning?

15 MR. KEYS: I do not.

16 CHAIRPERSON HILL: Mr. Young, is there anyone here
17 wishing to testify?

18 MR. YOUNG: Yeah, we have two individuals signed up.

19 CHAIRPERSON HILL: Okay. If you could please bring
20 them on.

21 (Pause.)

22 CHAIRPERSON HILL: Ms. Cunningham, can you hear me?

23 MS. CUNNINGHAM: Yes.

24 CHAIRPERSON HILL: Okay. Are you calling by phone?

25 MS. CUNNINGHAM: Yes, I am.

1 CHAIRPERSON HILL: Okay. Is it Ms. Harrison? Ms.
2 Harrison, can you hear me? Ms. Harrison, can you hear me?

3 MS. HARRISON: Hello?

4 CHAIRPERSON HILL: Can you hear me?

5 MS. HARRISON: Yes.

6 CHAIRPERSON HILL: Okay. If you could please introduce
7 yourself for the record?

8 MS. HARRISON: My name is Cheryl Harrison.

9 CHAIRPERSON HILL: Okay. Were you -

10 MS. HARRISON: Cheryl Harrison.

11 CHAIRPERSON HILL: And where do you live?

12 MS. HARRISON: Cheryl Harrison.

13 CHAIRPERSON HILL: Where do you live, Ms. Harrison?

14 MS. HARRISON: On Ingraham Street. 1223 Ingraham
15 Street.

16 CHAIRPERSON HILL: Okay, Ms. Harrison, you'll have
17 three minutes to give your testimony, and you can begin
18 whenever you like.

19 MS. HARRISON: Sure. I was concerned with the rezoning
20 of the property. I noticed that the second level -- I'm trying
21 to see why it's being rezoned, to be quite honest, because it
22 already backs the property. The neighborhood ~~doesn't~~doesn't mind
23 the rehabilitation, but they don't want the property to be
24 rezoned. And because rezoning brings upon other issues,
25 especially if the ~~gentlemengentleman~~ would decide to resell the

1 property.

2 So our biggest problem is having it rezoned, not that
3 he would like to rehabilitate the property, but to have the
4 property rezoned.

5 CHAIRPERSON HILL: I understand. Ms. Harrison?

6 MS. HARRISON: Yes.

7 CHAIRPERSON HILL: He's not asking for it to be rezoned.

8 MS. HARRISON: Okay.

9 CHAIRPERSON HILL: He is here for special exception
10 about the rear yard for the second story. It's not about anything
11 about being rezoned.

12 MS. HARRISON: Okay. He just wants to extend the back
13 of the building?

14 CHAIRPERSON HILL: He's finishing that second floor,
15 the back of the second floor.

16 MS. HARRISON: Okay. I can see the back of the second
17 floor from my house, so I can see that if I walk out my back
18 door, that's why I was.

19 CHAIRPERSON HILL: Sure. I understand.

20 MS. HARRISON: He's going to be on top of 1202 when he
21 finishes.

22 CHAIRPERSON HILL: I think whatever is there now is
23 what he's trying to finish.

24 MS. HARRISON: Can I tell you something?

25 CHAIRPERSON HILL: Sure.

1 MS. HARRISON: When you look at the back of that
2 building, the structure is in place. The structure there is in
3 place, it just -- the windows are open, but the structure is
4 there. Nothing's been done to it. It just looks abandoned up
5 top, that's it.

6 CHAIRPERSON HILL: Right. So he's trying to finish
7 that.

8 MS. HARRISON: He wants to do a rehab, that's what he
9 wants to do.

10 CHAIRPERSON HILL: He wants to finish it.

11 MS. HARRISON: Okay. You call it finish; I call it
12 rehab.

13 CHAIRPERSON HILL: Okay.

14 MS. HARRISON: Okay. Because I'm looking at it.

15 CHAIRPERSON HILL: Okay.

16 MS. HARRISON: The structure is in place.

17 CHAIRPERSON HILL: Okay.

18 MS. HARRISON: Because I can see it.

19 CHAIRPERSON HILL: Okay.

20 MS. HARRISON: It's old. The windows are there.
21 Everything is sitting there. It's what you call -- if someone
22 would see it, they say oh, you know, it looks old. It looks like
23 it could have been abandoned. Not finished, not done, but the
24 structure is in place but, if he wants to extend it, that's what
25 he wants to do with it. That's his part of his rehabilitation

1 to the building.

2 CHAIRPERSON HILL: Okay. Are you in support - are you
3 in support or opposition to it, or what are your concerns, Ms.
4 Harrison?

5 MS. HARRISON: I don't know if -- to back it up against
6 the other property, I don't see the benefit of doing it.

7 CHAIRPERSON HILL: Okay. All right, Ms. Harrison.

8 MS. HARRISON: I would oppose it.

9 CHAIRPERSON HILL: Okay.

10 MS. HARRISON: I don't know the benefit of pushing
11 it back on top of the neighbor's house, on top of their property.
12 And if he -- and I hope that the light -- I don't even know
13 what the top structure would be.

14 CHAIRPERSON HILL: Okay. Well, Ms. Harrison, do you
15 know how to access the files?

16 MS. HARRISON: Yes. Yes.

17 CHAIRPERSON HILL: If you go -- Ms. Harrison,
18 if you go to our BZA website and put in the case number, you can
19 see everything that's in the record which will explain what he's
20 trying to build. MS. HARRISON: Okay.

21 CHAIRPERSON HILL: Okay?

22 MS. HARRISON: Okay.

23 CHAIRPERSON HILL: If you have a pen, the number is
24 20391.

25 MS. HARRISON: Okay.

1 CHAIRPERSON HILL: Okay.
2 MS. HARRISON: Thank you.
3 CHAIRPERSON HILL: Thank you, Ms. Harrison. Ms.
4 Cunningham, can you hear me?
5 MS. CUNNINGHAM: Yes, I can hear you.
6 CHAIRPERSON HILL: Okay.
7 MS. CUNNINGHAM: My name is Janita Cunningham. I reside
8 at 1223 Ingraham Street, Northwest, Washington, D.C. My main
9 concern was I thought that the property was going to be rezoned
10 because we do not want it rezoned. But since you said that he
11 just wants to extend the addition of the existing second floor.
12 Now, my thing is this. I'm looking at it how it look. How much
13 further is it going to be extended out? Is it going to be the
14 second level that's going to be extended out only, or is it the
15 entire level? I know the second level, so how far would the
16 second level extend out from the bottom, the first level, or is
17 it going to be -- I mean, I don't -- I don't understand.
18 CHAIRPERSON HILL: He's not extending out. He's trying
19 to finish that second level.
20 MS. CUNNINGHAM: Okay. So he's going to finish the
21 second level, okay. So that property will not be rezoned,
22 correct?
23 CHAIRPERSON HILL: Correct.
24 MS. CUNNINGHAM: Okay. All right. Okay.
25 CHAIRPERSON HILL: Okay.

1 MS. CUNNINGHAM: And I think I heard that the neighbor
2 at 1202 Jefferson Street did not oppose the second floor being
3 extended?

4 CHAIRPERSON HILL: That's what I understand.

5 MS. CUNNINGHAM: Okay. Okay.

6 CHAIRPERSON HILL: Do you know how to access the files
7 also?

8 MS. CUNNINGHAM: I'm looking at it right now.

9 CHAIRPERSON HILL: Okay. Because they have the
10 architectural elevations there and everything you can take a look
11 at.

12 MS. CUNNINGHAM: Okay. So it will not be rezoned?

13 CHAIRPERSON HILL: No, ma'am.

14 MS. CUNNINGHAM: Correct?

15 CHAIRPERSON HILL: Yes, ma'am.

16 MS. CUNNINGHAM: Okay. Okay. Thank you.

17 CHAIRPERSON HILL: Okay.

18 MS. CUNNINGHAM: Bye-bye.

19 CHAIRPERSON HILL: Thank you. Bye-bye. All right.
20 Okay, if you can excuse the witnesses, Mr. Young.

21
22 Does the Board have any questions for anybody? I don't
23 see anything.

24 BOARD MEMBER SMITH: I think I have one last question.

25 CHAIRPERSON HILL: Okay. Go on, Mr. Smith.

1 BOARD MEMBER SMITH: Mr. Keys, my question is to
2 you. This rear addition, the existing rear addition that is
3 there now that was constructed without permits, are you proposing
4 to demolish that existing second floor addition and rebuild it?
5 And in rebuilding it, would it be taller than what is currently
6 there now?

7 MR. KEYS: Mr. Smith, no. We're going to finish the
8 existing construction. The height will be consistent with the
9 height of the second floor. It will be one continuous roof.

10 BOARD MEMBER SMITH: Because it currently
11 slopes now, but, okay. Thank you. I think you answered my
12 question.

13 CHAIRPERSON HILL: Okay. Anything else? All right.

14 COMMISSIONER TURNBULL: Mr. Chair, I just had one
15 question. The left side, the elevation, there's a lot of
16 materials going on there. What exactly are you doing to -- what
17 side is visible, right? There's nothing built on that side next
18 to the building. Well, those are one-story buildings.

19 MR. KEYS: Just a moment while I reference the exhibits.
20 You said the left side elevation. We submitted a supplemental
21 application that, I believe, addressed those elevations. And
22 that would have been -- that would be Exhibit 36.

23 BOARD MEMBER SMITH: Page A of 02?

24 MR. KEYS: Yes.

25 ~~MR. KEYS~~: And the Applicant intends to finish the

1 second floor with masonry wall. And that left side elevation -
2 - I'm not sure what's confusing you, Mr. Turnbull.

3 COMMISSIONER TURNBULL: I guess when I was looking at
4 the earlier drawing and it looked like a real hodgepodge of
5 materials --

6 MR. KEYS: Well, it is --

7 COMMISSIONER TURNBULL: I don't see the
8 submission. The left side elevation looks like there's brick or
9 masonry on the lower section and then it's just blank, so I can't
10 read the material yet.

11 MR. KEYS: It's masonry all the way. I think we
12 annotated that to do -- I think if you look at the rear elevation,
13 we specify the material. I think the rear elevation is probably
14 a better exemplar of what we intend to do. It's going to be a
15 consistent masonry wall.

16 COMMISSIONER TURNBULL: Okay.

17 MR. ABDALLAH: Excuse me. It will match the existing
18 building. So on the left-hand side, the stucco and cinder block.
19 It's going to be the same thing, the same color. In the back,
20 finishing the brick. And it's also going to be cinder block.
21 The brick is going to be the facial, the facing. So everything
22 is going to match existing. Thank you.

23 CHAIRPERSON HILL: All right. Mr. Abdallah, can you
24 introduce yourself for the record? I'll get you, Mr. Smith.

25 MR. ABDALLAH: Ahmad Abdallah. I am the owner of 5320,

1 5322 Georgia Avenue, Northwest.

2 CHAIRPERSON HILL: Okay. Great. Mr. Smith.

3 BOARD MEMBER SMITH: So to follow up with Mr.
4 Turnbull's question, and I'm hearing that you're saying it will
5 match the existing. What Mr. Turnbull is saying is based on the
6 diagrams that we see, or maybe there's something I'm overlooking,
7 that there is a mixture of materials. There's an existing wall
8 that's cinder block, there's an existing brick pattern, and when
9 we get up to the addition on the second floor, I see vinyl siding,
10 and I see stucco. So what I'm hearing now is that it would be
11 masonry. And so what we're saying is that -- and my question
12 is, is the CMU cinder block, the vinyl siding, the stucco, is it
13 going away, and it will be brick?

14 MR. ABDALLAH: It's not going to be our siding, sir.
15 It's -- the dooring has been revised to match the existing
16 building to add a nice architect to the area. It was a second
17 revised drawing that was sent to Mr. Keys, and he submitted it.
18 And that what is -- there is no siding. It's going to be on the
19 left, there's going to be stucco. In the back, it's going to be
20 finishing the brick in the back, cinder block to cover the
21 addition, and a brick veneer behind it. Whatever existing
22 in the bottom is going to be the same thing on that second
23 addition.

24 VICE CHAIR JOHN: If I can help, Mr. Chairman, it's
25 Exhibits 36 and slide A002, I believe. And you have to scroll

1 down to the end.

2 BOARD MEMBER SMITH: Thank you, Vice Chair John. I
3 do see the differences. Okay. That answers my question, Mr.
4 Chair. CHAIRPERSON HILL: Okay. Thank you, Mr. Smith.

5 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith. Does
6 anyone have any more questions? Okay.

7 VICE CHAIR JOHN: It's just one.

8 CHAIRPERSON HILL: Sure. Go ahead, Ms. Smith
9 -- I mean, Ms. John.

10 VICE CHAIR JOHN: I wasn't sure where the windows would
11 be. Are there windows on the rear facing the residential
12 building? And are there windows to the left, as I look at that
13 photograph? I believe there's a window on the second floor.

14 MR. KEYS: There are no windows in the rear. It will
15 be a solid masonry wall. They'll be full windows on the south
16 side of the building.

17 VICE CHAIR JOHN: So when you say south side --

18 MR. KEYS: That's the left elevation.

19 VICE CHAIR JOHN: Okay. And that faces this short
20 alley?

21 MR. ABDALLAH: No. On the alley would be no windows.
22 On the back will be no windows. The windows Mr. Keys is talking
23 about overlook the courtyard for the actual building. So there
24 is no window. It will give a total privacy to all of the neighbor.
25 These two windows on the side, it's actually on the right--hand

1 side, it overlook the existing building, our building. It's
2 going to see the little courtyard where all of that utility pipe
3 going through. So will be no windows except on the right-hand
4 side that it look into -- it will look over the courtyard. So
5 total privacy to all neighborhoods.

6 VICE CHAIR JOHN: Okay. Thank you.

7 MR. ABDALLAH: You're welcome, ma'am.

8 CHAIRPERSON HILL: Okay. All right. Anyone else?
9 Okay. I'm going to -- Mr. Keys, do you have anything you would
10 like to add at the end?

11 MR. KEYS: No, sir.

12 CHAIRPERSON HILL: Okay. Thank you. All right. I'm
13 going to close the hearing and the record. Please excuse
14 everyone, Mr. Young.

15 MR. MOY: Mr. Chairman?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: I have a minor procedural matter. Mr.
18 Abdallah, the owner, since he telephoned in, I wasn't able to
19 administer the oath.

20 CHAIRPERSON HILL: Okay. Mr. Abdallah, are you still
21 there?

22 MR. ABDALLAH: Yes, sir.

23 CHAIRPERSON HILL: You need to take the oath. If you
24 can, listen to Mr. Moy and respond.

25 MR. ABDALLAH: Absolutely.

1 MR. MOY: Okay. Yes, sir.

2 (Sworn.)

3 MR. MOY: All right. Thank you, sir.

4 MR. ABDALLAH: Thank you, sir.

5 CHAIRPERSON HILL: Okay. And Mr. Abdallah, everything
6 you said previously was true, correct?

7 MR. ABDALLAH: Yes, sir.

8 CHAIRPERSON HILL: Okay. All right. I'm going to go
9 ahead and excuse everyone then from the record and close the
10 hearing -- I'm sorry -- close the record and close the hearing.
11 I can begin deliberations. I didn't really have a problem with
12 this. I mean, it was a little confusing as everyone has kind of
13 addressed about the -- what was being built. I think that it's
14 all brick now has been kind of cleared up. And I would
15 agree with the analysis of the Office of Planning concerning how
16 they are meeting the criteria for us to grant the relief
17 requested.

18 I also -- even though the ANC, we don't actually have
19 a letter in support, we do have something from their SMD. We
20 can't give it great weight, but at least it does give some
21 indication as to the area of concerns -- I'm sorry -- the concerns
22 of the neighborhood. They did agree to some conditions, it looks
23 like, that are things that I don't necessarily think are anything
24 we need to put as a condition, but I do see that they've agreed
25 to it, and I'm glad that ~~they're~~they're going to try to work with

1 ANC there and the community to make sure that everyone's informed
2 with construction and such.

3 And then also, the people that had come to testify, you
4 know, we're not rezoning this. However, I think that they got
5 more clarification about what it was that they are here for and
6 have an opportunity to look into the record to see what is
7 actually being proposed. So I'm going to be voting in approval.
8 Mr. Turnbull, could I get your thoughts?

9 COMMISSIONER TURNBULL: Mr. Chair, I would agree with
10 you. I think all your comments -- you're right. It was a little
11 bit confusing, but I think through discussion about -- with the
12 applicant and his attorney, I think we clarified. I
13 mean, I was a little bit confused about the lot occupancy aspect.
14 It was a little bit misstated, maybe, but I know what they're
15 trying to do, and I have no objection to it. I'd be voting in
16 support also.

17 CHAIRPERSON HILL: Okay. Mr. Smith?

18 BOARD MEMBER SMITH: I agree with all of your
19 comments, Mr. Hill and Mr. Turnbull, and I will be in support of
20 the application. Also giving great weight to OP's staff report.

21 CHAIRPERSON HILL: Vice Chair John?

22 VICE CHAIR JOHN: I agree with all of the comments so
23 far, and I'm in support of the application.

24 CHAIRPERSON HILL: Okay. Great. Then I'm going to go
25 ahead and make a motion to approve Application No. 20391 as

1 ~~caption~~captioned and read by the secretary and ask for a second.

2 Ms. John?

3 VICE CHAIR JOHN: Second.

4 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy
5 , if you could 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
8 the motion made by Chairman Hill to approve the application for
9 the relief requested. The motion was seconded by Vice --
10 the motion was seconded by Vice Chair John. Zoning Commissioner
11 Michael Turnbull?

12 COMMISSIONER TURNBULL: 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: Moy we have a Board seat vacant. Staff would
20 record the vote as 4 to 0 to 1. And this is on the motion made
21 by Chairman Hill to approve the application for the relief
22 requested, seconded by Vice Chair John. Also in support of the
23 motion, Mr. Smith and Zoning Commissioner Michael Turnbull.
24 Motion carries 4 to 0 to 1.

25 CHAIRPERSON HILL: Okay. Great. Thank you. So do you

1 all want to take lunch and maybe we'll try to come back around
2 1:30? Is that good? What we should do. One time, we should
3 actually -- we should all order from the same place and then
4 we'll all get it delivered. My Ben's ~~chili bowl~~Chili Bowl has
5 arrived, and so it's going to be delicious. Okay. All right.

6 UNIDENTIFIED SPEAKER: All right. I'll be right over.

7 CHAIRPERSON HILL: All right.

8 (Whereupon, the above-entitled matter went off the
9 record and resumed at 1:38 p.m.)

10 CHAIRPERSON HILL: Mr. Moy, if you could call
11 us back and then call our next case when you get a moment.

12 MR. MOY: Thank you, Mr. Chairman. The Board is back
13 in session after its lunch recess. And the time is at or about
14 1:38 p.m. And the next case before the Board and its hearing
15 session is Case No. 20386 of Simone, S-I-M-O-N-E, Management,
16 LLC, Captioned and advertised for special
17 exception under the new residential development provisions of
18 Subtitle U, Section 421.1, to convert an existing two-story
19 detached principal dwelling, a unit, to a three-story, 16-unit
20 apartment house with cellar. This is in a -- in the RA-1 Zone
21 at premises 3044 30th Street, S.E., Square 5720, Lot 12. And I
22 believe, Mr. Chair, to accommodate the filings from the
23 applicant which include revised burden of proof, revised
24 drawings, landscaping, etc., there is the preliminary
25 matter of waiving the 21-day filing.

1 CHAIRPERSON HILL: Mr. Carballo, are you there?
2 MR. CARBALLO: Yes, I'm here.
3 CHAIRPERSON HILL: Okay. Are you calling in, or are
4 you choosing not to use video? I just want to know.
5 MR. CARBALLO: Oh. I can put my video on.
6 CHAIRPERSON HILL: Okay. Mr. Carballo, who is here
7 with you?
8 MR. CARBALLO: I have Johnson Kunlipe who is from Simone
9 Management. I also have another member of my staff, Shima
10 Safinia. She's just observing, but I may, you know --
11 CHAIRPERSON HILL: Okay.
12 MR. CARBALLO: -- may ask her a question, if needed.
13 But I'll be testifying on behalf of Simone Management.
14 CHAIRPERSON HILL: Okay. So let's see something.
15 We still don't have an Office of Planning's report; is
16 that correct, Mr. Jesick?
17 MR. JESICK: No, Mr. Chairman. You should have it. It
18 is at Exhibit --
19 CHAIRPERSON HILL: Oh, 38.
20 MR. JESICK: -- 38. 38, yes.
21 CHAIRPERSON HILL: Okay. Oh, yeah, yeah. The one
22 where I don't have a record -- I don't have a report. So okay.
23 Okay, so Mr. Carballo, you know, I mean, I guess you can make
24 your case if you want to. I don't know. Like, I don't have a
25 report from the Office of Planning, so I can't do much, right?

1 So did you know this?

2 MR. CARBALLO: We've actually been working with
3 the Office of Planning since January to incorporate comments, and
4 I believe that we've satisfied all of the comments that they've
5 requested. To my knowledge, that -- and even as early as several
6 days ago, I thought we were, if not officially receiving the
7 approval or support of OP, you know, very close to being able to
8 say that we are incorporating and satisfying the requirements.

9 CHAIRPERSON HILL: Okay. Give me one second. All
10 right. So first of all, there's the waiver for the 21-day rule,
11 I guess, for the Exhibit 31 for the IZ compliance certificates,
12 Exhibit 33 with the revised burden of proof, Exhibit 36 which
13 are the revised architectural plans, and then the
14 landscaping and cellar plans is Exhibit 37. I believe most of
15 this is some things that you wanted -- that you're talking about
16 the Office of Planning wanted more clarification upon?

17 MR. CARBALLO: That is correct, yes. And those revised
18 records reflect the incorporation of OP comments.

19 CHAIRPERSON HILL: Okay. And when you submitted --
20 when you presented to the ANC, did you present the revised
21 architectural plans?

22 MR. CARBALLO: Not ~~the~~these most latest. The scope of
23 -- we actually received unanimous approval and support from the
24 ANC, and we also have a community benefit agreement that's in
25 place with the ANC. We met with them on three separate occasions

1 in the late summer and fall of last year. These comments from
2 OP don't change the nature or request of our -- our relief
3 request. We actually also have support from DDOT and the -- and
4 we're only seeking -- the only relief we're actually seeking is
5 for increasing the ~~(indiscernible)~~gross floor area, of the
6 existing structure by more than 100 percent.-- We are providing,
7 as a matter of right, compliance with use, height, setback, lot
8 coverage, parking. We're here --

9 CHAIRPERSON HILL: Okay. Mr. Carballo. I'm just trying
10 to get through a couple of these hoops. You don't have --

11 MR. RICE: Mr. Chairman.

12 CHAIRPERSON HILL: Yeah. Give me one second, Mr. Rice.
13 The one -- and I was about to turn to you, Mrs. Rice -- the
14 exhibit from the ANC, that's not a great weight letter, right?
15 Mr. Rice, I'm sorry.

16 MR. RICE: The existing ANC is not a great weight
17 letter, sir.

18 CHAIRPERSON HILL: Right. Okay. So then you can send
19 --

20 MR. RICE: And as a point of information -- as a point
21 of information, there's also, I think, there were three filings
22 that were not accepted due to not meeting the 24-hour deadline
23 that are not in the record that I just want to let you know about.
24 The Board can waive the 24-hour deadline, obviously, if the
25 ~~Applicant~~applicant can demonstrate good cause. But I did want

1 to let you know that that's one of their preliminary matter.

2 CHAIRPERSON HILL: Thanks, Mr. Rice. What are the
3 items?

4 MR. RICE: The three items are there's a set of
5 landscape details, another set of updated architectural plans,
6 and the applicant has provided a response to the OP
7 report.

8 CHAIRPERSON HILL: Okay. Okay. Mr. Jesick, did you -
9 - you don't have -- I mean, I saw the OP report that got filed
10 the first time that said you guys can't make a determination.
11 You don't have another OP report, correct?

12 MR. JESICK: No. Not yet. Yesterday, we did see
13 some updated plans from the applicants. It must be the same ones
14 that Mr. Rice is describing that are not yet in the record. We
15 have not had a chance since -- it was just one day ago -- we did
16 not have a chance to fully review those.

17 CHAIRPERSON HILL: Okay.

18 MR. JESICK: We're happy to keep working with the
19 Applicant. They've been getting closer and closer towards
20 it though, you know, fulfilling the requirements of U 421, so
21 we can continue to work with them.

22 CHAIRPERSON HILL: Okay. All right. Well, I don't
23 know -- I'm looking at my Board members. I don't know what we're
24 going to do without an OP report, so I don't see whether there's
25 any point in moving forward today. I guess we can go ahead

1 -- and I'm looking at my Board members -- I guess we can go ahead
2 and allow everything into the record and then wait for when we
3 get a report from the Office of Planning and then set this for
4 another hearing date. Does anybody say anything differently, or
5 would they like to raise their hand and comment? Mr. Smith.

6 BOARD MEMBER SMITH: Mr. Chair, given the scope of
7 what was submitted within 24 hours and within -- I would say in
8 the two weeks since the staff report was written, and based on
9 the applicant stating that the ANC, which again, to
10 reiterate, we cannot use what they have submitted for great
11 weight. They haven't even had the opportunity to weigh in on
12 the architectural plans. And the landscape details, I would
13 prefer to -- we can let this in, but I would prefer to continue
14 the record until after they've met with the ANC again.

15 CHAIRPERSON HILL: Okay. To go ahead and -- right and
16 look at what the new landscaping plans are. And I don't know
17 the difference between the revised plans and the previous plans
18 because, you know, we didn't have a report from the Office of
19 Planning yet. So I hear what you're saying. Commissioner Mr.
20 Turnbull, did you have any comments?

21 COMMISSIONER TURNBULL: I guess my concern is that I
22 don't know if Mr. Jesick is going to have any trouble reading
23 these plans, but these are very minimal plans. ~~It~~ and really
24 don't describe a lot of the things that the Office of Planning
25 was looking for very clearly. They're ~~tiny~~, (audio interference),

1 and they say oh, we got lights at the side of the -- nothing's
2 called out.- The materials aren't called out. I think Mr. Jesick
3 is going to be rejecting these plans, or he's going to say I need
4 better drawings, so I think Mr. ~~Carballe's~~Carballo's got to go
5 back and look and make sure he's got a set of drawings that the
6 Office of Planning can easily read. These have got to be
7 architectural drawings of a high order so that Office of Planning
8 can make a judgment as to what they think is really there.

9 And I think -- as Mr. Smith was saying, I think with
10 the (audio interference) and the landscape plans, I
11 think we got to --there's things that they're looking for that
12 need to be called out clearly on the plan. So I think the
13 applicant has got to go back and really look at the
14 plans that he wants to submit for the Office of Planning to
15 review.

16 CHAIRPERSON HILL: Okay. Ms. John.

17 VICE CHAIR JOHN: I agree with all of the comments so
18 far. I looked at the documents briefly last night, and I didn't
19 get anywhere with it. It was just too much information at the
20 last minute, and we had nothing from the Office of planning, so
21 I am not prepared to go forward.

22 CHAIRPERSON HILL: Okay. So Mr. Carballo, I guess,
23 what did you present to the ANC, and how different is it from
24 what you're now proposing?

25 MR. CARBALLO: We presented the same 16-unit building

1 that we have here today. ~~The~~ difference is, is that we're
2 providing more information regarding the site lighting, the
3 landscaping details, the long-term bike storage, which is located
4 within the building. Also, short-term parking ~~---a~~ short-term
5 bicycle parking. There's also -- those are located outside the
6 building. There's also a request to review exterior material
7 changes, and there is also a request to provide a door on the
8 front of the building rather than the side entry doors that we
9 are using to gain access. Again, we received --

10 CHAIRPERSON HILL: When you say -- when you say there
11 was a request, you're talking about the Office of Planning?

12 MR. CARBALLO: Office of Planning. Office of Planning.

13 CHAIRPERSON HILL: Okay. Right. So my question -- so
14 I'm just telling you how this is now moving forward, right. Like
15 we need to get something from the Office of Planning, so that's
16 the number one thing that we need to get, right? And I'm going
17 to wait and try to figure out when the Office of Planning may or
18 may not be able to get us something. The ANC report that you
19 guys have, it's not actually a report. I mean, and I appreciate
20 that you -- I really do -- that you came up with a community
21 benefits agreement, but a community benefits agreement is not
22 something that the BZA does, that's usually something that is
23 like, you know, at the Zoning Commission level.

24 However, we always, or ~~Applicants~~applicants are always
25 working with the ANC to kind of come up with whatever their

1 concerns may be. Now, ~~often times~~oftentimes, those concerns
2 don't really relate to the zoning development standards or the
3 standards for the relief that's being requested and therefore,
4 they're usually -- those kind of things are outside of our
5 purview, but there are things that are within the standards with
6 which, you know, we look at in order to see whether something is
7 going to be granted relief, and those are things that will be
8 put in conditions as the ANC.

9 What I'm trying to say is you don't have anything right
10 now that we can give great weight to from the ANC. So I first
11 need to get an Office of Planning report, so that's what I'm
12 going to find out in terms of that timeline. We're going to
13 allow everything into the record because this is going to kick
14 down -- going to get kicked down the road until I know when we're
15 going to have everything complete again. And my question to you
16 with --after I get through this with talking with the Office of
17 Planning -- would be do you want to go back in front of the ANC
18 with your revised plans?

19 I understand what you're telling me is that there's no
20 difference, and that's fine, but that's something we would have
21 gotten into, into the hearing after we heard from the Office of
22 Planning. And if we thought your plans were different enough
23 that you should go to the ANC again, we might send you back to
24 the ANC again. So that's something that you can think about and
25 ask about as we go through this, and that's what Mr. Smith just

1 was commenting on. So before I let you talk, Mr. Carballo, and
2 I will, let me just ask the Office of Planning, when do you think
3 --do you have enough yet, or you don't know?

4 MR. JESICK: The package that I mentioned that I
5 received yesterday, I was able to take a more -- a closer look
6 at it today. I think there were still some issues that are going
7 to have to be, you know, worked out, at least for the Office of
8 Planning to make a positive recommendation.

9 UNIDENTIFIED SPEAKER: What is that?

10 CHAIRPERSON HILL: Okay. I got it. Hold on. Let's
11 see who that is. Give me one second, Mr. Jesick. All right. I
12 think I'm okay. All right. Go ahead, Mr. Jesick.

13 MR. JESICK: So I can get back to the applicant
14 quickly with a revised list of items from our report and,
15 depending on their turn-around time, we would probably need
16 another week or so after that to provide the Board with a
17 supplemental.

18 CHAIRPERSON HILL: Okay. Commissioner, can I -- is it
19 Commissioner Kiah?

20 MS. KIAH: Yes, it's Commissioner Kiah.

21 CHAIRPERSON HILL: Kiah. How you doing,
22 Commissioner?

23 MS. KIAH: Yes.

24 CHAIRPERSON HILL: Could you introduce yourself?

25 MS. KIAH: I'm great. Thank you so much. Yes. My

1 name is -- I'm ~~commissioner~~Commissioner Michelle Kiah of 8B05.

2 CHAIRPERSON HILL: Okay. Well, welcome,
3 Commissioner. All right.

4 MS. KIAH: Thank you, so much.

5 CHAIRPERSON HILL: So we're trying to figure out when
6 to postpone this, Commissioner. And I'm going to ask
7 a question for you as well. So I guess, Mr. Carballo -- and you
8 can respond now -- do you -- you know you have to get now with
9 the Office of Planning and figure out everything they need for
10 you to give us a report before we can even have the hearing. You
11 understand, correct?

12 MR. CARBALLO: I understand that.

13 CHAIRPERSON HILL: Okay. Commissioner Kiah or Kiah,
14 I'm sorry.

15 MS. KIAH: Kiah.

16 CHAIRPERSON HILL: Kiah.

17 MS. KIAH: Yes. Uh-huh.

18 CHAIRPERSON HILL: I don't know -- and this where Mr.
19 Carballo might be reaching out to you -- I don't know if he's
20 going to need to present again. If the information has not
21 changed, and he doesn't need to present again, and you don't
22 think he needs to present again, then, I guess, you do need to
23 give us a report that is done in a way that we can give it great
24 weight. Okay?

25 MS. KIAH: Okay. Yes. And I will work on that. It's

1 something that has come by me, as I'm a new commissioner. I've
2 been a resident since 2010 and attending the meetings, but I
3 don't think the commissioner before -- I'm learning to get (audio
4 ~~distortion~~interference) to actually look at the revised plans.
5 And I haven't -- I would just like to get my head wrapped around
6 it; I'm no expert. _However, this postponing would be great for
7 me to get my head wrapped around it and then get into how the
8 residents feel. I've been on this call all day, so it has been
9 sort of an education. I've already learned a lot about certain
10 questions I should probably ask. So this will be great for me
11 to get a chance to get involved and approach this in the proper
12 manner that it deserves from the ~~commissioner~~Commissioner.

13 CHAIRPERSON HILL: Okay, Commissioner.
14 Thank you. Mr. Rice, can you hear me?

15 MR. RICE: Yes. Yes, sir.

16 CHAIRPERSON HILL: What's the form again? I always
17 forget. How are the commissions supposed to -- how can you give
18 it great weight?

19 MR. RICE: So if the ~~commissioner~~Commissioner goes on
20 the Office of ~~Zoning's~~Zoning's website, there's a form available,
21 it's Form-129, and that is a form that if you fill out will kind
22 of ensure that you've provided the required items for your report
23 to be afforded great weight. And usually, what the individual
24 commissions do is they attach the resolution or whatever
25 formalized document--~~moralization~~, memorialization they have of

1 the ~~commissions'~~Commission's vote ~~and~~ decision to that Form_129,
2 ma'am.

3 MS. KIAH: Great.

4 CHAIRPERSON HILL: Form 129 --

5 MS. KIAH: I think that's been done.

6 CHAIRPERSON HILL: Form_129 on the website, okay? All
7 right. Mr. Moy, when can we do this again?

8 MS. KIAH: Uh-huh. Form 129.

9 CHAIRPERSON HILL: Form_129. And Zack -- I mean, Mr.
10 Rice, that's at the BZA website, the Office of Zoning?

11 MR. RICE: Yes, sir.

12 CHAIRPERSON HILL: So the Office of Zoning website,
13 Commissioner. Okay?

14 MS. KIAH: Yes. Okay. For Form_129.

15 CHAIRPERSON HILL: Yeah. Mr. Moy, this is going to be
16 a little while, I think. Like when -- I know that they have --
17 we're pretty jammed up now. I think you said until like the 31st
18 of March, right?

19 MR. MOY: Well, I was going to suggest -- if it was
20 doable, I don't know if it's doable in this case but, if it
21 is, the Board can entertain a continued hearing as early as March
22 17th. But if that's too soon, it will be a later date, and I
23 would need to confer with Mr. Turnbull whether or not he'd be
24 able to attend.

25 CHAIRPERSON HILL: Okay. So let's just --

1 MR. MOY: But now, after March - after March 17th, if
2 you push it out, I think best for the Board could be as early as
3 March 31st where we have eight cases, eight cases on April the
4 7th.

5 CHAIRPERSON HILL: How many cases on the 17th?

6 MR. MOY: Nine.

7 MR. JESICK: Mr. Chairman.

8 CHAIRPERSON HILL: Yes, Mr. Jesick.

9 MR. JESICK: I will not be in the office on the 17th.

10 CHAIRPERSON HILL: Okay. So then the 31st you're going
11 to be around, Mr. Jesick?

12 MR. JESICK: Yes.

13 CHAIRPERSON HILL: Okay. It'll give you more time
14 anyway to work with the applicant and figure out whether
15 -- at this point, I don't even know if you have what you need.
16 So okay. Mr. Carballo, do you understand everything?

17 MR. CARBALLO: Yes.

18 CHAIRPERSON HILL: Okay. All right. So Mr. Moy, what
19 dates do you need to give us if we're going to try to come back
20 here on the 31st?

21 VICE CHAIR JOHN: Mr. Chairman, if I may?

22 MR. MOY: If we come back --

23 CHAIRPERSON HILL: No, I'm sorry. Go ahead. Ms. John.

24 VICE CHAIR JOHN: So I'm wondering if we should not
25 inquire about the next ANC meeting in the event that the

1 ~~Applicant~~applicant has to go back to the ANC, so we should perhaps
2 schedule this for after the next ANC meeting.

3 CHAIRPERSON HILL: Commissioner, when is your next ANC
4 meeting?

5 MS. KIAH: Our next ANC meeting is March 16th.

6 CHAIRPERSON HILL: Okay. So that'll still work
7 .

8 MS. KIAH: That's our next public meeting.

9 CHAIRPERSON HILL: Okay. So I guess if you can get -
10 - Mr. Carballo, if you -- I guess, Commissioner,
11 you're the SMD for this project?

12 MS. KIAH: Yes.

13 CHAIRPERSON HILL: Okay.

14 MS. KIAH: SMD, yes. Yes. AB05.

15 CHAIRPERSON HILL: So Mr. Carballo, you need to get
16 with the Commissioner and just clarify and make sure
17 that the plans haven't changed enough that you need to present
18 again. And if you need to present again, then, I guess, you can
19 try to see if you can get on the ANC calendar by the 16th, right?
20 And if that were the case, Mr. Moy, that you could give
21 us dates then. If the ANC meets on the 16th, to get us back here
22 on the 31st.

23 MR. MOY: Okay. So I would suggest then if we're
24 looking at a continued hearing on March 31st and -- are we
25 requiring the ~~Applicant~~applicant to file any additional

Formatted: Not Superscript/ Subscript

1 information, Mr. Chairman?

2 CHAIRPERSON HILL: Not unless we need it. It's up to
3 the Board.

4 MR. MOY: If there's nothing then, then, I think, the
5 Board would be open to receiving a resolution from the ANC,
6 let's say within a week after the 16th, which would put me at
7 March the 23rd.

8 CHAIRPERSON HILL: Commissioner, so if you -- and these
9 are all ifs. If they present again --

10 MS. KIAH: Right. Okay.

11 CHAIRPERSON HILL: -- if you think they need to present
12 again, then if you could give us your resolution by the 23rd
13 of March, okay?

14 MS. KIAH: Okay.

15 MR. MOY: That would give the ANC a week, and the
16 Office of Planning, maybe towards the end of that week on Friday.
17 I'm sorry. Go ahead, Mr. Turnbull.

18 COMMISSIONER TURNBULL: No, I just wanted to -- I think
19 Mr. Jesick's going to be the one when he looks at these
20 drawings to see if he's going to need anything else from Mr.
21 Carballo. I mean, that's an open question.

22 CHAIRPERSON HILL: Yeah. So even if we get -- thank
23 you, ~~commissioner~~Commissioner. So still that leaves -- if we
24 could get the OP report by the 26th of March so then you can --
25 you have to work with -- Mr. Carballo, you have to work with Mr.

1 Jesick so that he can, you know. You got to figure this out
2 then.

3 MR. CARBALLO: Yeah, we've been working with Mr. Jesick
4 for about six weeks now. We talk weekly via email.

5 CHAIRPERSON HILL: Okay.

6 MR. CARBALLO: So it's not something we're not used to
7 doing.

8 CHAIRPERSON HILL: All right. Okay. So we'll get you
9 back here on the 31st. Does everybody know the dates? Okay.
10 All right. So we're going to do a continued hearing on the 31st.
11 Okay. All right. So see you all then. Thank you. Bye-bye.

12 MS. KIAH: Thank you. Bye-bye. Thank you so much.

13 COMMISSIONER TURNBULL: Mr. Moy, if you twist my arm,
14 I'll make myself available.

15 MR. MOY: It's not me, it's the Board.

16 CHAIRPERSON HILL: You should not - I mean, honestly,
17 Commissioner Turnbull, it would be great because you're an
18 architect, so let's go ahead and bring you back because
19 there's all these drawings now that we're going to
20 be taking a look at, okay? I'll twist your arm. Is that
21 all right, Mr. Turnbull?

22 COMMISSIONER TURNBULL: You know what, in this whole
23 pandemic thing, I mean, I'm tied down anyway, so I'll make
24 myself available.

25 CHAIRPERSON HILL: Well, ~~we'll~~we'll try to let you go

1 first then. The ~~Applicant~~applicant can thank me -- thank you for
2 that. All right. ~~Let's~~Let's see now.

3 _____ Our next one, whenever you like, Mr. Moy. _____

4 MR. RICE: Mr. Chairman, if we're proceeding on
5 the case 20389, just so you know, I think we have some other
6 items that we received less than 24 hours before filing, so
7 we'll need to add that into the agenda of preliminary
8 matters.

9 CHAIRPERSON HILL: Okay. Thank you, Mr. Rice.

10 MR. MOY: Okay. All right. Sorry, Mr. Chairman.
11 I've been --

12 CHAIRPERSON HILL: Take your time.

13 MR. MOY: -- I've been reordering my cases here.
14 Okay.

15 _____ So what is before the Board now is case Application No.
16 20389 of Samuel Medeiros, M-E-D-E-I-R-O-S, and Jessica Ellis
17 , captioned and advertised for area variances
18 from the side yard requirements, Subtitle D Section 206.2
19 ; minimum lot dimension requirements, Subtitle D Section
20 302.1, to subdivide the property into two lots and construct a
21 new, detached, principal dwelling unit with a detached two-story
22 accessory garage and a new lot in the R-1-B Zone at premises 1915
23 Shepherd Street, N.E., Square 4194, Lot 841.

24 In terms of preliminary, other than what Mr. Rice has
25 just stated, there was a filing last night -- I think it was

1 around 11 o'clock p.m., but anyways-- the ~~Applicant~~applicant is
2 requesting a postponement. It was by email but clearly, it was
3 not served on any parties. And of course, attached to that was
4 a letter of authorization to represent for a Olutoye Bello. So
5 those are the two items to address if the Board intends to go to
6 the merits of the case.

7 CHAIRPERSON HILL: Okay. Oh, gosh, I forgot.
8 Oh, you guys, I forgot I have that 2 o'clock phone call. I
9 apologize. Give me -- give me five minutes.

10 (Whereupon, the above-entitled matter went off the
11 record and then resumed at approximately 2:10 p.m.)

12 CHAIRPERSON HILL: Mr. Moy, are you there?

13 MR. MOY: Yes, sir.

14 CHAIRPERSON HILL: Okay. Mr. Moy, I'm
15 sorry. I didn't hear that. If you can just call us back
16 again.

17 MR. MOY: Oh, okay. Sure. The hearing is back in
18 session after a very, very, very brief break. And the time is
19 at or about 2:10 p.m.

20 CHAIRPERSON HILL: Okay. Thanks. All right. Mr.
21 Kearley, could you introduce yourself, please? You're on mute,
22 sir.

23 MR. KEARLEY: I keep ~~having to~~hitting -- keep turning
24 that off, ~~apologies.~~ Apologies. Gregory Kearley, Inscape
25 Studio. And I'm the architect for the project and also, one of

1 the representatives of the owner. I could speak to the
2 postponement request for --

3 CHAIRPERSON HILL: It's okay. Let me get through a
4 couple of these things, Mr. Kearley.

5 MR. KEARLEY: Okay. Sure.

6 COMMISSIONER HILL: So your client again is -- how do
7 you pronounce your name?

8 MR. KEARLEY: They're here. They're
9 here, Sam and Jessica.

10 CHAIRPERSON HILL: Okay. Is it Medeiros?

11 MR. MEDEIROS: It's Medeiros.

12 CHAIRPERSON HILL: Medeiros?

13 MR. MEDEIROS: Yes.

14 CHAIRPERSON HILL: Oh, okay. All right, Mr. Medeiros.
15 Could you introduce yourselves for the record?

16 MR. MEDEIROS: Yeah. Absolutely. I'm Sam Medeiros;
17 this is Jessica Ellis. We're here at 1915 Shepherd Street,
18 Northeast, looking to get this variance and the intent of dividing
19 the lot.

20 CHAIRPERSON HILL: Got it. And so you filed a bunch
21 of stuff recently, and one of those things is you authorized Mr.
22 Bello to represent you; is that correct?

23 MR. MEDEIROS: Correct.

24 CHAIRPERSON HILL: Okay. Well, so, unless the Board
25 has any issues, I mean, we're going to postpone this. But Mr.

1 | Kearley, if you could, mute your line.

2 | MR. KEARLEY: Pardon me?

3 | CHAIRPERSON HILL: If you could mute your line. Thank
4 | you. And so unless the Board has any issues, I mean, we're going
5 | to be postponing this, so we'll allow everything into the record
6 | anyway, including now, I guess, that Mr. Bello has been authorized
7 | as a representative. And so, Mr. Bello, can you hear me?

8 | MR. BELLO: Loud and clear, Mr. Chairman. Yes.

9 | CHAIRPERSON HILL: So Mr. Bello, I know that you know
10 | that currently the Office of Planning is in denial of a variance
11 | and do not think that your Applicant -- your client is meeting
12 | the criteria to grant variance. So I know you have things that
13 | you're going to have to kind of work through with. I didn't see
14 | anything even from the ANC. So Mr. Moy, we've been talking about
15 | this now. I guess Mr. Turnbull is coming back with us again,
16 | but I don't think if they're even going to be ready by then. We
17 | got Mr. Turnbull; we're forcing him back with us on the 17th. I
18 | don't know -- Mr. Bello, do you know enough about what's going
19 | on as to when you think you're going to be able to even have a
20 | shot at coming back before us?

21 | MR. BELLO: Well, I'll be on international travel
22 | between the middle of March through late April anyway, so we're
23 | not looking for anything before then.

24 | CHAIRPERSON HILL: Okay. Late April is when?

25 | MR. BELLO: Last week of April or first week of May.

1 CHAIRPERSON HILL: Okay. Mr. Moy, are you even setting
2 dates out then yet?

3 MR. MOY: Oh, yes. Absolutely. Oh, yeah.

4 CHAIRPERSON HILL: Well, then do the first week of May.

5 MR. MOY: Okay. In May, I would suggest -- the first
6 opportunity in May, Mr. Chair, I would suggest
7 May 19th at the earliest. The problem is the
8 two previous weeks, I have appeals. So on May 5th and May --

9 CHAIRPERSON HILL: What about April 28th? Oh, no, no.
10 You're -- oh, Mr. Bello. All right, so what did you say, May
11 19th?

12 MR. MOY: Yes. At the earliest.

13 CHAIRPERSON HILL: Okay. All right. So we'll bring
14 you guys back on May 19th. Okay? And -- hold on. And I'm --
15 Sam, can you hear me? I don't want to butcher your last name
16 again. MR. MEDEIROS: Yeah, it's Medeiros.

17 CHAIRPERSON HILL: Medeiros. I don't know why I'm
18 having a hard time reading that. I can say it easy enough. You
19 all understand you have a pretty high bar that you have to deal
20 with in terms of like getting a variance. So, you know, Mr.
21 Bello knows about it, and so you guys need to try to figure out
22 what you want to do, okay?

23 MR. MEDEIROS: All right. Sounds good. Thank you.

24 CHAIRPERSON HILL: Mr. Bello, can you hear me?

25 MR. BELLO: Yes, Mr. Chair.

1 CHAIRPERSON HILL: When you say international travel,
2 just a pang of jealousy shot through my entire body.

3 MR. BELLO: I didn't intend that. I'm sorry.

4 CHAIRPERSON HILL: No, that's all right. I'm really
5 happy for you.

6 MR. BELLO: Thank you.

7 CHAIRPERSON HILL: All right. Okay. All right, that's
8 it then. We'll see guys on 5/19.

9 MR. KEARLEY: Thank you.

10 CHAIRPERSON HILL: Thank you.

11 MR. BELLO: See you then. Thank you.

12 CHAIRPERSON HILL: All right. Good luck. I mean, at
13 this point, Mr. Moy, we don't even need -- I mean, Mr.
14 Turnbull, you don't have to come back for that. We
15 haven't done anything.

16 UNIDENTIFIED SPEAKER: Did you hear that, Cliff?

17 UNIDENTIFIED SPEAKER: No. (Audio
18 interference.)

19 UNIDENTIFIED SPEAKER: Are you from (audio
20 interference) also?

21 CHAIRPERSON HILL: Well, Mr. Bello is still in
22 the room, Mr. Young. That's why I'm trying to figure
23 out if he's supposed to be here.

24 MR. YOUNG: Yeah, he's on the next case. He's
25 on the next case, sir.

1 CHAIRPERSON HILL: Got it. Got it. Okay.
2 There you go. All right.

3 COMMISSIONER TURNBULL: I
4 won't be with you guys on May 26th anyways.

5 CHAIRPERSON HILL: Okay. We'll
6 you'll miss it anyway then. Although I am just so excited for
7 Ms. John. Okay. I'm going to call you later, Ms. John. All
8 right. Let's see.

9 Mr. Moy, you can call our next case if you like.

10 MR. MOY: Thank you, Mr. Chairman. So I'm going to be
11 reading what I believe is the amended relief for this application
12 because the Applicant actually filed a revised self-certification
13 yesterday or rather, I should say last night. So this is amended
14 for relief for special exceptions under Subtitle Z Section
15 703.2, from the minimum parking requirements of Subtitle C
16 Section 701.5; Subtitle G, Section 409.1 from the lot occupancy
17 requirement of Subtitle G, Section 404.1. And for an area
18 variance from the FAR requirements is Subtitle G Section 402.1.
19 This would construct a principal detached dwelling unit on a
20 vacant lot in the MU-3A Zone at premises 4331 14th Street,
21 Northwest, and that's in Square 2819S, Lot 1.

22 CHAIRPERSON HILL: Okay. I thought -- I didn't realize
23 the area variance was still -- I thought that was -- okay. All
24 right.

25 MR. MOY: Well, I'd ask the ~~Applicant~~applicant to

1 confirm that for me.

2 CHAIRPERSON HILL: Okay. Mr. Bello, are you there?

3 MR. BELLO: Yes, I am.

4 CHAIRPERSON HILL: Could you introduce yourself for the
5 record, please?

6 MR. BELLO: Olutoye Bello, representing the
7 applicant.

8 CHAIRPERSON HILL: Okay. Mr. Bello, could you turn on
9 your camera, if you wouldn't mind?

10 MR. BELLO: Yes.

11 CHAIRPERSON HILL: So you revised your self-cert, but
12 you're still here for the area variances?

13 MR. BELLO: The area variance will only be with respect
14 to the FAR. So we have one area variance FAR and two special
15 exception. One special exception is from the required parking,
16 and the other one is to exceed the maximum allowed
17 consented lot occupancy.

18 CHAIRPERSON HILL: All right. As I'm pulling up this
19 case then, Mr. Bello, who is here with you?

20 MR. BELLO: I'm not sure that any of --

21 CHAIRPERSON HILL: I see a Shelton.

22 MR. BELLO: Okay. Nneka. Right.

23 MS. SHELTON: Good afternoon, everyone. Yes, this is
24 Nneka Shelton. Do I need to turn my camera on?

25 CHAIRPERSON HILL: If you -- you don't have to but, if

1 you wouldn't mind, it's nice to be able to see people.

2 MS. SHELTON: All right.

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

5 MS. SHELTON: Sure. My name is Nneka Shelton. I am
6 working with the -- with Olutoye and the homeowner for the
7 project. I'm just assisting Olutoye.

8 CHAIRPERSON HILL: Got it. Okay. All right, Mr. Bello.
9 You can go ahead and give your presentation and tell us why you
10 believe you're meeting the standards for us to grant the relief
11 being requested. And you can begin whenever you like.

12 MR. MOY: One thing really quick, Mr. Chairman.
13 Sorry to intervene but, as I mentioned, there were these late
14 filings that were submitted yesterday, so that's within the 24-
15 hour period, so the Board should address at least official
16 formally that whether you're allowing those into the
17 record, which is the self-cert, the applicant's
18 PowerPoint, affidavit of maintenance, and comments from a
19 neighbor.

20 CHAIRPERSON HILL: All right. I'm sorry. I didn't
21 know that we had -- well, I heard you say the revised self-cert.
22 But so Mr. Bello, there's revised self-cert, there's your
23 PowerPoint, and then what were the other items?

24 MR. BELLO: Just the affidavit of maintenance.

25 CHAIRPERSON HILL: Okay. I don't have any issue with

1 any of that stuff getting into the record, but I'd like to be
2 able to see it, that's the problem. I don't know if the Board
3 members -- if any of my Board members have any issue with -- I
4 don't think it's going to prejudice any parties for any of those
5 items to be allowed into the record. Does the Board have any
6 issues with those ~~and?~~ And if so, raise your hand ~~2.~~ Okay.
7 Then Mr. Moy, could you put them into the record? And then how
8 long will it take before we can see them?

9 MR. MOY: Oh, you'll see that momentarily. The staff
10 is doing that now.

11 CHAIRPERSON HILL: Okay. We're just going to wait
12 here, because I want to see the revised self-cert or the
13 PowerPoint before we begin.

14 (Pause.)

15 CHAIRPERSON HILL: What we should probably do, Mr. Moy,
16 in the future, if we do this, is just kick them back to the end
17 of the line and then we'll -- but the other thing is I just noted
18 the next one is going to take a while to discuss so.

19 MR. MOY: It's -- those documents are being uploaded
20 now as we speak, sir.

21 CHAIRPERSON HILL: If one of you guys gets it, let me
22 know. I'm just clicking out and in.

23 (Pause.)

24 CHAIRPERSON HILL: Mr. Young, do you have Mr. Bello's
25 PowerPoint presentation?

1 MR. YOUNG: I do.

2 CHAIRPERSON HILL: All right. Let's go ahead -- Mr.
3 Bello, if you can just go ahead and walk us through your
4 PowerPoint, and we'll see what happens as we kind of wait to get
5 the other five items into the record, okay?

6 MR. BELLO: Thank you, Mr. Chairman. So the application
7 is for property address, 4331 14th Street, Northwest. And the
8 nature of the relief applied for -- we go to the second
9 page -- is an area of variance to exceed the allowable
10 floor area ratio. As noted, this property is zoned MU-3A which
11 permits a maximum of 1.0 FAR. The request is a 3.0 FAR.

12 There are two special exceptions that the
13 applicant seeks. One is from the minimum required
14 parking of one space; none is provided. And the second special
15 exception is to exceed the allowable percentage lot occupancy in
16 that zone district which limits percentage of lot occupancy about
17 to 60 percent. We intend to cover 100 percent of the property.

18 The property -- next page, please. The property is
19 located in the 16th Street Heights neighborhood in the northwest
20 quadrant. It's a vacant and unimproved property at this point.
21 The total square footage of the lot is 307 square feet. It is
22 triangular in shape.

23 The proposal is to construct a new single-family
24 developingdwelling which will be a owner-occupied private
25 residence effor this property. The surrounding neighborhood is

1 a mixture of ~~readrow~~ dwellings, flats, and apartment buildings.
2 As aforementioned, the proposed building will occupy 100 percent
3 of the lot. Next page, please.

4 CHAIRPERSON HILL: Mr. Bello?

5 MR. BELLO: Yes. Yes, sir.

6 CHAIRPERSON HILL: Just to let my Board members know,
7 I have all this stuff in the record if you want to open it up,
8 if you haven't yet. All right, Mr. Bello. Thank you.

9 MR. BELLO: Thank you. So compliance for the burden
10 of proof, starting with the area variance for FAR. The
11 applicant submits that the property demonstrates or
12 exhibits an extraordinary or exceptional situation, or
13 condition of property and unique physical characteristics of
14 shape or size. The subject property is triangular in
15 shape and is the only lot in its square location.
16 The subject property is extraordinarily small at
17 approximately 307 square feet.

18 The peculiar and practical difficulties upon the owner
19 of the property-: Subject property is surrounded ~~alongside on all~~
20 sides by the public space, hence the opportunity to expand. ~~The~~
21 ~~site in size~~ is and has been foreclosed since prior to May 12,
22 1958. The size of the subject property restricts the building
23 footprint to ~~180~~184-foot square feet if we were to construct 60
24 percent maximum. ~~And, and~~ a maximum gross floor area of 307
25 square feet if we were to keep ~~per~~ to the restriction on FAR 1.0.

1 The ~~Applicant~~applicant believes that the two following factors
 2 result in the uniqueness of the property, and ~~they pose~~impose an
 3 impractical outcome and practical and peculiar difficulties upon
 4 the owner.

5 Next page, please. Still the continuation of the
 6 burden of proof for area variance. The substantial
 7 detriment to public good and substantial impairment
 8 of intent, purpose and integrity of the zone plan.

9 Applicant seeks to establish use permitted as a
 10 matter of right in its underlying zone district.
 11 The surrounding neighborhood south, east,
 12 and west of subject property are zoned RF-1 which permits
 13 row dwellings, flats, and apartment houses. The proposed
 14 single-family developing is therefore compatible with the
 15 existing buildings in the vicinity of the property of
 16 application. The subject property is the only lot in
 17 its square and it is separated from all other properties by
 18 abutting streets in excess of 60 feet in width. Hence
 19 the proposed structure will not adversely affect the light and
 20 the air of adjoining property. Next page, please.

21 The compliance of the burden of proof ~~withof~~ special
 22 exception. ~~Property:~~ The property needs to be in harmony with
 23 the general purpose and intent of the zoning regulations and
 24 zoning maps. The proposed private residence, ~~a~~ or single-family
 25 dwelling is permitted ~~used~~use in the MU-3A Zone district of

1 location. The subject property constitutes a ~~deminimis~~ de minimis
2 less than 10 percent of the total area of the square within which
3 ~~it's~~ it's located, and it solely occupies. The ~~release sort~~ relief
4 sought result in limited or no potential adverse impact on the
5 adjoining ~~property.~~ properties.

6 _____ Next page, please. I apologize for the corruption
7 here; Will not tend to affect adversely the use
8 of the neighboring property in accordance with the zoning
9 regulation and zoning maps. The subject property is
10 separated from properties located on all sides by dedicated
11 streets, 60 feet or more wide in width of right-
12 of-way. The adjoining property to the east of the
13 subject property and separated by Arkansas Avenue
14 is an expansive public recreation park approximately
15 400,000 square feet in area. The proposed
16 structure will not exceed the maximum permitted number of
17 stories or height for the MU-3A zone district.
18 The shadow study attests that the
19 proposed structure will not unduly affect the light and air
20 available to neighboring properties. The third
21 point -- will meet such special
22 conditions as may be specified in this title. No other special
23 conditions are specified or applicable.

24 _____ Next page, please. The ~~Applicant's~~ applicant is aware
25 of the ANC opposition and also some neighbor

1 ~~oppositions~~opposition, and ~~adding~~I think one can essentially
 2 summarize those opposition to one, the fact or the belief that
 3 the comprehensive plan designates this property as a future park
 4 land use.

5 ~~-----The Applicant~~ the applicant believes that -- all the
 6 public space within the square will remain a green area, and this
 7 designation cannot be applicable to private property. And this
 8 property is designated with a zone district, and ~~it's~~is privately
 9 owned. Concerns about site contamination. ~~Applicants will merely~~
 10 ~~investigate issue and concerns,:~~ The applicant's preliminary
 11 investigation confirms the existence of an underground tank. It
 12 is as of yet confirmed that soil contamination ~~exist~~exists. The
 13 underground tank appears to be located entirely in public space.
 14 The process for the removal of an underground oil tank ~~or~~and a
 15 contaminated soil ~~irrigation~~remediation is strictly regulated and
 16 in the purview of the Department of Energy and the Environment
 17 and ~~the departments that need adjustments~~not the Board on Zoning
 18 Adjustments. The loss of green space is mitigated by the close
 19 proximity of a large public recreational facility. The proposed
 20 fence and public space is limited to 42 inches in height will be
 21 open and will not affect the traffic ~~sidelines~~sight line of the
 22 ~~(indiscernible)~~abutting streets.

23 ~~-----~~Next page. I believe that concludes our presentation.
 24 I believe that for all the foregoing factors, that the Board
 25 should consider approving this application respectfully.

1 CHAIRPERSON HILL: Okay. Let's see. Mr. -- or maybe
2 if you could use your microphone, sorry. Or maybe it's Mr.
3 Mordfin, I'm not sure. All right. Does the Board have
4 questions for the applicant?

5 VICE CHAIR JOHN: So my initial question for you, Mr.
6 Olutoye, is you say that because of the exceptional
7 condition of the property that a variance relief is required
8 because of the size of the private property. And yet, the design
9 takes up not only the private property but the public space. So
10 I'm not sure why it is an exceptional condition if you're able
11 to use the public space.

12 CHAIRPERSON HILL: You're on mute again, Mr.
13 Bello.

14 MR. BELLO: ___ My apologies. To your question,
15 Commissioner John, initially, the design of the property kept all
16 the property within private property but the Office of
17 Planning --we worked with the Office of Planning very closely
18 on the design for this project, and it was the Office of
19 Planning's recommendation they they'll be projections
20 beyond the property lot line. So the projections
21 beyond the property lot lines are those that are permitted under
22 the construction codes, and they're in response to design
23 recommendations by the Office of Planning.

24 MS. JONES: So what are the projections?

25 MR. BELLO: Building the projections and then a public

1 space fence, 42-inch public space fence around the perimeter of
2 the triangular square.

3 MS. JONES: Mr. Olutoye, maybe you could pull up a
4 diagram to help me understand that because I looked at them last
5 night, and I mean, the private property is a tiny section
6 in the middle. And are you saying that everything outside of
7 that property is the fence or maybe a balcony or something like
8 that?

9 MR. BELLO: Okay, so if you look at the limits of the
10 private property, I think that maybe Exhibit 48 may help a little
11 bit with that.

12 VICE CHAIR JOHN: Okay.

13 MR. BELLO: So that exhibit actually -- if you have it
14 open -- that exhibit actually shows in red those portions of the
15 building that will be projections beyond the private property lot
16 lines. -- So those are a series of projections that are
17 ~~(indiscernible)~~ bay window projections and balconies that the
18 Office of Planning has recommended. And ~~then~~ there you would also
19 see the approximate location of the fence, the ~~lower~~ low 42-inch
20 fence that is proposed around the perimeter of the square. And
21 it should show you that the fence was relocated three feet
22 additionally in ~~width~~ (audio interference) in response to the
23 neighborhood concern. So that on 14th Street, that fence is
24 about 15 feet from the edge of the curb. But this will be the
25 typical fence that every D.C. resident has in front of their

1 yard. This property just happens to be fortunate to be the only
2 one that occupies its entire square.

3 ~~So~~ it appears to have a whole lot more public space
4 main area that it's fencing, but it's pretty much the same thing,
5 amenity that is available to every D.C. resident and ~~rural~~
6 ~~houses~~ rowhouses who fence the front yard. The green space or
7 their front yard, which is public space, but they -- it's used
8 for private purposes and maintained by the property owner.

9 VICE CHAIR JOHN:

10 CHAIRPERSON HILL: Mr. Turnbull. Yeah, I'm sorry.
11 Please.

12 COMMISSIONER TURNBULL: So Mr. Bello, this
13 applicant is basically taking over this whole island for
14 their own private use. MR. BELLO: Well, actually, not.

15 Again, the property would occupy -- the building structure itself
16 proper -- would occupy 100 percent of the tiny triangular
17 private property which is approximately about 307 square feet.
18 And in terms of relative size, that's only 10 percent of the
19 entirety of the square, including the public area outside of
20 private property boundaries. So that portion that they are
21 fencing around is public space, but the applicant does
22 not seek to build any projections not allowed under the
23 construction codes or allowed by public space regulations.

24 COMMISSIONER TURNBULL: The public can't go into this
25 park -- what was this park before. You're going to fence around

1 it basically secluding it for just this piece of property for
2 this one residence.

3 MR. BELLO: Not in entirety. And again, that fence is
4 really not a deal breaker, if you will. But again, the comparison
5 I would have is that if you take a look at the other
6 rowhouses, essentially those rowhouses across
7 14th Street, they also have public space green area that is fenced
8 in that's not accessible to the public. That's public space too.
9 Yes, this property --

10 COMMISSIONER TURNBULL: Yeah, this is a little bit
11 different. This is a huge taking. This is -- you're
12 basically, kind of reverse eminent domain. This is like
13 , "I'm taking over this public space, it's only a park," and
14 yeah, I think you said "Ooh, there's some place else they can
15 go for recreation" earlier. And I'm like no, the form says this
16 is Parks and Recreation, and you're basically
17 saying we're going to take it over for the private use of this
18 individual. And I -- that's a big bar. You've really, you know
19 what I mean. That's really -- I can't go along with that.

20 MR. BELLO: Well, the issue -- the separation that I'm
21 trying to make here is that if we look at the project opposite
22 of the fence, right, what the Applicantapplicant seeks to do is
23 really to construct on their private property and also build
24 projections within the limits permitted under the construction
25 codes. So the Applicantapplicant could argue that if the total

1 objection is about the fence, then the fence could be taken off
2 the table, and then what would be the consideration at that point?

3 COMMISSIONER TURNBULL: Well, I think you better
4 consider it, I think.

5 MR. BELLO: It's not a deal breaker for the
6 applicant.

7 CHAIRPERSON HILL: Okay. Mr. Smith.

8 BOARD MEMBER SMITH: I think Mr. Turnbull answered
9 my question. My question, regarding the fence, what
10 is the height of the fence, or what is the material of the fence?

11 MR. BELLO: The fence will be 42 inches high, and it
12 will be an open fence because there are specific regulations on
13 the material and the type of fence that you have on public space.
14 So it's not a wooden closed fence that basically closes the
15 property out, that it cannot be in excess of 42 inches. But you
16 know, as I've said here, if the application is going to hinge
17 on, you know, the fence, then the fence can be removed.

18 CHAIRPERSON HILL: Mr. Bello, I'm trying to just
19 understand. I'm looking at Exhibit -- and maybe you can just
20 point me to stuff. Like, I'm looking at Exhibit 30, right, and
21 maybe my fellow Board -- I'm just having a hard time kind of
22 wrapping my head around this because there's different -- I'm
23 trying to get an idea as to what you're talking about is -- and
24 the Office of Planning can help me also. But in Exhibit 30, you
25 have like a building and then you have green area, right? I

1 | thought you were developing 100 percent of -- and this where I
2 | think I'm confused -- 100 percent of that triangle. And even in
3 | your Exhibit 30, it's not really a triangle. On a couple of
4 | things, it looks like a triangle. ~~On;~~ on another, it doesn't
5 | look like a triangle. I'm just -- I'm confused as to -- my
6 | question to you is, is that green space, that's the area that
7 | completely is the outline of the triangle; is that correct?
8 | You're on mute, Mr. Bello.

9 | MR. BELLO: Yes, sir. One second. I'm trying to take
10 | a quick look at the exhibit.

11 | MR. MOY: While he's doing that, Mr. Chairman, it might
12 | be also -- it might also be helpful if you also look at Exhibit
13 | 35 because that's a updated survey spot where you can see the
14 | boundaries of Lot 1. That might be helpful as well.

15 | CHAIRPERSON HILL: Right. So Mr. Bello, I'll come back
16 | to you because I want to go to the Office of Planning. And my
17 | computer is working very slowly for some reason.

18 | BOARD MEMBER SMITH: Mr. Chair, I have one
19 | additional question.

20 | CHAIRPERSON HILL: Yep. Go on, Mr. Smith. Give me one
21 | second. Give me one second, Mr. Smith. I'm sorry.

22 | BOARD MEMBER SMITH: Okay.

23 | CHAIRPERSON HILL: Because that thing that Mr. Bello
24 | just pulled -- or Mr. Moy just pulled up, I think you said Exhibit
25 | 35. Yeah, 35. I mean, to me, it looks like there's a lot more

1 green space in Exhibit 35 than there is in Exhibit 30, I guess.
2 And so Mr. Godfrey(audio interference) or the Office of Planning
3 can maybe help me understand. I'm just trying to understand
4 where the green space is and where the building is. So now, the
5 Office of Planning can help me probably and/or Mr. Bello. Mr.
6 Smith, go ahead with your question.

7 BOARD MEMBER SMITH: Sorry. Given the concerns
8 that were raised by Mr. Turnbull about the
9 prioritization of open space, was there any
10 consideration in the design of the fence? And I understand that
11 it's not a make-or-break situation to have additional
12 penetrations into the fence along Arkansas Avenue, things of that
13 particular nature. It looks like it's only 42- inches,
14 isn't it?

15 MR. BELLO: Well, again, in the absolute absence of the
16 fence, you know, what you'd have is a situation where the people
17 could walk up straight to the front door of the occupant of this
18 building. And so the applicant is amenable to
19 moving the fence to wherever location offers that modicum of
20 security for the applicant, and it's not tied to exactly
21 where the location of this fence is at the moment.

22 MR. BOARD MEMBER SMITH: Okay. Got you. And I have
23 final question regarding these projections which I think I heard
24 earlier that it was consideration that they were balconies but,
25 based on your Exhibit 30, they look to be outright additions to

1 the proposed -- only to the public space. --Was there some
2 consideration, given that your request is for a variance for FAR,
3 for a different design?

4 MR. BELLO: Well, as I mentioned previously, the design
5 team worked very closely and amended these plans along the way
6 based on the recommendations of the Office of Planning. And
7 I'll let the Office of Planning speak to it, but our
8 understanding is that, you know, buildings of this nature because
9 of the high visibility profile, are better served with
10 these projections than, you know, just (audio
11 interference) that just are right at the property lot line.
12 And these projections are within the limits permitted under the
13 construction code. But again, I'll let the Office of Planning
14 speak to that.

15 BOARD MEMBER SMITH: Thank you.

16 MR. BELLO: Thank you.

17 CHAIRPERSON HILL: Ms. John, do you have any questions
18 before I turn to the Office of Planning?

19 VICE CHAIR JOHN: No. I don't have any more questions
20 at this time. It was really very helpful for me to see the
21 Exhibit, I believe it's 34, that shows how the project is confined
22 to the private property. I still have a question about access
23 to the private property which would be over public space, but I
24 guess it's something for the applicant to work out at a
25 later date so.

1 CHAIRPERSON HILL: Okay. I'm going to turn to the
2 Office of Planning.

3 MR. MORDFIN: Good afternoon. Chairman and members of
4 the Board, I'm Stephen Mordfin with the Office of Planning.
5 And the Office of Planning does recommend approval over this
6 application. There are three areas of relief, two
7 special exceptions, and one variance. The fourth issue, the
8 fourth type of relief that was requested is no longer required
9 due to a change in the building code and the wording that it
10 uses, so GAR is no longer required for this property because a
11 certificate of occupancy is not required.

12 Now, this piece of property, it is a small piece of
13 property. It is surrounded by public space. That is under the
14 jurisdiction of DDOT. It is public space by DDOT; it is not park
15 land. It is the same as the other houses across the street.
16 Across 14th Street, there's a row of ~~row houses~~ rowhouses. Those
17 property lines -- the front of those property lines, are equal
18 to or the same as the front row of those houses. So the walkways
19 up to those houses, all of those front lawns, ~~would~~ what appear
20 to be front lawns, are also public space under the jurisdiction
21 of DDOT. Same as when you get to the corner⁷; the corner house
22 has two areas of public space, this one would have three. But
23 all of those areas forward of their exterior walls, to the front
24 and to the side if it's a corner lot, it's public space similar
25 to this. And because it's not private property, its use is

1 governed by the public space committee as a part of DDOT and not
2 by the Board.

3 So based on that, the applicant is allowed to
4 do what they're proposing. It is true that the Office of Planning
5 recommended that the applicant expand the building into
6 the public space. That's also not something that's unusual in
7 the District. Often times, usually, when you see on the
8 front of a rowhouse, you see a bay window. Those bay
9 windows extend into public space. Their regulations as to how
10 you can do it and what you can do, what you can't do, you can't
11 put things like -- you can't have plumbing in those areas, you
12 can't have closets in those areas. And the Applicant did revise
13 his plans to conform with the public space committee's
14 requirements for what you can and cannot do when you expand into
15 public space.

16 This piece of property just happens to be
17 unusual in that it has it on three sides. Usually,
18 you only have it on one side, or maybe two if
19 it's a corner lot as -- but for the front yard to be public space
20 is typical and is most common in the District. There are
21 some places where the buildings are set back further. And there
22 is some private land that is public space, but that's not the
23 norm. The norm is that it's all public space. So do you want
24 me to go into why we recommended approval in each of the three
25 areas of relief (audio interference).

1 CHAIRPERSON HILL: Yes, please. Go ahead, Mr. Mordfin,
2 if you wouldn't mind.

3 MR. MORDFIN: Okay. Wait just a minute. I wanted to
4 open up my report again. Hold one second. Okay.

5 So the applicant is requesting three areas of
6 relief at this point. The first one has to do with FAR, floor
7 area ratio. This is an unusual lot. It's 307 square feet which
8 -- and triangularly shaped, so that makes it difficult to
9 put it to any use because of the size and because of the shape,
10 but it still is a legal record lot. So to restrict it to 307
11 square feet would result in an extraordinary situation because
12 the FAR permitted as a matter of right is one, so that would
13 create problems with developing a dwelling that would be usable
14 in kind of a sufficient size to accommodate a family.

15 We don't see that this would be a detriment to public
16 good. First of all, there are no adjoining lots because this
17 lot is the entire square so it wouldn't be located adjacent to
18 or in close proximity to another lot because it does occupy the
19 entire square. And, you know, raising it to 3.0, we don't find
20 that, that would be a substantial impairment to the intent or the
21 purpose of the zoning regulations. Because the lot is so small,
22 it's massing a lot, and it's on the square all by itself
23 and we don't see that that would have a negative effect.

24 So any request for -- okay, then for the parking. Okay,
25 ~~this say~~ to reduce it by one is what the ~~Applicant~~applicant is

1 requesting. Now, there is no ~~Applicant~~,(audio interference), so
2 the applicant could only access parking if he got a curb cut from
3 DDOT which DDOT is not inclined to give. And DDOT has also
4 recommended approval of this reduction of one parking space, and
5 they are in support of that. And you indicated that the
6 ~~Applicant~~applicant would not have to submit or implement any TDM
7 strategies in order to reduce the parking from 1 to 0. _____

8 _____
9 And then the last relief that's requested is a special
10 exception for lot occupancy. So the applicant does want
11 to increase the lot occupancy to 100 percent, but this is an
12 unusually shaped lot. It does have all that public space around
13 it which is actually part of the street; it's the
14 DDOT public space that surrounds it. And so if you build to the
15 100 percent lot occupancy, it's appearance and the bulk of this
16 structure as compared to the rest of the neighborhood, it would
17 not appear to be out of place, and there aren't neighboring
18 properties again. So based on that, the Office of Planning also
19 recommends approval of the lot occupancy.

20 As for the green area requirement, what happened was
21 in May 2020, the 2017 building code was adopted, and it changed
22 the ~~legislation~~(audio interference) of what you need when you
23 build a single-family home the first time. ~~Used~~It used to be
24 you had to get a Certificate of Occupancy and that's what
25 triggered the GAR requirement in the zoning ~~reess~~regs. What's

1 happened since then is now, the building code says for a single-
2 family home, you need a Certificate of Compliance, I think. And
3 it changed -- the wording changed. It kicked this out of
4 requiring GAR, so therefore, the ~~Applicant~~applicant no longer
5 requires GAR.

6 CHAIRPERSON HILL: Okay. Mr. Mordfin, are you done?

7 MR. MORDFIN: I am. Yes, sir.

8 CHAIRPERSON HILL: Because I want to ask you a question.
9 Are you able to pull up exhibits?

10 MR. MORDFIN: Yes.

11 CHAIRPERSON HILL: Okay. So Exhibit 34, right?

12 MR. MORDFIN: Okay. One second. Okay.

13 CHAIRPERSON HILL: Okay. And then there's a triangle
14 --and this is just -- I just want to make sure I'm understanding
15 everything, right? And that's the property, right?

16 MR. MORDFIN: Yes, sir. With the black lines, yes.

17 CHAIRPERSON HILL: And then in Exhibit 35.

18 MR. MORDFIN: Okay.

19 CHAIRPERSON HILL: And my computer is taking a while
20 to pull up. Give me one second. Right. So that triangle is
21 basically the black lines again, correct?

22 MR. MORDFIN: Are they black or are they
23 (audio interference).

24 CHAIRPERSON HILL: No, no, I'm sorry. The black lines
25 from Exhibit 34 are now the red lines in Exhibit 35, correct?

1 MR. MORDFIN: That's my understanding.

2 CHAIRPERSON HILL: Okay. And the 100 percent lot

3 occupancy is the black lines in Exhibit 34, correct?

4 MR. MORDFIN: Yes.

5 CHAIRPERSON HILL: Okay. Because when I got all

6 confused -- and then the triangle is what we're looking at in

7 Exhibit 35. I mean, I saw the architectural drawings and

8 (audio interference). So that was -- the triangle

9 is the actual piece of property that we see pictures of, correct?

10 MR. MORDFIN: Yeah. That whole triangle is the entire

11 square, including the public space because it's our -- you know,

12 if you're looking, Arkansas Avenue (audio

13 interference).

14 CHAIRPERSON HILL: (Indiscernible). And then I see the

15 fence line and all that stuff. Okay. I understand now. Okay.

16 Thank you. Ms. John?

17 MR. MORDFIN: Oh, you know what, sir?

18 CHAIRPERSON HILL: Sure.

19 MR. MORDFIN: Where the solid red lines are, are the

20 projections that the applicant has proposed. And inside

21 of that, that white area, is the lot itself.

22 CHAIRPERSON HILL: Okay. Right.

23 MR. MORDFIN: Because ~~it's in~~it's the new ~~projected~~

24 living area. So that's additional areas, and there are

25 restrictions on, you know, it being continuous all the way around

1 the lot and you have to break it up which is why it's designed
2 the way it is.

3 CHAIRPERSON HILL: It can't be continuous all the way
4 around?

5 MR. MORDFIN: Correct. Per open space regulations.

6 CHAIRPERSON HILL: Okay. That's helpful. That you
7 know, Mr. Mordfin. Ms. John?

8 VICE CHAIR JOHN: Thank you, Mr. Chairman. That
9 answered my question because I originally thought that the lot
10 included the red areas, not just that small piece. And I didn't
11 realize that places like the living room would be in public space.
12 See at the end there's the arrow that says, "projected living
13 area" and the front porch, for example. So I withdraw my question
14 because I believe Mr. Mordfin's answer helped me to
15 understand it. CHAIRPERSON HILL: Okay. Who else has
16 questions for the Office of Planning? Mr. Smith, and then I'll
17 go to Commissioner Turnbull.

18 BOARD MEMBER SMITH: Okay. Mr. Mordfin, my first
19 question is being that the future land use map does call for this
20 to be Parks and Recreation and open space, how
21 come it didn't trigger an amendment to that future land use map?

22 MR. MORDFIN: Well, as to the future land use map,
23 first of all, it's not (audio ~~distortion~~interference) the BZA
24 ~~applications~~application. If you're going to the ~~zoning~~
25 ~~commission~~Zoning Commission, we look at that if you wanted to

1 rezone it into a (~~indiscernible~~), ~~we~~audio interference). We
2 would look at it then. It doesn't apply to this. First of all,
3 the future land use map is not site specific although, you know,
4 you can pretty much say give me a good idea, it doesn't include
5 specific (audio ~~distortion~~interference) says that on future land
6 use map, but you're not supposed to be reading it that way.

7 ~~It says that it's~~It's not a zoning map, and zoning maps
8 are parcel specific, and this map does not follow any ~~parts~~
9 ~~or~~(audio interference) boundaries. So you can't definitively say
10 yes, this is absolutely inside this area or that area also, even
11 though it's not relevant to the BZA application altogether. But
12 that's just something else to think about when you read the future
13 land use map.

14 BOARD MEMBER SMITH: Okay. Could you again, define
15 how D.C. Code treats encroachments? I think you had touched on
16 it earlier in your presentation, but you can -- can you explain
17 that a little bit more?

18 MR. MORDFIN: You're talking about the ~~public space~~
19 ~~committee~~Public Space Committee which permits these encroachments
20 into -- ~~public space~~Public Space is part of DDOT, and this land
21 is actually DDOT's land. It's part of a street. And if you look
22 on this exhibit that we were last talking about, it's wider in
23 some places than others, and it has the actual right-of-way width.
24 You can see Arkansas Avenue has a wider right-of-way width than
25 Webster Street and that's why the lot is closer to Webster Street

1 than it is to the travel lanes of Arkansas Avenue. ~~So public~~
2 ~~space committee~~ So the Public Space Committee has regulations
3 where they permit certain extensions into their public space.

4 And they did work with the applicant, public
5 space, to design it correctly so that it would conform to their
6 regulations. So my understanding is, at this point, it does
7 conform. You can't have things like plumbing in that area, you
8 can't have closets within that area. And the applicant
9 did design it so that none of those things would extend into
10 that. There's also restrictions on the width. I don't know
11 those numbers because they're outside of zoning. You know, how
12 wide it can be before you have to have a break? And that's why
13 the building is designed the way it is to maximize as much
14 as possible how much space they could use while not being in
15 violation of those regulations.

16 BOARD MEMBER SMITH: Okay. Did the Office of
17 Planning also do a calculation of the percentage of the proposed
18 dwelling unit that will be encroaching into D.C. public land
19 versus what would be on private property?

20 MR. MORDFIN: No. No, we did not because this is what
21 they're permitted. And they did not ask for relief. And if they
22 did ask for relief, it would go to the ~~public space~~
23 ~~committee~~ Public Space Committee. It would not come before us;
24 it would not come before the Board. That would be something that
25 would be decided by the ~~public space committee~~ Public Space

1 Committee if they saw a reason to grant relief from one of their
2 provisions.

3 BOARD MEMBER SMITH: Thank you. And last final
4 question. Is there a maximum projection that a building can --
5 that building can project from the front building -- from the
6 property line into public -- into public space whether owned by
7 DDOT or considered public space within the eyes of the city?

8 MR. MORDFIN: There are maximums, I'm not familiar with
9 --

10 BOARD MEMBER SMITH: Okay.

11 MR. MORDFIN: -- because we don't work with them. But
12 this was reviewed by public space committee, and my understanding
13 is that it conforms. If it doesn't, then the applicant
14 will find out at the time of building permit application.

15 BOARD MEMBER SMITH: Okay. Thank you. That's all
16 the questions I have.

17 CHAIRPERSON HILL: Commissioner Turnbull.

18 COMMISSIONER TURNBULL: Thanks, Mr. Chair. So Mr.
19 Mordfin, did I -- are you basically ignoring the FLUM, from
20 what I understand?

21 MR. MORDFIN: ~~I'm~~ I'm not ignoring it, but it's not
22 applicable to BZA applications, it is to the ~~zoning commission.~~
23 ~~When I listened~~ Zoning Commission. (Audio interference) to this
24 and also, it's private land. It's not owned by the
25 ~~district~~ District, and it's not federal park land either. - It's a

1 piece of private property so --

2 COMMISSIONER TURNBULL: Wait a minute. The park is a
3 piece of private property?

4 MR. MORDFIN: It's not a park. All the triangles --

5 COMMISSIONER TURNBULL: Are you saying the triangle is
6 piece of private property?

7 MR. MORDFIN: The Lot 1 in the middle is. The rest of
8 it is under the jurisdiction of DDOT.

9 COMMISSIONER TURNBULL: So it's government property.
10 It's D.C. government property.

11 MR. MORDFIN: It's D.C. government property the
12 same as all the other front yards in this neighborhood and side
13 yards when it's a corner lot.

14 ~~MR. TURNBULL~~COMMISSIONER TURNBULL: Yeah, but ~~that's~~
15 ~~more for~~ -- Mr. Mordfin, you know, ~~they you~~ make a big case
16 about the public space ~~be in~~being the front yards. If you take
17 a ~~row house~~rowhouse 20 feet and you come out 15 feet, that's a
18 little bit different than looking at ~~those~~this triangular piece
19 of land that's got like several ~~hundred~~hundred of square feet
20 that people have been using or at least thought that they could
21 use as a park regardless of whether they thought -- whether it
22 was owned by the Department of ~~transportation~~Transportation or
23 not. I think -- what I think ~~commissioner~~Commissioner Smith, or
24 the Board ~~member~~Member Smith was talking about was that this
25 encroachment -- or a taking of this government land at this scale

1 is very egregious. This is not just a 20-foot ~~row house~~rowhouse
2 or a 15-foot ~~row house~~rowhouse coming out 15 feet, 12 feet, or
3 whatever, this is huge. This is several hundred feet. Did you
4 recommend putting the fence where it is?

5 MR. MORDFIN: I did not recommend it. That's how --
6 that's public property, it's not private property, and we only
7 review applications with what can be put on private property.
8 But this is no different than any other piece of property that
9 has frontage on a street. It's unusual that it has --

10 COMMISSIONER TURNBULL: Yeah, but maybe -- but there's
11 three streets here.

12 MR. MORDFIN: Correct. There are three streets, and
13 Arkansas Avenue is a wide -- right-of-way, but that same
14 distance applies to all the other buildings up and down Arkansas
15 Avenue also. They also have that same public space from the curb
16 line to the building -- to the property line.

17 COMMISSIONER TURNBULL: I'm sorry. This -- to me, this
18 just doesn't smell right to be able to put a fence all around
19 this amount of public space property and say it's now used by
20 one owner. It just seems -- it just seems egregious. To me, it
21 just doesn't -- there's something that just doesn't sit right
22 that you could put a fence all the way around. And there's a
23 curb cut on Webster also right now.

24 MR. MORDFIN: There is a curb cut right now because it
25 used to be a gasoline station, but the existence of a curb cut

1 when you redevelop does not give you the right to continue it 7.
2 DDOT make you file for a new curb cut permit. So they would not
3 permit the continuance of that without a new permit.

4 COMMISSIONER TURNBULL: Good information, Mr. Mordfin.

5 CHAIRPERSON HILL: Okay. Mr. Bello, do you have any
6 questions for the Office of Planning?

7 MR. BELLO: No, Mr. Chairman.

8 CHAIRPERSON HILL: All right. Mr. Young, is there
9 anyone here wishing to testify?

10 MR. YOUNG: We do.

11 CHAIRPERSON HILL: Can you please bring them in?

12 MR. YOUNG: Yes. We have four. One is calling in by
13 phone, so I can wait until the other three testify and then unmute
14 him.

15 CHAIRPERSON HILL: Okay. That would be great. Thank
16 you. Mr. Bello, if you could mute your microphone, as well as
17 Mr. Mordfin.

18 MR. YOUNG: Mr. Chairman, that one person is calling
19 in by telephone, I may need to administer the oath to him.

20 CHAIRPERSON HILL: Okay.

21 MR. YOUNG: Sorry. There's somebody calling into my
22 phone. It's Elisa Irwin and George Troop.

23 CHAIRPERSON HILL: Okay. Wait for the phones for a
24 minute, Mr. Young. Let's see. Ms. Waldeck, can you hear me?

25 MS. WALDECK: Yes, I can. Can you hear me?

1 CHAIRPERSON HILL: Yes. Could you introduce yourself
2 for the record, please?

3 MS. WALDECK: Yes. I'm a neighbor, and I live at 4517
4 15th Street, Northwest. I'm about two blocks from this green
5 space. And I've lived in the neighborhood since
6 (audio interference).

7 CHAIRPERSON HILL: We saw that you -- one second. Let
8 me just interrupt you one second. There's a clock right there.
9 Can you see the clock?

10 MS. WALDECK: Not really.

11 CHAIRPERSON HILL: Oh, you can't see the clock?

12 MS. WALDECK: Oh, I guess I can. Okay. I just want
13 to -- yeah, I can --

14 CHAIRPERSON HILL: Sure.

15 MS. WALDECK: How much time do I have?

16 CHAIRPERSON HILL: I'm sorry. You're okay.
17 Take your time, but you have three minutes. But go ahead and
18 begin whenever you like.

19 MS. WALDECK: Well, I've lived in the neighborhood
20 since 2004, and I have listened to your discussion about this lot
21 and what it is. The reality on the ground, for
22 ~~neighbor's~~neighbors like me, I'm shocked that somebody even
23 privately owns this land. I and my neighbors, many of my
24 neighbors, have always considered this triangular lot which is
25 right across from the steps going up to the children's recreation

1 center as part of Upshur Park.

2 So, I mean, now of course, I've looked at the map and
3 see that, you know, it's not zoned as technically part of Upshur
4 Park. But since 2004 and actually, probably earlier, this land
5 has been vacant. It's a green space. It's been used in the past
6 for Easter egg hunts by our neighborhood association. There
7 are several multi-story apartment buildings nearby where, you
8 know, people go and sit there in their lawn chairs, especially
9 during Covid, to chat.

10 And one reason why I'm opposed is Upshur Park is just
11 sort of -- it had all its square footage squeezed out. If you
12 go to Upshur Park, it's a very active park. Every square foot
13 of that park is designated for soccer or baseball or the
14 children's playground, basketball courts, a dog park, and
15 recently now, a community garden because of the development
16 (audio interference) the elementary school where they took
17 over the land for our community garden, so they moved the
18 community garden into Upshur Park. The bottom line, what I'm
19 getting at, is this may not seem, when you look at your maps,
20 like a big deal. It's a triangle at a diagonal -- one of the
21 diagonal streets named 14th Street, Northwest. The reality is
22 even though it's right next to Upshur Park, people do use this.
23 And it's a nice sunny place where you can sunbathe, you
24 can sit out on your chair. And so it means a lot to a lot of
25 people and suddenly, we can't use this triangle.

1 And basically, my other opposition is to the, I guess,
2 if you are going to allow construction, I would really want a
3 much lower building because as you walk down 14th Street, whether
4 you're driving or walking, this lot is at an angle, it's on a
5 hillside that goes down to Arkansas. Arkansas and 14th Street
6 are very busy, congested intersection at rush hour for, you know,
7 traffic reasons. So it surprises me that DDOT has just signed
8 off with this so readily, particularly with the fence. Right
9 now, if I drive down 14th Street, I can look across that open
10 green space and see the traffic on Arkansas where generally
11 speaking, there's a lot of very fast-moving cars. And so there's
12 a visibility that you get as a driver that you will not get if
13 you build a high building there or you even put a four-foot fence
14 around partly because the lot itself -- some of this at a steep
15 grade.

16 My other opposition is well, with the height, if you
17 are going to build this, I would say build it -- the first story,
18 build it underground and lower the height so that there's no
19 shadows going onto Upshur Park at all. And the other thing, too,
20 is I really don't like -- I don't know if you can do anything
21 like condition the grant to the resident not owning a car that
22 will be parked on the street. The reason for that is --

23 MS. WALDECK: Ms. Waldeck, I'm sorry. I'm going to ask
24 you to wrap it up a little bit just because you've gone over.

25 MS. WALDECK: Okay. There's a lot of no parking around

1 that area on the street. There's two elementary schools. And
2 also there's the park, and there's very limited on-street
3 parking. And even one more car, it's a problematic.

4 CHAIRPERSON HILL: Okay.

5 MS. WALDECK: So those are my reasons why I oppose
6 this. I really think it is -- OP's just flat wrong. It really
7 is impacting a lot of the neighbors who use Upshur Park in a very
8 negative way. And I wish you would reconsider.

9 CHAIRPERSON HILL: Okay. Well, we haven't made
10 a decision yet, but thank you. All right. Thanks, Ms. Waldeck.
11 Is it Ms. Hart? Can you hear me? I can't -- I can't
12 hear you. I can't hear you. You might be on mute. I'll tell
13 you what -- oh, there you go. Try it again. Nope, can't hear
14 you. Nope, can't hear you. Is there a volume, maybe?

15 COMMISSIONER TURNBULL: Maybe her volume
16 is too low.

17 CHAIRPERSON HILL: All right. Ms. Hart, I'll
18 let you play around with that. And I'm going to go to the --
19 yeah, call in. Why don't you call in. Call in. The number is
20 202 -- it's there on the screen with the three minutes. And then
21 you want to mute your -- make sure you mute your computer, so
22 you don't get feedback. Mr. Young, can you let in the phone
23 people?

24 MS. IRWIN: Hello.

25 ~~CHAIRMAN~~CHAIRPERSON HILL: Yes. Can you hear me?

1 Hello. Can you hear me?

2 MS. IRWIN: Hello. Okay. Yes, I can hear you.
3 Can you hear me?

4 CHAIRPERSON HILL: Yes. Could you introduce
5 yourself for the record, please?

6 MS. IRWIN: Absolutely. My name is
7 Elisa Irwin, and I represent the 16th Street Neighborhood
8 Association. This is a little bit weird because I'm getting like
9 an echo on my phone, but is it okay for you guys?

10 CHAIRPERSON HILL: I can hear you okay.

11 MS. IRWIN: You can go ahead. As a representative
12 for an association, you get five minutes rather than three. And
13 so I didn't know if we needed anything into the record about this
14 association, but I'm just going to go ahead and let you -- I
15 guess I would need something later. I don't know -- well,
16 actually, now, I see Ms. John nodding her head. So Mr. Rice,
17 can you hear me? Mr. Rice, can you hear me?

18 MR. RICE: Yes, sir. I can hear you.

19 CHAIRPERSON HILL: Do you know about -- and I'm
20 sorry. What was your name again, ma'am?

21 MS. IRWIN: Elisa Irwin from the 16th
22 Street Neighborhood Association.

23 CHAIRPERSON HILL: So do we need something in
24 the record about Ms. Irwin representing the 16th Street
25 Association?

1 MR. RICE: We would need authorization in the
2 record if she wants to speak on her own. Until she can
3 provide it, she can do that.

4 CHAIRPERSON HILL: Okay. So let me see what I
5 want to do. Ms. Irwin, go ahead and -- you can -- you can
6 reference your association, but you're speaking on your own --
7 you're speaking as your own representative because I have nothing
8 in the record that says you're representing the association; do
9 you understand?

10 MS. IRWIN: Sure. And then --

11 CHAIRPERSON HILL: You can just go ahead and
12 reference your association and, you know, now you got three
13 minutes, but I haven't been stopping anybody. I just want you
14 to know that I don't have anything in the record that says you
15 can represent the association so therefore, you can't, but you
16 can go ahead and reference your association, okay?

17 MS. IRWIN: Okay. Let's try that. And I'm fine
18 with the three minutes I have. Okay.

19 CHAIRPERSON HILL: Okay. Go ahead.

20 MS. ~~ERWIN~~IRWIN: So let me start again. I am ~~Alyssa~~
21 ~~Erwin~~Elisa Irwin, the chair of the 16th Street Neighborhood
22 Association. And I am asking that the Board postpone this hearing
23 and any decision on the special exception request and the variance
24 request. So I'm a little bit discombobulated, so bear with me.
25 So I live on Varnum Street, Northwest, about two blocks from this

1 area. I am one of the families that did cleanup on this public
2 space and also, did Easter ~~Egg~~ hunts on this public space.

3 We are -- I am asking that BZA postpone the hearing
4 until further environmental testing as suggested by the Total
5 Environmental Concepts, Incorporated report that was done for the
6 applicant, and that this testing should include
7 electromagnetic testing and ground penetrating radar. In
8 addition, I am requesting that the soil in all areas, not just
9 of the lot in question, but in the whole triangle be tested for
10 contamination because we know it was a gas station for over 20
11 years.

12 In addition, I am requesting that there be a
13 remediation plan, and that there be written approval from the
14 Department of Energy and Environment and the EPA before BZA looks
15 at this again. And I am asking this because I do not believe
16 that the -- I do not support the proposition that the
17 applicant should benefit from the increase in property
18 value that will result from the BZA granting the two special
19 exceptions and the variance without the applicant taking
20 responsibility for the remediation that may be required as a
21 result of the prior use as a gas station.

22 And I would just like to point out, bear with me, on
23 September the 17th, at 1:23 p.m. people -- nope. On September
24 the 17th at 8:15 a.m., people were -- in the neighborhood were
25 informed by the original commissioner of ANC 405 that the

1 ~~Applicant~~applicant was applying to do this. And on September the
2 17th at 2:03 p.m., ~~commissioner~~Commissioner Campbell from ANC
3 4C03 found records of the prior use as a gas station. So it's
4 my contention that the owner should have known that this was a
5 prior use.

6 Further, I believe that the applicant should
7 pay for all the remediation at the site that is required by law
8 no matter where on the site the contamination occurs. D.C.
9 taxpayers should not have to pay, in addition to giving a benefit
10 to the owner by granting them the special exception and the
11 variances. D.C. taxpayers should not have to pay for the
12 remediation of that site caused by the applicant's
13 construction on the 307 square feet of an over 3300-square foot
14 site. He's talking about taking over the majority of that site,
15 and we should not have to pay for the remediation of that no
16 matter where the underground storage tanks are because the gas
17 station was on the whole site, and he should have known.

18 If the BCA is not inclined to request a postponement
19 or this or grant a postponement, then I'm going to ask that the
20 BZA deny the request for the special exceptions and the variance.
21 The ~~Applicant~~applicant knew the size and shape and the zoning of
22 the lot when he purchased the land, I think, in a tax sale for
23 next to nothing. So there is no hardship, and the BZA does not
24 need to make people hold because they imagine they can make a
25 lot of money even though the size, the square, and the zoning

1 didn't permit it. In particular, the ~~Applicant~~applicant knew or
2 should have known or could have known with a minimum of an
3 internet research that this had been a prior use as a gas station
4 and may require much remediation, okay, and to take that
5 responsibility. Because once that person starts building on that
6 307 square feet, he is using that whole site as a construction
7 staging zone which is going to create contamination, sorry.

8 And finally, I am going to ask that the BZA not grant
9 this because the owner of 10 percent of the lot is now saying
10 that they want to take 80 -- 70 to 80 percent of that site for
11 their control. Whether you put up a fence or not, the fence is
12 going to keep people out of public lands. Thank you for your
13 time. Sorry I went over.

14 CHAIRPERSON HILL: Nope. Thank you. Let's
15 see. And I forgot to ask. Did the Board have any questions of
16 either witness?

17
18
19 Okay. All right. I'm going to come back to Ms. Hart
20 at the end because there (audio interference) phone person. Mr.
21 Young.

22 MR. YOUNG: Yeah, they're unmuted now. They
23 should be able to speak.

24 MR. TROOP: Hello. Can you hear me?

25 CHAIRPERSON HILL: Yes. Can you hear me?

1 MR. TROOP: Yes.

2 CHAIRPERSON HILL: Can

3 you introduce yourself into the record, please?

4 MR. TROOP: Yes. Thanks for having me. My name is
5 George Troop. I live within 200 feet of the 14th Street
6 triangle parcel, and I've been here for the last 17 years.

7 CHAIRPERSON HILL: All right, Mr. Troop.
8 Mr. Troop, I just want to get you first to introduce yourself.
9 You'll have three minutes to give your testimony. Can you see
10 the clock in front of you? Or maybe not.

11 MR. TROOP: Yeah. Well, not quite, but I don't think
12 I'm going that far.

13 CHAIRPERSON HILL: Okay. Great.

14 MR. TROOP: So well, as noted, I am in opposition, and
15 I -- you know, I've already heard the concerns, the
16 environmental concerns, you know, stemming from the previous use
17 as a gas station, and I've heard the traffic concerns as
18 well. I mean, it is a already busy and chaotic intersection.
19 You know, I don't think we need to add to that.

20 But my main point here is public space. I object to
21 the fencing off of a public space. It is in conflict with the
22 D.C. future land use map, and the public will no longer have
23 access to this space which is supposed to be ~~parke~~Parks and
24 ~~recreation~~Recreation. The space is used by the public. For
25 example, it's used as an overflow for the large yearly events at

1 Upshur Park. For example, the ~~word For Summer Barbeque~~ Ward 4
2 summer barbeque and live music which, you know, happens also on
3 the basketball courts directly across the street. So there's,
4 you know, there's some yearly events that happen in which this
5 space is definitely used.

6 And as somebody mentioned before, since the pandemic
7 began, it has been used as a safe alternative to indoor
8 gatherings, particularly by neighboring apartment dwellers. You
9 know, I've seen, you know, people there with their lawn chairs.
10 So I think now more than ever, public space access is vital to
11 the neighborhood.

12 And related to that, I also wondered if an outreach
13 effort has been made to the residents of the building directly
14 across from it because many of them are Spanish speakers. I have
15 not seen, you know, either notices or signs in Spanish, and they
16 might not be aware of the proposed development here and therefore,
17 cannot weigh in.

18 So for these reasons, I -- you know, I consider this
19 public space of great community value and, for these reasons, I'm
20 opposed to this application. Thank you.

21 CHAIRPERSON HILL: Okay. Thank you, Mr.
22 Troop. Thank you for your testimony. Does anyone have any
23 questions for Mr. Troop?

24 (Negative head shake.)

25 Okay. All right.

1 _____ Ms. Hart, can you hear me now? No, I can't hear you,
2 Ms. Hart.

3 MS. HART: Somehow you couldn't hear me, but I'm on my
4 telephone.

5 CHAIRPERSON HILL: I can hear you. I can
6 hear you.

7 MS. HART: Great.

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

10 MS. HART: Yeah. My name is Tracy Hart. I live at
11 4213 16th Street, and I'm a member of the 16th Street Neighborhood
12 Association.

13 CHAIRPERSON HILL: Okay. Go ahead, Ms. Hart,
14 with your testimony.

15 MS. HART: Sure. And I'm well aware of the clock.
16 I'll try to complement what has been said rather than go over
17 the same points.

18 _____ We would like to respectfully disagree with Mr.
19 ~~Mordfin's~~Mordfin's assumption that although it looks like it's
20 ~~park~~Parks and ~~recreation~~Recreation on the map, ~~that~~but the map
21 doesn't really indicate where things go on the map. ~~That's~~That's
22 completely -- it's farcical, let's say. The owner of this
23 property owns a commercial ~~launcher map~~laundromat that is almost
24 adjoining directly across the street from his property. He has
25 owned that piece of land since 2008, and he knows full well when

1 he acquired this that there was a previous use, and that this
2 was largely 90 percent public space. So he's not a newcomer to
3 the neighborhood.

4 If the property owner would like to develop a house and
5 wants to have a modicum of privacy, he could construct on his
6 original 60 percent of lot occupancy requirements, and then he
7 could very well have a fence at the 100 percent line of lot
8 occupancy. So, you know, to say that there would be a fence
9 outside of his original 100 percent of lot occupancy, which would
10 still allow for public space as it is currently used, is also a
11 farce. Children play there, and dogs play there, people
12 convene there. Once you put up a fence, you know, people
13 are not going to walk inside the fence to that part of the public
14 space.

15 This request does not meet hardship requirements for
16 the reasons I've stated below -- or for the reasons I've stated,
17 namely, that he's a longstanding owner in this
18 neighborhood and knew about the public space when he acquired the
19 property. And this would be a substantial detriment to the public
20 good, especially considering the fact that the Rock Creek East
21 comprehensive plan notes the public space is grossly underplanned
22 in the Petworth and 16th Street Neighborhood Association
23 neighborhoods relative to the density of the populations.
24 The comprehensive plan itself says that any remaining public
25 space should be maintained and in fact, upgraded and improved.

1 I respectfully ask that you deny relief, and I must say
2 that my strongest urging to you is to deny the relief
3 for the lot occupancy requirements. Thank you very much for
4 listening to me.

5 CHAIRPERSON HILL: Thank you, Ms. Hart, for
6 your testimony and your patience in trying to deal with getting
7 online. Does anybody have any questions for Ms. Hart?

8 (Negative head shake.)

9 Okay. All right, Ms. Hart. Thank you.

10 Mr. Young, if you could please excuse all of the
11 witnesses. All right, Mr. Young. Let me know when we're clear.

12 MR. YOUNG: You're good to go.

13 CHAIRPERSON HILL: Okay. Thanks. Mr.
14 Mordfin, can I ask you. So again I -- a couple of things. As
15 far as like the -- and I think you kind of addressed this -
16 - as far as like the remediation for the gas tanks and all that,
17 how does that work?

MR. MORDFIN: Okay. So when -- in
18 order for the applicant to get their permits from DCRA, they're
19 going to have to satisfy DOE, Department of Energy and
20 Environment. And unless this is remediated, per their
21 regulations, the applicant is not going to get any
22 building permits.

23 CHAIRPERSON HILL: Right. So they have to
24 deal with it.

MR. MORDFIN: So they're going to have

25 MR. MORDFIN: So they're going to have to deal with it.

1 If they want to get any permits, they're going to have to do
2 whatever it is that DOEE requires them to do.

3 CHAIRPERSON HILL: And they, the applicant,
4 will pay for that?

5 MR. MORDFIN: Correct. Yeah. That's what usually
6 happens. And other ones that I've worked on where there have
7 been other sites, BZA sites, that have been contaminated. They
8 were gas stations, they were auto repair, things going back
9 sometimes 80 years when nobody cared if anything leaked. And
10 oftentimes they contact who was the gas station owner
11 or the provider of whatever it is that they were storing there,
12 and they'll go after --

13 CHAIRPERSON HILL: That's all right. I'm
14 just trying to make clear; they have to deal with it?

15 MR. MORDFIN: They have to deal with it, yeah, yeah.
16 And if they don't, they won't get any building permits.

17 CHAIRPERSON HILL: All right. That's
18 number one.

19 The next is -- and I don't know whether there's any -
20 - the matter of right -- and I remember what you said as to why,
21 you know, the square footage -- what is the matter of right
22 option?

23 MR. MORDFIN: I don't -- I don't understand what you
24 mean.

25 ~~THE CHAIRMAN~~CHAIRPERSON HILL: What could they actually

1 build there?

2 MR. MORDFIN: Oh, what can they build there? I mean,
3 they can build a one family house. It's MU3-A, so it permits
4 commercial use, also mixed use.

5 CHAIRPERSON HILL: No, but how big could
6 it be? And maybe Mr. Bello would know this better than I, or
7 than you.

8 MR. MORDFIN: How big?

9 CHAIRPERSON HILL: Yeah.

10 MR. MORDFIN: Well, they have an FAR of 1. So it's a
11 307 square foot lot which then gives you 307 square feet to get,
12 you know, additional floors, but the FAR doesn't accommodate that
13 unless you pull back from occupying the entire lot.

14 CHAIRPERSON HILL: Right. Mr. Bello, do
15 you know what you could have built without having to go through
16 us?

17 MR. BELLO: We could considerably build a permitted
18 commercial use but with no more than 307 square feet.

19 CHAIRPERSON HILL: Right. On one floor.

20 MR. BELLO: One floor, that's it.

21 CHAIRPERSON HILL: Right. That's it, the
22 one floor.

23 MR. BELLO: Yeah. And was indicated in our application
24 that we thought that would attract more of an adverse and
25 deleterious impact on the neighborhood than thea home~~—or~~, a

1 private property. This property is to be improved for a private
2 residence use --

3 MS. SHELTON: Excuse me.

4 CHAIRPERSON HILL:

5 That's okay. I'm just curious --

6 MR. BELLO: -- which in itself is a permitted use.

7 CHAIRPERSON HILL: All right. Ms.

8 Shelton. Give me a second, Ms. Shelton.

9 MS. SHELTON: I was just going to repeat what
10 Mr. Mordfin said, but I'll wait.

11 CHAIRPERSON HILL: Okay. Mr. Bello, why
12 did you say -- why are you saying that the retail you felt is
13 going to be worse than a single-family home?

14 MR. BELLO: Well, because it's clearly going to attract
15 more pedestrian and vehicle use. Whatever use it is that you
16 can fit into a 307 square foot crossroad area. I don't know what
17 that would be.

18 CHAIRPERSON HILL: Right. Okay. Ms.
19 Shelton, what were you going to repeat, please?

20 MS. SHELTON: Sure. I was just going to say you
21 asked what the matter of right use was, and Mr. Mordfin --
22 Mordfin, yes -- said that the matter of right is single family.
23 So this is a permitted use, it's just what we're requesting is
24 outside the --obviously, outside the boundaries of the lot
25 occupancy and then the --

1 CHAIRPERSON HILL: Right. I'm sorry, Ms.
2 Shelton. All I was just trying to figure out -- and I
3 appreciate it - is -- and it was already spoken about a bunch of
4 times about the 375 square feet, so I understand.
5
6
7
8 Let's see. Who wants to go next with questions?
9 Anybody? Nobody's got any questions? '
10 (Negative head shake).
11 Okay. This is interesting. All right. Let's see
12 then. MS. SHELTON: I don't have any questions.
13 Commissioner, sorry to interrupt. I don't have any questions,
14 but I did have something that I wanted to mention just as a
15 consideration. I don't know if this is the time to do that or
16 if I should wait?
17 CHAIRPERSON HILL: Sure, Ms.
18 Shelton. Go ahead.
19 MS. ~~SHELDON~~SHELTON: Sure. Okay. Well, thank you. I
20 just wanted to address a couple of things. I know that I
21 mentioned in the beginning that I'm working with Olutoye Bello.
22 I represent the homeowner of this case and, as one of the callers
23 mentioned, the property owner does have a business in the
24 neighborhood. This is his private property. He's well aware
25 that it could potentially be contaminated. I think the request

1 of the members of the ANC or the members of the neighborhood to
2 -- and I think you kind of already touched on this by asking Mr.
3 Mordfin -- but for them to request us to undergo six feet --
4 close to however much it may be to check the soil for what they
5 deem as ultimate -- what they ultimately want as a public park
6 is a little outside of what we were hoping to do.

7 But we've obviously, met with the ANC and done shadow
8 reports. I know one of the callers mentioned that. And we're
9 more than willing to do whatever tests need to happen but,
10 as we've gone through this process, we know that there are certain
11 stipulations that have to be met even prior to getting an approval
12 of the building permit. One thing, when we were speaking with
13 the property owner, we understand that this is deemed as a park
14 or most of the neighborhood thinks this is a park. Unfortunately,
15 it's not a public park; it is private. It is a private space,
16 and that's kind of what we're just hoping that the Board really
17 pays attention to the types of relief requested and not the
18 preference.

19 CHAIRPERSON HILL: Okay, Ms. Young. I got
20 you. Right. And yeah, the private part of the property, we
21 understand what the private part of the property is, that's what
22 some of the discussion has been about. All right. Does anybody
23 have any final questions?

24 All right. The one thing I am going to do is I am
25 going to excuse -- I'm going to close the hearing; I'm going to

1 close the record; I'm going to excuse everybody. I see people
2 raising their hand, Ms. John. And then but Mr. Bello, if you'll
3 -- and Mr. Mordfin, and Ms. ~~Sheldon~~Shelton, if you'd stick around
4 because we might bring you back. I don't know. ~~Ms. John, you~~
5 ~~had a question?~~

6 Ms. John, you had a question?

7 VICE CHAIR JOHN: I was wondering if the ANC was here?

8 CHAIRPERSON HILL: Oh. That's a good
9 question. Mr. Young, is the ANC here?

10 MR. YOUNG: I don't believe so.

11 CHAIRPERSON HILL: Okay. All right. Okay.
12 Then I'm going to close the hearing, close the record, and excuse
13 everyone.

14 Okay.

15 Are my Board members with me? I don't know what to
16 say. I'm going to start with Mr. -- Commissioner Turnbull and
17 then go from there. Commissioner Turnbull.

18 COMMISSIONER TURNBULL: (Audio
19 interference.)

20 CHAIRPERSON HILL: Yeah, I can hear you.

21 COMMISSIONER TURNBULL: Pardon?

22 CHAIRPERSON HILL: I can hear you.

23 COMMISSIONER TURNBULL: Good. I don't know what to
24 say. -I'm torn with this whole thing. We want to see development
25 in the city, we want to see homes. I guess my concern is I don't

1 know how much this building -- these cartoon drawings that we've
2 got of what this thing looks like fits into the neighborhood. I
3 guess that would be one concern what this thing really looks
4 like. I don't know if it is harmonious. --I mean, it's hard to
5 tell. There's no relationship showing the house. This is three-
6 stories, a lot of them are two. --I guess I -- to make me even
7 more comfortable, I'd like to see better drawings of what this
8 house -- this proposed house is really going to look like.

9 Obviously, the OP doesn't really care about the
10 FLUM. They think it's an imaginary drawing that
11 doesn't really concern people.

12 _____ I understand that it's the Department of Transportation
13 that owns the property. So with government property, it's not
14 private property, it's public space that is controlled by the
15 Department of Transportation but apparently, a lot of people use
16 this place as a park now. But that's kind of like a side issue.
17 I guess what bothers me is sort of what is this encroachment on
18 this public space and Mr. Mordfin's analysis that well, it's just
19 like the yards across the street and all the rowhouses
20 that you come out 15 feet, 20 feet that technically, that's public
21 space. Well, yeah, but they're usually -- it's different than
22 having -- I don't know how many hundreds of square feet would
23 be taken up by this house.

24 Now, Mr. Bello said well, we could make it shorter, you
25 know, like we could -- well, I would like to see that before I

1 | jump in and then ~~I'd~~ go and approve this. I'd like to see
2 | something more rational rather than taking up the whole public
3 | space. Now, ~~I grant it it's granted, it's~~ the ~~public space~~
4 | ~~committee~~Public Space Committee that grants permission to do
5 | whatever this fence is going to look like. So I mean, that's
6 | the -- that's one issue. I would like to see that somehow
7 | addressed ~~though but a little bit~~ better by the Applicant. I'd
8 | like to see an option saying well, we're only going to go out
9 | like five feet; or we're going to go 10 feet on this one side, 5
10 | feet on that, so that most of the other area is still public
11 | space and open for people to go out and do a Easter ~~Egg~~ hunt
12 | or whatever.

13 | And I guess the other thing -- I just -- well, there
14 | is the environmental aspect which is, as you noted, Mr. Chair,
15 | when you talked about it, that, that's something they got to do
16 | eventually anyways if they want to get a permit. So in a way,
17 | that's sort of out of our play in one sense but, I guess, I'm -
18 | - I'd like to hear from the rest of you, but I'm not ready to
19 | jump on board and grant approval right off the bat. I'd like to
20 | hear -- I'd like to see some more things that are going to
21 | convince me that they're taking -- that this site -- whatever
22 | they want to build, this house, looks a little bit better, fits
23 | a little bit better, they've addressed the fence area on the
24 | site, and that they're taking into account the
25 | ~~neighbors'~~neighbors' concerns about -- now, I -- Mr. Mordfin will

1 tell you well, Department of Transportation says ~~it's~~it's not a
2 park and so, unless the Department of Transportation is going to
3 put a fence around it and say, you know, no one else can use it,
4 I'm a little bit torn by this. I'm wavering back and forth on
5 how to interpret this.

6 CHAIRPERSON HILL: Okay. Well, I'm going to chime in
7 just a little bit because maybe we can kind of take these also
8 in pieces. I mean, the special exception or, you know, the
9 reduction of the parking spaces, like, I was okay with it, right?
10 Okay, at least as far as like, you know the -- they're not going
11 to get the curb cut from DDOT and so, I was okay with the parking
12 spaces, right? The --

13 COMMISSIONER TURNBULL: I would be okay with that too.

14 CHAIRPERSON HILL: The thing about -- and this is where
15 I kind of -- I didn't even see the special -- I'm sorry -- the
16 revised self-cert so I can kind of match it up a little bit, but
17 the area variance -- and this is the problem that, I guess,
18 we can even talk about. I didn't even necessarily have a problem
19 with -- this is where it's kind of weird. I didn't even
20 necessarily have a problem with the area of variance, right.
21 What we continue to talk about, which I don't know if this is in
22 our purview or not, and we can -- you can have an emergency closed
23 meeting if we want to, to talk to OAG.

24 Like, I mean, Google maps is amazing. Like, I literally
25 have pulled up Google maps, right, and I can see Lot 4331 in the

1 ~~freaking~~-square, right. So there's a piece of property in there,
2 right, and that's somebody's property, right? And a variance is
3 supposed to help exactly this situation, right? But the problem
4 that we're having, I think, that we're kind of even talking
5 through that I can't understand is that this large piece of
6 property that this person is going to try to get -- and that
7 might not even be our discussion, right? That's public space's
8 discussion, right?

9 But maybe it would make us feel more comfortable, to
10 your point, Mr. Turnbull, if we can understand where this fence
11 was possibly going to go, right? And even -- and now, I'm
12 just going to -- because I guess we're going to talk about
13 whatever we want to talk about -- even if there was no fence,
14 right, then that would still kind of make it a - make me -- and
15 I -- it's later in the day -- make me a little uncomfortable kind
16 of going on that person's yard, right, or in that area, right?
17 But if there were a fence, and I knew that I was sitting outside
18 of that fence, I'd be okay hanging outside the fence. So I'm
19 just throwing all kinds of stuff at the walls at this point in
20 time to kind of talk about this because I see a piece of property,
21 and I'm trying to figure out, per the regulation, what we're
22 supposed to do and help with that piece of property.

23 And to Mr. Mordfin's argument, I also agree that those
24 townhomes across the street on 14th Street, that's all public
25 space in front of their homes as well which is what is normally

1 the case, right? You know, those planters that my dog goes to
2 the bathroom in, those are public space planters, and people yell
3 at me and tell them nobody's those supposed to go in there. I
4 say, no, no, no, that's public space. That's not your space,
5 right? With their little sign that says no poop, right? So the
6 front, I can see it's in front of Webster Street or -- I don't
7 know. So I'm also kind of throwing my hands up at the wheel for
8 a second. And then if you pull back out again or just look
9 around, Upshur Park is a big park, right? I mean, they got a
10 swimming pool, they got all kinds of stuff going on over there,
11 you know. That's just another little square that used to be a
12 gas station that everybody knew was also private property. At
13 one point, it was a gas station.

14 And as far as the -- and I'll stop in a second -- as
15 far as the remediation, you know, that's already going to get -
16 - you know, we're not paying for that. D.C. public government
17 is not paying for that property to get remediated, right? They,
18 the property owner, is going to have to deal with that remediation
19 which actually, could be another reason to grant the exceptional
20 situation because that's more money to remediate, that gas tank,
21 right? And we've heard about the economic. So I'm going to go
22 to Mr. Smith, as normal, and I'll end with Ms. John, and then we
23 can go around the table again and see where we get, and then
24 we're going to take a break. So Mr. Smith, go ahead.

25 MR. BOARD MEMBER SMITH: I feel like I'm on a reality

1 TV show. We should -- after I speak, let's take a break, a
2 commercial break from this interesting case here.

3 _____ So I'll approach it from how you're approaching it, Mr.
4 Chairman, bit by bit. So when it comes down to the park and
5 special exception, yes, I'm in agreement with that given that
6 DDOT wouldn't approve a curb cut or access for a driveway outside
7 of an alley.

8 When it comes down to the special exception, I agree
9 with Mr. Turnbull. I'm not completely sold, and that may be the
10 fault of some of these designs that we were submitted. Like,
11 Exhibit 30, sheet DD01. This particular sheet, the building
12 isn't to scale. So, I mean, to your point, Mr. Chairman, when
13 you were asking your questions earlier in this dialogue, it is
14 completely out of scale from the plat that we're looking at
15 or Exhibit 48 and 35 that show the context of the privately owned
16 lot in context with the publicly_owned space around that area
17 . So it's difficult for me to ascertain whether it's in keeping
18 with the character. Where I'm leaning now is that it's not based
19 on the design of this -- on sheet DD01. So I don't believe, as
20 of right now, it's in conformance with the special exception
21 criteria for a lot occupancy.

22 When it comes down to the variance -- and I'll take
23 each prong -- discuss each prong. The first prong, I do believe
24 that it's in keeping with. There is an extraordinary or
25 exceptional situation or condition based on the size of this

1 property. So 307 square feet.

2 _____ Now, when I get down to the second and third prong, I
3 struggle with the second prong, the peculiar and
4 exceptional practical difficulties to the owner. So in
5 considering the strict application, I think about the
6 institutional necessity to be able to construct on this property.

7 _____ While this may be the most desired outcome given the
8 size of the lot, I don't think it is the only option to be able
9 to construct anything ~~on~~on the lot. Yes, it's 307 square feet.
10 This is the MU-3 Zone, a mixture of -- a multitude of different
11 uses. It doesn't have to be residential of this particular size,
12 ~~it~~. It can be some form of a commercial structure that is not
13 3.0 FAR. It could be 1 FAR, 307 square feet. It could be 2 FAR
14 at 614 square feet. I ~~don't~~don't -- and in a multitude of
15 different uses, it doesn't have to be residential. So I don't
16 believe that currently, it meets that second prong. _____

17 ~~So I don't believe that currently, it meets that second~~
18 ~~prong.~~ And also, I do not believe it meets the third prong claim
19 ~~the idea~~(audio interference) of the public good. And I understand
20 Mr. Mordfin's point of view about the encroachments given that
21 there are -- within the city, there are commonly encroachments
22 into a public space~~,~~, bay windows, balconies, decks, stoops.
23 What do they all have in common? In addition to what Mr. Mordfin
24 also said, can't encroach into public space -- utilities. To me,
25 the intent of the encroachment regulations is to allow ancillary,

1 ancillary portions of buildings to encroach into public space.
2 To me, based on the design, and the scale of this building, and
3 this open question whether to me, given that we have a master
4 bathroom on the third floor that does not show where the
5 facilities in that bathroom will be located. ~~It~~ -- it could very
6 well be in the encroached area, ~~it~~ -- meets the provisions of
7 encroachment.

8 ~~-----~~ Nor do I believe this size of a structure is within the
9 public good because these other structures, they're ancillary,
10 they're small, they can be removed as needed. These large liens
11 of encroachment are encroaching into the public space owned by
12 the District of Columbia. So I do not believe it even meets the
13 third prong of this test, ~~so~~. So I think you know where I stand
14 on this.

15 CHAIRPERSON HILL: I kind of know. We're kind of
16 getting somewhere. All right. Ms. John.

17 VICE CHAIR JOHN: So I sort of agree with Commissioner
18 Turnbull and Board ~~member~~ Member Smith. Initially -- and I
19 listened to Mr. Mordfin -- I thought yes, this is an exceptional
20 condition, and I still feel that way. And I looked at the
21 ~~Applicant's~~ applicant's need to build, you know, a suitable
22 dwelling, and I thought well, yes, certainly it makes sense to
23 grant the additional floor area ratio. ~~And~~ then I listened to
24 Mr. Smith, and it make sense, you know, when you think that this
25 is in the MU-3A Zone, ~~and~~. And I looked up the regulation to

1 see what's allowed as a matter of right, and there is a whole
2 range of commercial uses that could be put on this 307 square
3 foot property. And so I have to say that it flunks the second
4 criteria.

5 I tell you, before I listened to Mr. Smith, I was happy
6 to go along with saying that it met all three criteria for the
7 variance test, but I have to look at it in a different way. The
8 question is would the neighbors be more happy with
9 commercial activity that could be more intrusive than this
10 residential property?

11 As to the fence, let's say we were to approve this.
12 I don't agree that the fence should take up the full lot
13 line, including the public space. And that's why I asked the
14 question earlier about, you know, what the property -- where the
15 property -- I'm sorry -- the dwelling would be located.

16 I'm satisfied with the location of the dwelling and
17 the encroachments because that is the responsibility of the
18 Public Space Committee. And if they have
19 approved these encroachments in the corners, I'm fine with that,
20 but I would not be happy with a fence that takes up the full
21 triangle. So I agree with the parking analysis and so, I think,
22 I am possibly a "no" on this but, I guess, we can talk some more.

23 CHAIRPERSON HILL: You know, ~~that's~~that's -- I mean, I
24 guess the problem with -- not a problem -- you know, being a "no"
25 on this, and this is where you guys can help me - I think we've

1 already kind of at least established why you don't think -- and
2 whether or not you all want to talk to the ~~Applicant~~applicant
3 anymore is another reason that I'm kind of just taking our time
4 is that, you know, I can see why you all say, and I think it can
5 be written up as to why we don't think that relief can be granted
6 without substantial detriment to the public good.

7 And then the third prong, without substantially
8 impairing the intent, purpose, and integrity of the zone plan as
9 embodied in the zoning regulations map. I guess that could be
10 articulated if we were to deny the variance. And I guess if we
11 deny the variance, then there's no point in -- I mean, just deny
12 the application, right? And so I guess that's where we kind of
13 are, I suppose, is that, you know, if you, Commissioner Turnbull,
14 or Mr. Smith, or Ms. John thinks it's worth hearing from -- I
15 mean, we're taking our time here to try to figure this out --
16 you know, hearing from the applicant.

17 I mean, I'm also just kind of struggling with this. I
18 think Ms. John, you said it well is that the public space, that
19 encroachment for those corners, right, that's understandable, and
20 I don't think it's that dramatic, right? Whether or not, you
21 know, FAR-3 is necessary, right, or, you know, whether -- you
22 know, when you think that the second and third prong might be
23 something that you all would find more -- you could get behind
24 in terms of if it were two stories, right, and not three stories.
25 I don't know. I mean, I'm just kind of talking this through, or

1 we can just go ahead and deny it, and they can come with us in a
2 different, you know, design.

3 I mean, the fence thing is just, you know, right. I
4 mean, like, I don't even know what to say about the fence thing.
5 I don't want to say that it's ridiculous, but I'm just like as I
6 look at it, I'm just like wow, that's lot of land as Mr. --
7 you know. But at the same time, I don't disagree with what again,
8 the Office of Planning had said. I mean, as I'm kind of, you
9 know -- and now I don't even know which -- I guess what I'm trying
10 to understand is we're tasked with variances and special
11 exceptions, and as we get further and further down this rabbit
12 hole, I don't know sometimes if I'm talking about different
13 things.

14 I mean, you know, they could have a -- 375 square feet,
15 I don't even know if you could do like a restaurant or a cafe,
16 you know, and then you could have public space out on the street
17 of Webster for the front of the, you know, the cafe version. You
18 know, it's just such a small space, I don't much. So what do -
19 - somebody want to make a motion, or does somebody have an idea?

20 COMMISSIONER TURNBULL: It would make an excellent tiny
21 home.

22 CHAIRPERSON HILL: 375 square feet?

23 VICE CHAIR JOHN: That's right.

24 BOARD MEMBER SMITH: That's in keeping with
25 the zoning regulations.

1 VICE CHAIR JOHN: So I would like to suggest that we
2 continue this case and maybe have the applicant meet
3 with OP again and maybe have talks with the ANC. I mean, I could
4 see some commercial use that could be really disruptive to the
5 neighborhood. So maybe something, you know -- something shorter
6 -- not three stories -- might work, and maybe there might be a
7 way to get to meeting that second prong.

8 But at the end of the day, this is private property,
9 and so for the Board to say that the applicant was not
10 able to develop the property is (audio interference),
11 as far as I'm concerned. So I think I would prefer to see us
12 continue the case and think about it some more. Have everyone
13 go back to the drawing board and see what's possible.

14 CHAIRPERSON HILL: All right. We'll see before -- I'm
15 going to bring everybody back in, in a minute just so we can kind
16 of talk just a little bit, I think, if we want to do that. Or -
17 - and I'm kind of just -- I mean, if we denied it, then we denied
18 it, and they'd have to come back with us again, you know. And
19 so I don't know what is the most efficient thing for the Board.
20 I guess, go ahead, as you say, try and see if the
21 applicant is able to come forward with a different
22 project, depending upon what were the Board's concerns with this
23 project, and then also going to the ANC. Is that what you are
24 thinking also Mr. Smith or Commissioner Turnbull?

25 COMMISSIONER TURNBULL: Well, you know, the ANC has

1 already approved this, if I'm not mistaken. They had eight
2 ~~yay's~~ or something like that. Was that right? Am I looking
3 at the right one?

4 CHAIRPERSON HILL: I thought they were opposed.

5 COMMISSIONER TURNBULL: Oh, they opposed?

6 VICE CHAIR JOHN: Opposed. Uh-huh.

7 CHAIRPERSON HILL: Yeah. I thought so. Mr.
8 Rice, isn't that correct?

9 MR. RICE: Yes, sir. They recommended denial of all
10 relief on the basis of mere hardship (audio
11 interference) due to environmental and safety concerns.

12 CHAIRPERSON HILL: Oh, okay. I'm looking
13 through -- I'm looking at the wrong report. I'm sorry.

14 COMMISSIONER TURNBULL: So I'd be willing to -- I'd
15 love to say to not to go ahead, but I would be more than willing
16 because of the need for the -- I think they need the opportunity
17 to develop this site in a rational manner. And I think we could
18 ask them to come back and make some -- if they'd be willing to
19 make some revisions. That would be --

20 CHAIRPERSON HILL: Mr. Chairman -- Commissioner
21 Turnbull, we're going to go around and round. I can already kind
22 of see a little bit of this. I think Mr. Smith is a hard no.
23 So let's see. Mr. Smith, what do you got?

24 MR., BOARD MEMBER SMITH: So you are correct, I'm a hard
25 no. -- So the reason why I'm a hard no is that I'm a firm believer

1 of acting on what is before us today. Some of this discussion
2 that we're having is to continue it and allow the developer to
3 meet with OP and potentially meet with ANC to change the concept
4 of this development. If we were to deny this, and they change
5 the concept of the development to something that is substantially
6 different from what we saw previously, we could still hear the
7 variance, if I'm correct, Mr. Rice, it could just be a variance
8 of a different nature.

9 So to me, the proposal here today is for variances and
10 special exceptions for this single-family home. And I think that
11 we should hear that and make a decision today. It sounds like
12 we've gone around and deliberated this already. And they can
13 come back at some future point if they want to resubmit it for a
14 different project or modifications to this one, if they're
15 substantial enough.

16 CHAIRPERSON HILL: Okay. So that's what I thought.
17 Okay. So Mr. Smith is the stern parent. And so Commissioner
18 Turnbull.

19 COMMISSIONER TURNBULL: Yeah. Well, I think Mr. Smith
20 made some -- he made excellent arguments before we first was --
21 when we first -- on the first round, and I think Ms. John was
22 sort of in favor of that too. So I'll back Mr. Smith on this,
23 and I'll say not to go ahead with this.

24 CHAIRPERSON HILL: Oh, God. I'm going to be more wishy-
25 washy now than even before, you guys. You're going to love this,

1 right? Now, again, the Office of Planning was in approval, right,
2 so it's not like the ~~Applicant~~applicant is here trying to get
3 something that they thought was crazy, right? They've like gone
4 through the process; they've worked with the Office of Planning.
5 They've come up with what they believe was something that was
6 going to work within the regulations, meaning they worked with
7 the system, right? So now I'm looking at Mr. Smith who's the -
8 - and I don't know. I'm just kind of now you've made your case,
9 I'm just talking, right? If this were -- they were just out of
10 control and they, you know, this is wild, right, then I could
11 even understand Mr. Smith's argument. --I still ~~can't~~can
12 understand Mr. Smith's argument.

13 The fact that the Applicant is here, and has worked
14 through the Office of Planning's process, and came to us with
15 what seemed to be a reasonable case, I could also understand
16 talking with them a little bit more and just seeing what may
17 happen, right? However, I can also go on with Mr. Smith because
18 it's the end of day and just that's the end, right? So you just
19 wait, Mr. Smith, because I'm going to see what Ms. John has to
20 say, okay? And then we'll come around and see one more round
21 and then we'll see what happens. Ms. John.

22 VICE CHAIR JOHN: So I'm not wishy-washy at all. I
23 think this discussion should help the ~~neighbors'~~neighbors to
24 understand that this is private property at the end of the day,
25 it's not a park. And so whether or not the property owner knew

1 before that it was a gas station, that's neither here nor there.
2 The property owner has a right to develop the property. What's
3 anat issue is if he's entitled to the relief, specific relief
4 that the property owner is requesting.

5 Now, if we go with Mr. Smith's suggestion and we just,
6 you know, deny the application, then there is no opportunity for
7 the property owner to go back to the drawing board and see what's
8 a reasonable solution to develop this property, which he owns.
9 It's not owned by the city; that triangle is owned by the property
10 owner. And so the neighbors might want to talk to the
11 property owner to see what everybody would be happy with before
12 they come back. If we dismiss the case, then is it, you know,
13 another filing fee and all of that.

14 And there's no guarantee that the next owner will be -
15 - will put something there that's even more of a nuisance. It
16 could be a wildly popular pizza shop or something
17 that -- you know, a bowling alley, I don't know if you could
18 get one that small. But something that would really be a
19 nuisance. Or maybe they can come up with -- or maybe, you know,
20 it can be sold and kept as a park. So that would be my
21 suggestion.

22 CHAIRPERSON HILL: Okay. So Ms. John's not wishy-
23 washy. VICE CHAIR JOHN: No.

24 CHAIRPERSON HILL: So she's got -- so I can go -- I
25 can -- I'm on Ms. John's side now because I'm the wishy-washy.

1 And Mr. Turnbull, where are -- Mr. Smith, where are you?

2 BOARD MEMBER SMITH: I think you got -- I haven't
3 changed my opinion.

4 CHAIRPERSON HILL: Okay. So you're still there. Mr.
5 Turnbull, where are you?

6 COMMISSIONER TURNBULL: Home. I'd like to -- this is
7 -- I don't think whether it's -- I think I was in the same camp
8 as Mr. Smith that I don't know if we're going to get anything.
9 Unless we go back out there and explain to the applicant
10 that they're pretty close to getting a denial, and that they need
11 to look at what they're -- the Board is willing to consider
12 continuing on this case if there would be a sincere effort to
13 revise the drawings and revise the plans to accommodate the issues
14 that have been talked about. I don't know. Again, I'm --

15 CHAIRPERSON HILL: Okay. Let's do this.

16 COMMISSIONER TURNBULL: You (audio
17 interference) yourself for trying to accommodate the
18 applicant and continuing on this case. But I think we
19 got to make it clear that it's very close to being denied.

20 CHAIRPERSON HILL: No, no, no. I mean, I think -- oh,
21 I lost Mr. Turnbull. Did I lose Mr. Turnbull? Do you guys see
22 him?

23 BOARD MEMBER SMITH: I lost him too.

24 COMMISSIONER TURNBULL:
25 I'm on.

1 CHAIRPERSON HILL: Okay. Great. So, I mean, they're
2 watching. They know that it's very close to being denied.
3 We'd have to bring them back in and talk some more and ask what
4 we wanted to see. That's what I'm trying to -- if we're going
5 to deny it, then we're just going to deny it. If not, then we'd
6 have to bring them back in and talk them through this stuff. To
7 Ms. John's point -- and I think we should take a quick break and
8 think about it then we'll come back, okay? And then we might
9 still take another quick break because the last thing is going
10 to be long too.

11 And so -- but to Ms. John's point, Ms. John, I think
12 they could come back again but, right, there's new filing fees,
13 they're all that stuff, but they could come back again with a
14 different proposal, with a different variance, but it would be,
15 right, like six months from now. You know, I don't know how long
16 -- or three months from now. I don't know what it is. So we
17 know where Mr. Smith is. I don't know whether Ms. John has
18 changed. I'm leaning towards Ms. John and bringing them
19 back in, I guess. And then Mr. Turnbull, you get to be kind of
20 the deciding factor, or you can figure out what you want to do,
21 and we'll just take a quick five-minute break. Does that sound
22 good?

23 BOARD MEMBER SMITH: Mr. Chairman, we could take a
24 five-minute break, but can I -- either after or before it, just
25 (audio interference).

1 CHAIRPERSON HILL: Go. No, talk now.

2 BOARD MEMBER SMITH: So this question of submitting
3 something that we want to see. And I struggle with that term of
4 "submitting something that we want to see" because we're sitting
5 here. That's an interesting concept, like to me sitting
6 in this seat, because what we're tasked with is not necessarily
7 triggering out something that we want to see, we're tasked with,
8 in this particular case, making a decision of what we see, the
9 metrics of this particular case. So where I stand is more
10 so on the technical aspects of the variances and the special
11 exceptions and analyzing that, not necessarily what the ANC would
12 like to see or what the property owner could conceivably at some
13 particular time revise the use of the size to something that
14 would be appropriate, which is completely nebulous. To me, we
15 should be making a decision about what we see as a -- for a zoning
16 appeal -- adjustment (audio
17 interference). So with that, we can do the five-minute break.

18 CHAIRPERSON HILL: No, no, no. I appreciate -- I mean,
19 the only thing I can hang my hat on with this one is again,
20 "relief can be granted without substantial detriment to the
21 public good-." So we're in that public good little world also,
22 right? We've already jumped through the first prong, right? And
23 then, you know, without substantially impairing the intent,
24 purpose, and integrity of the zone plan. Like that's where it
25 gets a little squishy for us, right? But definitely, I think

1 that you, given your background also, Mr. Smith, are very helpful
2 in what you're saying, and I think you're making a very valid
3 point to where now, I'm leaning towards you.

4 So let's take -- well,
5 there's only four of us, so somebody's going to have to be
6 flexible, right? Okay? There's only four of us, right? So
7 we're going to take a break. Or what, Ms. John, are you giving
8 up also?

9 VICE CHAIR JOHN: I'm not going to fall on my sword.
10 All I'm going to say is this. Mr. Smith, we have done this a
11 lot where we see that we're about to deny an application, we
12 allow the applicant to go back to the drawing board and
13 see if there is something that can be built on the site that
14 meets the requirement or might just need a little tweaking so
15 they could come back in for a special exception.

16 But to deny it outright, to me, is a bit burdensome on
17 the ~~Applicant~~applicant because as the ~~chairman~~Chairman said, they
18 went through the process. They did a lot of work. They went to
19 public space; they got permission. I was shocked, shocked,
20 shocked to see that there could be these projections into public
21 space and that it would be allowed. And maybe the
22 ~~neighbors'~~neighbors didn't know that either. I strongly object
23 to the fence. I don't think -- and the ~~Applicant~~applicant said
24 the owner is willing to move the fence. So what is the
25 ~~Applicant~~applicant going to put on that small property? And I

1 say it again, it could be worse than a single-family dwelling.
2 And so I will go either way. So Chairman, you get to decide.

3 CHAIRPERSON HILL: No, no, no, no, no. No, no.
4 You've now --

5 VICE CHAIR JOHN: I'm undecided, Mr. Chairman.

6 CHAIRPERSON HILL: That's fine. I'm just saying
7 you've now pushed me back to you again, okay? Whoever is
8 the last person seems -- we're going to let Mr. Turnbull. And so
9 because what Ms. John has said is true -- I don't know; this is
10 tough, right? I mean, we've done this before again where we've
11 worked with people. And it's not -- again, you know, Mr. Smith,
12 you used words that the lawyers use, you know, "what we'd like
13 to see," right? I'm just talking here at 4:15 on a Wednesday,
14 and the words that I'm using are just the words that I'm using.
15 We're here for the regulations and all that stuff, right, okay;
16 but within the regulations, we know where we are. But anyway,
17 Mr. Turnbull, you get to help us out. We're going to take a
18 five-minute break. We're good? And then we'll come back. Thank
19 you.

20 (Whereupon, the above-entitled matter went off
21 the record at 4:15 p.m. and resumed at 4:20 p.m.)

22 CHAIRPERSON HILL: All right. So I realized something.
23 We don't have to decide today. Like that was the other thing,
24 you know. Like we can -- we can think about this a week and come
25 back at a hearing session and next week ~~go ahead~~ -- at a meeting

1 session next week and take a vote. And then if we want to reopen,
2 we can reopen. So I don't know ~~what~~, but, you know, that's also,
3 you know, one option. But I think Commissioner Turnbull, you had
4 the basketball.

5 COMMISSIONER TURNBULL: Yeah. We could do that. I'm
6 not opposed to that. I don't know if it's going to change
7 anything. I mean, our big hang up -- what we were leaning on
8 right now is that, I think, Mr. Smith was in the camp of
9 definitely that it's the variance that's really a tough thing to
10 vote on right now that he can't really approve it based upon the
11 variance. I am also thinking ~~--~~ there's parts of the special
12 exception which gets into the harmonious character in the
13 neighborhood. I don't know if the building -- I can't tell by
14 these little cartoon drawings if I could definitely say it's
15 fitting into the harmonious content of the context of the
16 neighborhood. So I don't know if holding it off is going to help
17 or not. I mean, I'll go with whatever you guys want to do, but
18 I'm open to it.

19 CHAIRPERSON HILL: Right. Well, I guess, we're still
20 stuck here. And as long as you all don't mind, I don't mind
21 because we're doing this out of the -- as a duty. And again,
22 I'm stuck because the ~~Applicant~~applicant has worked through the
23 process and has worked with the Office of Planning and came to
24 what they thought was a reasonable project and therefore, they're
25 here. And I understand that we can go against the Office of

1 Planning and disagree with what they're thinking and all that,
2 but I'm just saying, you know, I've been doing this now going
3 over five years. As Ms. John is saying, and previously,
4 we've tried to do our best when we were there in ~~the~~ in person.
5 Because if we were in person, by the way, people would have raised
6 their hand already and said things and you know. So somebody
7 would have already stepped forward. Mr. Bello would have already
8 stepped forward, and we would have already had some discussion,
9 right? So this is even -- this is even more reason now to why
10 I'm confused, right, because this video world, people can't just
11 suddenly appear as they do in real life. They raise their hand,
12 or they look like they're -- they look scared to death and you're
13 like ~~eh~~ "Oh, maybe you want to say something," you know. And so
14 that makes me even want to stick with the maybe bringing them in
15 again.

16 I don't necessarily know if I have the stomach for it
17 today now, now that we've kind of gone through this, but that's
18 why ~~I was~~ I'm still kind of -- to just clarify what I think Mr.
19 Smith was saying, at least that I understand it is, you know,
20 Mr. Smith is very clear to what I understood. -You know, we have
21 the application in front of us, that we have the application in
22 front of us. And that's what we're doing. And so he is just
23 like, you know, we decide this application, there you go, right?
24 And I'm saying that there's a little bit room for discussion, and
25 that's why I'm still over on the discussion side. But I don't

1 know.

2 Mr. Turnbull, I didn't get what your -- are you on Mr.
3 Smith's side, or are you with -- are you going to vote with what
4 seems to be myself and Ms. John?

5 COMMISSIONER TURNBULL: I am definitely leaning toward
6 Mr. Smith

7 ~~CHAIRMAN HILL:~~ , which would mean you would have a
8 split vote 2-2 which means it gets dead eye, it doesn't go
9 forward.

10 CHAIRPERSON HILL: No, nothing happens. It just -- it
11 just sits until -- right. It doesn't get denied or approved
12 . It just sits until our next person comes which
13 is actually happening, right? And so that person but, you know
14 -- I'll tell you what. Why don't we -- why don't we put this
15 off for a week. I lost Mr. Smith, if he's gone. I don't know
16 if he's there or not. Did I lose Mr. Smith? I lost Mr. Smith.

17 MR. MOY: He's getting back in, I
18 think.

19 ~~MR. MOY:~~ You could either put it off for a week, Mr.
20 Chair, or put it off until March the 17th, if ~~it's~~ there's going
21 to be more considerable discussion.

22 CHAIRPERSON HILL: Why? What's March the 17th?

23 MR. MOY: That might help Mr. Turnbull.

24 CHAIRPERSON HILL: Oh, he's back.

25 COMMISSIONER TURNBULL: I'm back. On St. Patrick's

1 Day, yeah.

2 CHAIRPERSON HILL: You'd come in, Mr. Turnbull, right,
3 just to talk real quick in the morning on next week?

4 COMMISSIONER TURNBULL: Next week, yeah. Sure.

5 CHAIRPERSON HILL: Okay. Well, I don't need Mr. Smith
6 to put this off until next week then. Ms. John, you want
7 to do that? Okay. All right.

8 Mr. Moy, we're going to put this off on decision until
9 next week. So you can put it on for a decision on --

10 MR. MOY: March 3rd, sir.

11 CHAIRPERSON HILL: 3/3?

12 MR. MOY: Yes.

13 CHAIRPERSON HILL: Okay. I got Mr. Smith back. All
14 right. So Mr. Smith, we're just going to put this off until
15 next week, okay? All right. I don't know if -- I just know that
16 we have a lot of things to think about on the next one. And I
17 wouldn't mind standing up for a minute again, if that's all right
18 with you guys. Are you all in a big hurry? Can we do another
19 five-minute break? Okay. Okay. Poor OAG, they have to stay.
20 It's the -- okay. All right. We'll come back in five minutes
21 again.

22 (Whereupon, the above-entitled matter went off the
23 record and then resumed at approximately 4:40 p.m.)

24 CHAIRPERSON HILL: Mr. Moy, you can welcome us back and
25 call our next case.

1 MR. MOY: The Board is back in session after a quick
2 recess. And the time is at or about 4:40 p.m.

3 _____ The case of application before the Board now is
4 Application No. 20374 of Mathew and Alicia Amling. This is a
5 application for a special exception from the front yard setback
6 requirements of Subtitle D Section 1205.2, pursuant to Subtitle
7 D Section 5201.3, and Subtitle X Section 901.2, to construct a
8 front vestibule addition to an existing two-story principal
9 dwelling unit, R-20 Zone, at premises 3617 T Street Northwest,
10 Square, 1296, Lot 338.

11 Mr. Chairman, just for you to know that the
12 applicant did file an affidavit of maintenance today so,
13 and of course, today is the date of the hearing, among other
14 preliminary matters.

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

17 MS. AMLING: Sorry.

18 MR. AMLING: Hello. We're both here.

19 CHAIRPERSON HILL: Okay. Hello? Let's see. And I see

20 ~~THE CHAIRMAN: It's all right.~~

21 ~~MS. AMBLIN: We were on a couple of hours but.~~

22 ~~THE CHAIRMAN~~ CHAIRPERSON HILL: Okay. Hello?
23 Let's see. And I see Mr. Cross. Could you introduce yourself,
24 Mr. And ~~Ms~~Mrs. Amling?

25 MR. AMLING: Sure. My name is ~~Matthew~~Mathew Amling.

1 This is my wife Alicia. We are the homeowners at 3617 T Street.

2 CHAIRPERSON HILL: Okay. And I see you got
3 Mr. Cross with you. Mr. Cross, could you introduce yourself for
4 the record?

5 MR. CROSS: Sure. Michael Cross, architect. I'm joined
6 by Elizabeth Stuart, project designer.

7 CHAIRPERSON HILL: Okay. So I see Mr.
8 Amling -- Mr. and Mrs. Amling, that the PowerPoint
9 presentation, the request to waive the 21-day filing, and the
10 notice -- so the affidavit of notice you just put in today?

11 MS. AMLING: Yes.

12 MR. AMLING: Yes.

13 MS. AMLING: The PowerPoint filing, our case was very,
14 very different and a lot more straightforward
15 until about five days ago, so we were not prepared -- we were
16 just planning on telling you, the ANC, OP, everyone who supported
17 our application, and it would be
18 straightforward. And then when it changed, we realized
19 we probably needed to submit that PowerPoint. So apologies for
20 the delay -- the lateness of it.

21 ~~THE CHAIRMAN~~CHAIRPERSON HILL: That's okay. I'd like
22 to see the PowerPoint, so I'm going to allow it into the record
23 unless the Board has any issues, as well as ~~the 800-A100~~ floor
24 plan, as well as --yeah -- and then the affidavit of posting.
25 Does the Board have any issues; if so, raise your hand? ~~No. All~~

1 ~~right.~~

2 (Negative nod.)

3 No. All right.

4
5 ~~THE CHAIRMAN~~

6 COMMISSIONER TURNBULL: (Audio interference.)

7 CHAIRPERSON HILL: Yes, Commissioner.

8 COMMISSIONER TURNBULL: I've lost
9 my video here. Let me get it back up.

10 CHAIRPERSON HILL: Okay.

11 COMMISSIONER TURNBULL: I think we
12 do have a preliminary matter and that's whether or not this
13 is not a special exception and not a variance.

14 CHAIRPERSON HILL: Right.

15 COMMISSIONER TURNBULL: My reading
16 of the rights would tell me that special exception is that a
17 front setback is not covered as a special exception. You can
18 have front yard relief, but front setback would probably best be
19 addressed as a variance. MR. AMLING: We're asking for
20 an addition to our front yard, which is just part of the front
21 setback, which is specifically called out in 5201, I believe. I
22 think what you're referring to is the general requirement.
23 There's the specific requirement later on that calls out the
24 ability to apply for a special exception. And it's also --

25 ~~MR. TURNBALL~~ COMMISSIONER TURNBULL: So I don't

1 think there's anything that says that a setback is an addition.
2 It's clearly called out as a setback, and it clearly is a hard
3 and fast rule to align up with adjacent neighbors. ~~Because It's~~
4 because of the street front, so it has to have a higher bar than
5 just a special exception. So I'm -- my reading of that, and you
6 can check with RATFOAG is that it could be a gray area, but unless
7 the Office of Planning and the zoning regulations are changed to
8 specifically address that, I think to play on the conservative
9 end of this, it should be done as a variance.

10 COMMISSIONER HILL: Okay. All right. So Commissioner
11 Turnbull cutting right to the chase. All right. So hold on,
12 Commissioner -- I mean, not Commissioner
13 -- Mr. Smith. All right. Okay. Mr. Smith, go ahead.

14 BOARD MEMBER SMITH: Well, I defer to you, Mr. Chair.

15 CHAIRPERSON HILL: Well, you guys aren't
16 deferring to me. We're already starting to spread
17 away. So but --

18 BOARD MEMBER SMITH: Okay. So --

19 CHAIRPERSON HILL: Go on.

20 ~~MR.~~BOARD MEMBER SMITH: So I agree with Mr. Turnbull,
21 and I'll go into the reason why I agree with Mr. Turnbull. I
22 believe both front yard and front setbacks are not synonymous,
23 especially in this zone. A front setback is a minimum measurement
24 dictating the placement of a building. However, a front yard
25 could begin at a front setback, whatever that would be, to the

1 street frontage. So therefore, that forms the front setback. Or
2 front yard could be greater than the front setback. Let's say
3 that this was set back even further, everything forward of that
4 building frontage is the front yard. So I think we're talking
5 about two different definitions here.

6 So I do believe that the Commission intended
7 for required open space at the front to be treated differently
8 from the required open space at the side or rear of the property.
9 If not, we would not have created this difference between the
10 two definitions. Anything forward of that of this particular -
11 - of the minimal front yard, anything forward of that line would
12 constitute a front yard. That's my thinking of this. So within
13 the R-20 Zone, the minimum development standards for building
14 placement are dictated by the regulations of 1205.2 for a front
15 -- front setback. So therefore, I'm with Mr. Turnbull. I think
16 that this is the wrong avenue, that it needs to be a variance.

17 CHAIRPERSON HILL: Okay. Give me a second
18 here. All right. So and I'm going to turn to Ms. John in a
19 second. So just so you -- I mean, Mr. Amling, Mrs. Amling,
20 you guys know what we're talking about --

21 MS. AMLING: Well, yes.

22 ~~THE CHAIRMAN~~CHAIRPERSON HILL: -- and so ~~we're~~we're
23 having this discussion as to whether or not you're here correctly
24 as a special exception versus a variance, and if front setback
25 and yard are basically the same thing, right? And that's what

1 the discussion is being -- we were prepped beforehand, meaning
2 we had a time to think about all this. And all of a sudden, it's
3 the end of the day, everybody just wants to tell me what they
4 think, right? Okay. And so --

5 MS. AMLING: We applied for
6 this nine months ago based on the guidance of zoning, so I just
7 wanted to acknowledge that we only did this based on the
8 guidance of zoning experts not --

9 MR. AMLING: Right. They told us specifically to apply
10 for a special exception.

11 MS. AMLING: I totally understand the legal minutia
12 here but, just as a homeowner, it is exhausting to be --

13 CHAIRPERSON HILL: I know. You guys, I'm
14 with you, and I understand. But again, you weren't even supposed
15 to build the vestibule, right? Like that wasn't supposed to be
16 there, you know. And so then we wouldn't even be here with that,
17 right? So we're also -- I'd rather you didn't have the vestibule,
18 and you weren't here. So now, Ms. Cain, so just -- OAG, if
19 you can do me -- help and just set up the discussion that, I
20 guess, the Board is starting to have. I already have two
21 noes, right? And so I don't know where Ms. John is. Are we
22 going to do the same thing we did in the previous case in a
23 second?

24
25 So Ms. Cain, could you set up the discussion, if you

1 wouldn't mind.

2 MS. CAIN: So this issue came up because the
3 opponents submitted a letter, Exhibit 42, raising this concern
4 about the issue of relief. We looked at it, as I believe
5 Commissioner Turnbull indicated, this is sort of a gray area
6 that has not been clearly addressed in past (audio
7 interference) precedent and has been dealt with as a variance
8 . It also has been dealt with as a special exception. Because
9 there has not been any clear discussion in any of those prior
10 cases as to what the appropriate relief is and why that is
11 appropriate, the Board needs to address that now since it has
12 been raised in the record.

13 CHAIRPERSON HILL: Okay. So Ms. John, did
14 you have an opinion?

15 VICE CHAIR JOHN: It depends on which day of the week
16 you ask me. So it really is very gray. And one way to look at
17 the term "front setback" is as the regulation says it measures
18 the distance of the space where the building will be placed on
19 the lot. And for policy reasons, there is a range where the
20 building can be placed. And because front setback is not
21 mentioned in 5201, then it should be a variance. On the other
22 hand, 5201 says "yards," and allows for one particular type of
23 yard, the other setback. So that's the other side of the coin.

24 And I think -- I mean, I think there has to be a text
25 amendment to clarify this area because it creates too much

1 confusion. I think that as a policy matter, we need to be clear
2 about what a front setback should look like and if ~~it's~~it's
3 treated differently in the regulations. There's never a set
4 distance, it's always in relationship to the other dwellings on
5 the same side of the street. And so in one particular zone, it
6 actually refers to one of the maps in order to set the distance
7 for this setback.

8 So I am fine with approaching this particular case as
9 a special exception because front setback is not excluded from
10 yards, and it's a general description of the space that, you
11 know, that is in the front of the yard. So it's difficult. I -
12 - you know, I can go with the special exception. And I
13 recall -- don't know if I have the facts clearly before me --
14 but I might have voted against a front setback case. I think
15 others voted in favor and it involved a variance. I can't quite
16 remember what the vote was like. So the variance standards is
17 much higher, and it definitely limits where you can place the
18 building in the front yard.

19 ~~THE CHAIRMAN~~CHAIRPERSON HILL: You know, the variance
20 standard is much higher. I don't think that, that -- well, my -
21 - and this is where I was, and this is where again, Commissioner
22 Turnbull and Mr. Smith need to continue to have a discussion and
23 maybe ~~we'll~~we'll hear from OP. But again, the ~~part~~part that I
24 got -- and if you all wouldn't mind muting your microphones,
25 whoever is not muted, thanks. ~~D5201.2~~CD-5201.2(c) say ~~"~~"yards

1 including alley centerline setback, ~~"~~, " right, ~~"~~ could be done as
2 a special exception, ~~"~~.

3 And the way that I kind of thought was that -- and this
4 is where Commissioner Turnbull might be able to say -- the fact
5 that you all said alley line center -- I'm sorry -- alley
6 centerline setback, you referred to that in 5201.2, and you
7 used the word "yard." I kind of thought that you might as well
8 have used the term "front setback" as well in that place, meaning,
9 you know, the words are interchangeable, you know. And I don't
10 know. I agree with Ms. John it -- you know, and the reason why
11 a text amendment would be wonderful, but there's nothing here
12 right now for the text amendment that clarifies it. If you kick
13 it to a variance, then I don't think -- I mean, then that kind
14 of ends it, right?

15 -----I don't think, you know, you're really going to have
16 anybody getting approved for a variance for something like this
17 where there was special exceptions for it and specifically talked
18 about alley line ~~center line~~centerline setbacks and, to me, this
19 is a front yard. And so that's why -- but you all seem pretty
20 resolute in your looking at this. And I guess what is difficult
21 for us is that we've -- and this is where we might want to talk
22 to OAG in an emergency session meeting real quickly again -- is
23 that we have done this both ways, right? We've also treated it
24 as a special exception before, and that's why they're here before
25 us, and that's why the ~~Applicant~~applicant is saying that this is

1 the way they were told to approach this, right?

2 And so do you want to have -- let's hear from the
3 Office of Planning real quick if we could. Mr. Kirschenbaum, do
4 you have any light on this issue?

5 MS. KIRSCHENBAUM: Good afternoon, Chair Hill and
6 members of the Board. Jonathan Kirschenbaum with the Office of
7 Planning. So I will start by saying we do not make zoning
8 determinations. That is the responsibility of the zoning
9 administrator. This application was self-certified, and we
10 originally reviewed it as a special exception under D-5201.
11 And we submitted our report to that effect at Exhibit 39. After
12 filing the report, we were informed by OAG that this case most
13 likely should have been reviewed as a variance. This is because
14 the development (audio interference) listed in Subtitle D
15 -5201.1 do not specifically call out from setback as a development
16 standard where the Board can grant special exception relief. The
17 closest development standard is yards, including alley line
18 setback, but it does not specifically call out front setback as
19 a development center that you can grant special exception relief
20 from.

21 So OP does agree with ~~OEG's~~OAG's reading that 5201
22 would appear to exempt from setbacks from having special
23 exception relief. The zoning ~~Commissioner~~commissioner has also
24 put in writing to both ~~(indiscernible)~~OP and to the
25 ~~Applicant~~applicant that he agrees with this reading in 5201~~-and,~~

1 in that variance relief should be required for the relief from
2 the front setback requirements. Ultimately, it is up to the
3 Board to decide whether they would like to -- sorry -- whether
4 or not they would like to review this application as a special
5 exception as self-certified by the ~~Applicant~~applicant or as ~~thea~~
6 variance as was put in writing by the zoning administrator.

7 So you have two different ways to process this that is
8 before you. I don't - you know, I don't think it's your
9 job to decide what the relief should be, but you have two
10 different things in front of you. You have something in writing
11 from the zoning administrator that should be a variance, and you
12 have something from the applicant saying that this
13 should be a special exception. So you know, I can't make the
14 decision for the Board. If the Board does decide that they want
15 to review this as a special exception, then I'm happy to provide
16 OP's report and recommendation on this case at this time. And
17 if the Board decides to review this as a variance, then OP will
18 need additional time for analysis and to prepare a report and
19 recommendation. Thank you.

20 ~~CHAIRPERSON~~ HILL: Where's the zoning in
21 this? That wasn't in the record, was it, for the --

22 MR. KIRSCHENBAUM: It's not. It's an email.

23 ~~CHAIRPERSON~~ HILL: So the zoning
24 administrator thinks that it could be a variance?

25 MR. KIRSCHENBAUM: Correct.

1 MS. AMLING: He emailed us --

2 CHAIRPERSON

3 HILL: I'll give you all a second. I'll give you all a second.
4 Okay. Mr. -- oh, I'm sorry. Mr. And Mrs. Amling, you had your
5 hand up, as did Mr. Cross.

6 MS. AMLING: We got that email from Mr. LeGrant
7 yesterday about 5:40 p.m. Previously, in August and September
8 and, I believe, October, we had spoken to Mr. LeGrant, and he
9 had advised us to proceed with the special exception.

10 CHAIRPERSON HILL: Right.

11 MS. AMLING: And so he revised his opinion, which
12 everyone is entitled to do, but he did not revise his
13 opinion until about 5:39 last night when -- so that no one had
14 time to submit anything to the record. And we are proceeding
15 with this exception based on multiple conversations with Mr.
16 LeGrant. So it's not just -- not just that one notice of
17 violation, it was repeated attempts of trying to do this the
18 right way.

19 CHAIRPERSON HILL: Okay. I got you.

20 MS. AMLING: I'm sorry about that.

21 CHAIRPERSON HILL: And you guys, I'm sorry
22 that you're in this situation also. Mr. Cross, you were about
23 to say something? _____

24 MR. CROSS: Same thing. I would just add that as the
25 AmblingAmlings suggested, the original directive to apply for a

1 special exception did come in written form from DCRA as part of
2 the notice of violation that was issued to them. That was one
3 of those late filings that we uploaded where DCRA suggested they
4 file for a special exception. And, just for the record, you
5 suggested that the vestibule was built illegally. It was built
6 per the approved DCRA plans, and later the notice of violation
7 sent said that the permit was issued in error. So a subtle
8 difference.

9 CHAIRPERSON HILL: No. That's great.
10 Thank you, Mr. Cross. That's helpful. So then I wonder if that
11 would help your variance case, actually. Okay.

12 COMMISSIONER TURNBULL: Just to -- Mr. Cross, those
13 drawings that were submitted, those were changed drawings from
14 what was approved by the BZA on a previous case two years ago;
15 am I not correct?

16 MR. CROSS: I'm not sure. It does seem like the set
17 that was ultimately approved by BZA did not have the full
18 vestibule shown in it. However, that vestibule was reviewed by
19 OP and the ANC in that previous application.

20 COMMISSIONER TURNBULL: But the drawings -- the Board
21 two years ago issued a summary order, and the drawings -- based
22 upon the drawings that were submitted, which showed
23 that the front setback lined up with the neighbors to the left,
24 and the vestibule went inside the living room. That's what we
25 have on the record.

1 MR. CROSS: I do believe that's correct.

2 MR. AMLING: That is correct. And we weren't -- at
3 that time, we didn't -- we were not under the impression
4 that we needed review for that.

5 MS. AMLING: And this is probably -- Mr. Hill, you told
6 someone earlier that homeowners aren't required to be zoning
7 attorneys. So I got a set of plans that have my vestibule on it
8 that were stamped by DCRA and approved, and no one at the ANC,
9 no one at the BZA, no one asked a question about my vestibule
10 until Mr. Bolden or Inspector Bolden on July 29th had
11 received a complaint from my neighbor. So I don't know what we
12 submitted wrong throughout this process, and I'm sorry that
13 we've caused this consternation about this square foot --
14 this little, teeny vestibule, but I'm just -- we've just been
15 looking at our approved permits, and I don't understand where we
16 went wrong.

17 ~~THE CHAIRMAN~~CHAIRPERSON HILL: Now, Mr. And ~~Ms~~Mrs.
18 Amling, what Commissioner Turnbull is bringing up is that -- and
19 this is where I have to go back also; he's an architect -- is
20 that he's saying that the BZA plans that were approved didn't
21 have the vestibule. So I don't know then where -- I also don't
22 know when the vestibule showed up. I believe you, you got
23 approved plans from DCRA, but if the BZA did not approve the
24 vestibule, then, also, that's a problem, right? That means that
25 we didn't approve it, and somewhere down the line the plans

1 changed and DCRA did approve it- right?

2 So, you know, again, that -- I don't think if that --
3 I mean, if the zoning administrator says that this should be
4 reviewed under a variance, that's even now more a reason to where
5 I'd be thinking this should be reviewed as a variance, right?
6 And I don't want to waste any of our time going through this if,
7 at the end of the day, two of the -- two of the three of us think
8 that it should be a variance and you're just not going to be here
9 for a special exception, and you have to start again anyway, you
10 know.

11 Can you clarify again, Mr. Kirschenbaum? Tell me what
12 the ZA said?

13 MR. KIRSCHENBAUM: The ZA said that he would -- when
14 he -- he said he had -- I had spoken with the Office of Planning
15 regarding as to what type of relief D-5201.1(b) is
16 required to deviate from the setback requirement. And then R-20
17 Zone, I have concluded that variance relief would apply as to be
18 used in that section.

19 ~~THE CHAIRMAN~~CHAIRPERSON HILL: Okay. All right. Well,
20 then Mr. And ~~Ms~~Mrs. Amling, I'm sorry you've been here all day,
21 you know, and I don't know what to say about the -- you know,
22 three -- I mean, three of us think right now the zoning
23 administrator thinks you have to be here for a variance. And
24 so, if the zoning administrator thinks you have to be here for a
25 variance and three of us think you have to be here for a variance,

1 then I don't know what to say to you.

2 MS. AMLING: I understand that. I just -- I wish the
3 zoning administrator had told me that in July over and over again
4 when he -- he told me to proceed with the special exception. And
5 I understand, I just -- it's just D.C., it constantly makes being
6 a homeowner applying for these kinds of -- being a homeowner is
7 hard in D.C., and if -- but I just thought --

8 CHAIRPERSON HILL: I know you guys are
9 frustrated. I'm going to let know, we're all D.C.
10 homeowners. We're all D.C. homeowners. We all love the city,
11 and sometimes it's a pain in the butt, you know. And sometimes,
12 you know, those plans -- anyway. There are plans, I guess, that
13 I'm going to go back and look at that we approved that didn't
14 have your vestibule. And so it seems as though also, you might
15 have an argument now that DCRA, you know, approved these plans
16 and now you guys -- I forget what the legal term is -- you know,
17 that this is not your fault, right?

18 MS. AMLING: Well they -- the notice of violation says
19 , "in error."

20 MR. AMLING: Yeah. It clearly states, "DCRA permitted
21 this in error." And you can see that in the exhibit that
22 we submitted last night.

23 CHAIRPERSON HILL: Right.

24 MS. AMLING: So it's just -- you know, it's just nine
25 months and a couple thousand dollars, and we'll keep -- ~~we'll~~we'll

1 keep spending that money until we get it right. And I appreciate
2 your time. I know it's all frustrating for you all as well.

3 CHAIRPERSON HILL: Mrs. Amling, it's
4 not frustrating, it's just frustrating because it's also
5 confusing that -- so again, what I'm trying to say is that your
6 particular case might be an exceptional situation because you
7 have approved plans from DCRA, right? That's what I'm trying to
8 say if, you know, you did make an argument for a variance that
9 Mr. Cross can help you make that argument and also, if there's
10 counsel, I don't know, right? So -- and I don't know if it's
11 worth it, that's another thing, right, to come into -- I don't
12 know what you would have to do to come into compliance.

13 But Ms. John, did you have anything to -- you were
14 helpful before. Do you have anything to add?

15 VICE CHAIR JOHN: Can you hear me, Mr. Chairman? I'm
16 calling in from my cell phone because my computer died. So
17 can you hear me?

18 CHAIRPERSON HILL: Yes.

19 VICE CHAIR JOHN: Yes. I think there might be a case
20 for detrimental reliance. I realize that the Board did not
21 approve the vestibule in the Board's approval process, so how it
22 got approved by DCRA is unusual. But I think the
23 ~~Applicant~~applicant could try to make a case that the
24 ~~Applicant~~applicant relied on the signed and approved permit in
25 building the vestibule, and that might help with the variance

1 test. So I'm sort of in agreement with you on this one.

2 CHAIRPERSON HILL: Okay. So -- I'll let
3 you talk Ms. Amling and Mr. Amling. Ms. Cain, did this help
4 clarify any of the stuff that we're trying to work through?

5 MS. CAIN: Yes.

6 CHAIRPERSON HILL: Or the zoning administrator?
7 Did the zoning administrator help clarify?

8 MS. CAIN: I think it's more -- I mean, the letter
9 from the zoning administrator is something that the Board can
10 consider. I think Board Member Smith and Commissioner
11 Turnbull articulated based on the regulations, a
12 pretty clear reasoning for having this be a variance.

13 ~~THE CHAIRMAN~~CHAIRPERSON HILL: Okay. Okay. So you --
14 -- all right. All right. Mr. And Ms. Amling, I think we're at a
15 variance at this point, and so is there anything -- I think we're
16 not -- we're not going to deny this, we're going to let you have
17 an opportunity to decide what you want to change and come back
18 to us. Because again, if we deny it, then it's a whole another
19 you start again, and there's different fees, and all these things,
20 and a ~~time-table~~timetable. But at least now, you can go back
21 and speak with your architect and come up with a game plan and
22 also, the Office of Planning as to how, you know, the detrimental
23 alliance~~er~~reliance -- that's the term that I was trying to think
24 of -- you know, that argument in terms of, you know, this is not
25 -- that is what is your exceptional situation, right, for the

1 variance, right? And so now did you all have something to say?
2 You were trying to say something it ~~look~~looked like at one point.

3 MS. AMLING: I've never done a variance. I don't
4 understand. Like will it be helpful to have -- you know, we have
5 eight letters of support from neighbors, including both of our
6 direct neighbors. Is it helpful to have just
7 hundreds of neighbors saying they like our vestibule and that
8 there's no harm in the -- what would be most helpful in our --
9 this process?

10 CHAIRPERSON HILL: Everything you have
11 already submitted is helpful, right? Now you need to make a
12 different argument, okay. And Mr. Cross can help you understand
13 that argument. Mr. Cross, you understand?

14 MR. CROSS: Yes, I understand.

15 CHAIRPERSON HILL: Okay. And you
16 understand what we're speaking to about the detrimental
17 reliance and, you know, how they got themselves in this
18 situation. And I know you know how to talk your way through a
19 variance.

20 MR. CROSS: I don't know if I'm qualified for a
21 variance, but I do understand the issue and, you know. Yeah, I
22 understand the issue.

23 CHAIRPERSON HILL: Okay. All right. And
24 then Mr. Kirschenbaum can also, you know, provide some clarity.
25 So okay. Then let's --

1 MR. CROSS: Can I ask one procedural
2 question? I don't know if it's able to be answered, but it sounds
3 like you are suggesting that we could amend this application,
4 which I do appreciate. I think that will help the homeowner.
5 Will there be a required reposting period? Is that something you
6 can answer at this time?

7 CHAIRPERSON HILL: Yeah. Unfortunately,
8 you're going up; you're not going down, meaning if you went from
9 a variance to a special exception, you wouldn't have to repost
10 and go back to the ANC. But since you're going up, you're going
11 from a smaller special exception to a variance which is a higher
12 standard. You do have to repost. And Mr. Moy, you can clarify
13 on that.

14 MR. MOY: Typically, the public notice requirements,
15 Mr. Chairman, as you know, it's not waivable, so going to the
16 variance, what we've done with past applications, is I've got
17 publicly notices for 51 days.

18 MR. CROSS: Okay.

19 CHAIRPERSON HILL: So do you do that, or do
20 they do that?

21 MR. MOY: No, the OZ does that because we
22 have to also put public notice in the Register as well.

23 CHAIRPERSON HILL: Okay. So that will --
24 does that require anything from the Applicant?

25 MR. KIRSCHENBAUMMOY: I don't think ~~well, well,~~

1 ~~well, it will.~~ I'm assuming they're going to have to refile for
2 their burden of proof. And I don't know if there's any other
3 additions to the record but certainly, the burden of proof because
4 not of all of your -- you have to make your argument for the
5 variance test.

6 CHAIRPERSON HILL: Right. But I'm saying
7 in terms of the posting. Yeah, I mean, they have to -- I mean,
8 Mr. Cross, and I see Ms. Stuart also nodding her head
9 . You guys understand you have to argue the variance, right
10 ? So obviously, there's going to be different things that need
11 to be put in the record for that, right? And --

12 MR. MOY: And they'll be a new posting on
13 the sign because we'll have to put the new date, the hearing
14 date.

15 CHAIRPERSON HILL: Okay.

16 MR. AMLING: I think we understand. And it sounds like
17 the clock will start when we resubmit that new file -- that new
18 --

19 MR. MOY: Yeah. Just -- yeah, Mr. Cross
20 can, you know, make contact with our office and then we'll go
21 through the steps. CHAIRPERSON HILL: Okay. Mr. And
22 ~~THE CHAIRMAN~~ CHAIRPERSON HILL: Okay. Mr. And
23 Ms. Amling, I'll get back to you. You guys, I'm really - ~~I'm~~ I'm
24 sorry that you all -- I see how you got to this point, right,
25 again, but we are where we are right now. And again, the fact

1 that you have been through this might actually get you in the
2 end what you want. I don't know, right. That will also be where
3 the Office of Planning -- the Office of Planning -- I mean, Mr.
4 Kirschenbaum, I don't even understand what people are supposed
5 to do in this situation, right? Like how do they come into
6 compliance? They have to remove that vestibule?

7 MR. KIRSCHENBAUM: I believe technically if the Board
8 were to deny a variance then yes, that would have to be removed.

9 CHAIRPERSON HILL: Well, no, but as of now
10 -- as of now, there's nothing that is before us is what I'm trying
11 to say, so they don't have -- you know, right, if they did apply
12 for the variance and we denied it, right, they'd have to -
13 they'd have to remove -- I'm just trying to understand.
14 The vestibule is what the issue is. They remove it, they come
15 into compliance, correct?

16 MR. KIRSCHENBAUM: I believe. OAG can correct me. You
17 know, when you review this vestibule, you have to act as if it
18 doesn't exist because it's not legal at the moment, right? It
19 should not have been built, so that is -- you know, you're
20 supposed to review this case that it doesn't exist.

21 CHAIRPERSON HILL: No, I understand. But
22 it got built because they got approved plans from DCRA.

23 MR. KIRSCHENBAUM: They did get approved plans from
24 DCRA back then.

25 ~~THE CHAIRMAN~~CHAIRPERSON HILL: Right. And so that's

1 what I'm saying, right? And so that's why I think that this is
2 also, you know, not fair, right? I mean, they're not architects.
3 I don't know how the vestibule got put on there, right. And so,
4 you know, if it weren't for the zoning administrator, I'd be
5 still arguing about the front setback yard thing, right?

6 MR. KIRSCHENBAUM: Correct.

7 CHAIRPERSON HILL: Ms. John, did you have
8 any thoughts?

9 VICE CHAIR JOHN: No. I think reposting is necessary
10 because, as Mr. Moy said, we're moving up to a higher standard.
11 What I wasn't sure about is whether we needed to repost for the
12 full 51 days since the design is the same. Sometimes we consider
13 that as well. But yeah, I think --

14 CHAIRPERSON HILL: Mr. Moy, do you know?

15 MR. MOY: If -- well, there are nuances to this and
16 certainly, there are no changes in the design if the proposal has
17 been vetted with the public that can help shorten it but, yeah,
18 I would have to defer to OAG on it. I would go with the 51 days.

19 CHAIRPERSON HILL: All right. OAG, are you
20 just going to agree with that?

21 MS. CAIN: Yeah, we would be in agreement with
22 that.

23 CHAIRPERSON HILL: Okay. So the 51 days.
24 So let's stick with the 51 days. Let's see.

25 Oh, Mr. Kirschenbaum, so what about the variance

1 argument. Have you looked at that at all yet? Have you thought
2 about that at all? i I mean, this detrimental reliance thing?

3 MR. KIRSCHENBAUM: We have not begun any analysis for
4 the variance, no. So I am not going to
5 talk about it off the fly like this yet.

6 CHAIRPERSON HILL: Okay. But you will be
7 able to at least coordinate with the applicant, so they
8 understand what they're trying to achieve?

9 MR. KIRSCHENBAUM: Sure.

10 CHAIRPERSON HILL: What they're trying to
11 argue. At least what they're trying to argue, okay?

12 MR. KIRSCHENBAUM: Maybe we can at least set up a
13 meeting with them if they want to, you know, talk to us, that's
14 -- yeah, that's no problem.

15 CHAIRPERSON HILL: Okay. So Mr. And Mrs.
16 Amling, I'd get with the Office of Planning to understand the
17 argument you're trying to make, and I know that the Board has at
18 least spoken about some of the points that we've heard in the
19 past when we had people in this situation where again, they have
20 approved plans from DCRA, and it puts them in this unique
21 situation or exceptional condition. All right. So Mr. Moy, when
22 can we get back here?

23 MR. MOY: Oh, for this case. Yeah, I'd like to confer
24 with the staff because we have to do the mailout for the posting
25 and -- so that I can ensure that we have the required number of

1 public notice days. And once we establish that, then I'll upload
2 OZ memorandum into the record that will give you your new date,
3 all right?

4 CHAIRPERSON HILL: Okay.

5 MR. MOY: So that will occur within the next 24 hours.

6 CHAIRPERSON HILL: Okay. So Mr. And Mrs.
7 Amling, they'll be -- the Office of Zoning will be in
8 touch with you, okay? All right. Well, I'm sorry. And I know
9 that you just got information, you know, two days ago, or a day
10 ago, or whatever it was, and, so, you know -- and I appreciate
11 all the efforts you did with your PowerPoint presentation, and
12 all of the outreach that you've already done. But again, yeah.
13 All right. Is there anything else you like to add; otherwise,
14 we'll see you later. Okay. All right. You guys have a nice
15 evening. We're going to -- I'm not -- this is a continued
16 hearing. They're going to find out what the dates are with
17 everything but, for this portion of it, I'm going to close the
18 record and the hearing, okay? All right. So I'll just put
19 "continued hearing" for at some point. Okay.

20 Let me see before I say good-bye to everybody. Okay.
21 I don't think there's anything. Mr. Turnbull, we're going to see
22 you next week for a decision.

23 COMMISSIONER TURNBULL: Yes.

24 ~~THE CHAIRMAN~~CHAIRPERSON HILL: And then we're also
25 going to see you for a continued hearing, I think, on a certain

1 date and ~~we'll~~we'll put it first.

2 COMMISSIONER TURNBULL: I wrote down March 10th, March
3 31st, May 19th. I've also got down March 3rd I'm coming. That's
4 the one you're talking about, next week.

5 CHAIRPERSON HILL: Right, right. For the
6 decision.

7 COMMISSIONER TURNBULL: So I got March 10th, March
8 31st, and May 19th for cases.

9 CHAIRPERSON HILL: Okay. Okay. Well, I
10 appreciate --

11 COMMISSIONER TURNBULL: But I will make myself
12 available for this case, obviously.

13 CHAIRPERSON HILL: Yeah. I don't know when
14 this is going to come back now, you know. But thank you very
15 much for everyone's help.

16 Mr. Moy, is anything we need to do still?

17 MR. MOY: Nothing from the staff, sir.

18 COMMISSIONER TURNBULL: Just as a side note, I'm
19 understanding that OP is working at looking at this issue so
20 hopefully, we'll get a text amendment at some point in the
21 future.

22 CHAIRPERSON HILL: Okay. Great. Well,
23 that's great. Thank you, Commissioner. All right. Thank you
24 all very much. Pleasure seeing you. Bye-bye.

25 ~~UNIDENTIFIED SPEAKER: Thanks, everyone.~~MR. MOY: Take

1 care.

2 CHAIRPERSON HILL: Bye-bye. We're
3 adjourned.

4 VICE CHAIR JOHN: Thank you.

5 (Whereupon, the above-entitled matter went off the
6 record at 5:17 p.m.)

7

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 02-24-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
accurate record of the proceedings.

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)