

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 7, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:37 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson
LORNA L. JOHN, Vice-Chair
CHRISHAUN S. SMITH, Board Member
CARL BLAKE, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD W. MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
MAXINE BROWN-ROBERTS
CRYSTAL MYERS
ELISA VITALE

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JOEL LAWSON
JONATHAN KIRSCHENBAUM

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACK RICE, ESQ.

The transcript constitutes the minutes from the Regular Public Hearing held on April 7, 2021

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

(9:37 a.m.)

CHAIRPERSON HILL: All right. The hearing will please come to order.

Good morning, ladies and gentlemen. We are convened and broadcasting this public hearing by videoconference. It's the April 7, 2021, public hearing of the Board and Zoning Adjustment District of Columbia. My name is Fred Hill, the Chairperson. Joining me today is Lorna John, Vice Chair; Board Member, Carl Blake and Chrishuan Smith, and representing the Zoning Commission is Peter Shapiro.

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

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

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

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1 If you're experiencing difficulty accessing Webex or
2 your telephone call-in or if you have forgotten to sign up 24
3 hours prior to the hearing, then please call our OZ hotline number
4 at 202-727-5471. It's also listed on the screen there to sign up
5 to testify and to receive Webex log in or call-in instructions.

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

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

21 The order of procedures for special exceptions and
22 variances are pursuant to Y 409, appeals are in Y 507. At the
23 conclusion of each case, an individual who is unable to testify
24 because of technical issues may file or request for leave to file
25 a written version of the planned testimony to the record within 24

1 hours following the conclusion of any public testimony in the
2 hearing.

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

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

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

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

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

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

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

11 MR. MOY: Good morning, Mr. Chairman, members of the
12 Board. We do, but as always, for efficiency of the Board, I would
13 suggest that we address those preliminary matters when I call the
14 case. Other than that, three applications that were previously
15 scheduled for today's docket, I would like to give an update for
16 the record. The first is Appeal No. 20252 of Citizens Against
17 Developers Greatly Obfuscating has been rescheduled to a tentative
18 date which appears to be May 5th, 2021. But I would suggest that
19 the public look at the OZ memorandum in that case file.

20 The second Case No. 20433 of Prime Realty, LLC has also
21 been postponed and rescheduled. It will tentatively be
22 rescheduled for a date in June because of the cases that we're
23 going to hear today. But again, I would suggest that the public
24 review the OZ memorandum that will be in the record on this case
25 after today's hearing. And finally, Application No. 20410, Bruno

1 Fabi, F-A-B-I has been postponed, rescheduled to June 16, 2021.

2 Thank you, Mr. Chairman.

3 CHAIRMAN HILL: Okay, great. Thank you, Mr. Moy.

4 You can call our first case when you have an
5 opportunity, Mr. Moy.

6 MR. Moy. Okay. This would be Case Application No.
7 20414, Thurston Fisher. This is captioned and advertised for a
8 special exception under the rear addition requirements of Subtitle
9 E, Section 205.4. And this would construct a two-story dwelling
10 with basement addition to an existing non-conforming two-story
11 with basement, principal dwelling unit in the RF-1 Zone. This is
12 at premises 1637 D Street Northeast, Square 4563, Lot 131. And
13 finally, Mr. Chairman, I've reviewed the record this morning,
14 there's still not a ANC 6A report in the record, but as you know,
15 the applicant has provided more information about that in their
16 statement under Exhibit 31, I believe.

17 CHAIRPERSON HILL: Okay, great. Thank you.

18 Ms. Rogers, are you there?

19 MS. ROGERS: Yes, I am. Can you hear me?

20 CHAIRPERSON HILL: Yes. Could you --

21 MS. ROGERS: Good morning.

22 CHAIRPERSON HILL: -- introduce yourself for the record,
23 please? Good morning.

24 MS. ROGERS: Yes. Good morning, Chairman Hill and
25 members of the Board. My name is Elizabeth Rogers with Lerch,

1 Early & Brewer here today on behalf of the applicant, Thurston
2 Fisher.

3 CHAIRPERSON HILL: Okay, great. I'll tell you what.
4 Ms. Rogers, are you just going to be doing the presentation or is
5 Mr. Fisher going to also be presenting at some point?

6 MS. ROGERS: I'm planning to do the presentation. My
7 colleague, Patricia Harris and Mr. Fisher are also on the line in
8 case there are specific questions, but I plan to do the
9 presentation.

10 CHAIRPERSON HILL: Okay, great. Then let's go ahead.
11 I'll just -- if we get to them, I'll -- they can introduce
12 themselves at that time. I'm going to go ahead and let you give
13 your presentation. You have 15 minutes there just on the clock
14 just so I kind of know where we are. If you could, I guess speak
15 a little bit to the -- there's no ANC report. And then also, I
16 guess there is -- clarify the extension, like how far back it
17 actually is going. There seems to be a little bit of a
18 discrepancy in a couple of different places, so that would be
19 helpful, and you can begin whatever you like.

20 MS. ROGERS: Great. Thank you. As a preliminary
21 matter, I would just note, we did submit a PowerPoint presentation
22 yesterday. Due to some internal miscommunication, honestly, we
23 just missed the deadline by like 30 minutes for the 24-hour rule.
24 So that does have some exhibits that are basically entirely in the
25 record for ease of efficiency.

1 CHAIRPERSON HILL: I understand. Okay. Unless the
2 Board has any objection, I'd like to see the PowerPoint in the
3 record, and I guess it'll take a little while to load up. But
4 could the staff please go ahead and put the PowerPoint into the
5 record? And then Mr. Young, I guess you have their PowerPoint and
6 if you do, if you could bring that up so that they can begin their
7 presentation?

8 MR. YOUNG: Yes, I have it. Yes.

9 MS. ROGERS: Great. And -- perfect. Thank you very
10 much. As Mr. Moy said, we're requesting special exception relief
11 to allow for the replacement of actually an existing covered deck
12 that has fallen into a state of disrepair with a two-story rear
13 addition that will retain the existing footprint but extend more
14 than 10-feet beyond the adjacent rear facade. Before getting into
15 the specifics of this case, at our presentation, I did want to
16 note one substantive change for the record. We previously
17 received the Zoning Administrator's determination that lot
18 occupancy relief would not be required in this case because the
19 lot is currently non-conforming with respect to lot occupancy and
20 grandfathered.

21 We were informed yesterday that while the first floor of
22 the addition is grandfathered, the second story of our proposed
23 addition would require lot occupancy relief because it's not
24 deemed grandfathered, although it is within the existing footprint
25 and will not change the existing law of occupancy. So we would

1 | like to update our application to request that additional relief.
2 | We were also informed that this case cannot be decided today due
3 | to a noticing issue and must come back for decision in May. So we
4 | were instructed to just submit an updated Form 135 into the record
5 | following this hearing, an updated burden of proof statement,
6 | although honestly, the burden of proof statement already drew
7 | attention to the lot occupancy issues, so there'll be minimal
8 | updates necessary.

9 | CHAIRPERSON HILL: Okay.

10 | MS. ROGERS: So with that, if you can advance to the
11 | next slide. There's just an aerial showing the location of the
12 | property. It's an end unit row dwelling at the intersection of D
13 | Street and 17th Street Northeast. If you'll go to the next slide.
14 | The property is currently improved with a two-story, two-bedroom,
15 | single family row dwelling. It has a large elevated covered
16 | concrete deck at the rear as you can see, that's fallen into a
17 | significant state of disrepair. The applicant is proposing to
18 | replace that deck in the exact same footprint with a two-story
19 | rear addition with basement. This is really necessary to
20 | accommodate the applicant's -- the demands of their growing family
21 | and also to respond to the new challenges obviously that COVID has
22 | presented. As you all are well aware, it has placed additional
23 | demands on one's personal residence. So this will allow the
24 | applicant to construct a home office and an additional bedroom to
25 | the two-bedroom house. The proposed addition will maintain the

1 existing footprint like I said, which currently extends 18-feet 6-
2 inches beyond the rear wall of the adjacent row dwelling. The
3 special exception is in harmony with the general purpose and
4 intent of the zoning regulations including those specific purposes
5 of the RF-1 Zone. Obviously, the use of the property will remain
6 unchanged. It will continue to be used for single family
7 residential use. The rear addition also is in keeping with the
8 character of the surrounding neighborhood as there are several
9 other similarly sized rear additions that actually basically
10 aligned with the rear addition that you can see in the bottom
11 right photo, which is two doors down, and also bookends this row
12 of homes which has a rear addition on the other end of the row.
13 We believe the rear additional actually improve (audio
14 interference).

15 CHAIRPERSON HILL: Ms. Rogers. Ms. Rogers.

16 MS. ROGERS: Yeah.

17 CHAIRPERSON HILL: I'm sorry to interrupt you. Just so
18 my colleagues know, the PowerPoint is up in the record right now.
19 Thank you. Okay. Thank you, Ms. Rogers.

20 MS. ROGERS: We believe the proposed addition will
21 actually enhance the character of the surrounding neighborhood as
22 the applicant is proposing to reinvest in the property and replace
23 this existing unsound -- structurally unsound deck.

24 And lastly, importantly, consistent with the provisions
25 and the purposes of the RF-1 Zone, this addition will allow for

1 interior space that's more usable for the Applicant and his family
2 especially in light of COVID, which will allow them to remain and
3 grow in this house and in the neighborhood that they've lived in
4 for the past 12 years, which is consistent with the RF-1 Zone of
5 providing affordable attainable housing that allows its residents
6 to age in place.

7 The addition will not adversely impact the use of the
8 neighboring property. The adjacent rear yard, as you can see in
9 the bottom right-hand corner, is entirely paved and used for off
10 street parking. The proposed addition will not have windows on
11 the western facade, which was specifically designed, you know, to
12 provide privacy for the adjacent neighbor. Importantly, the light
13 and air to the adjacent property will not be unduly impacted or
14 affected given the orientation of the property -- if you'll
15 advance to the next slide. The addition only casts shadow on the
16 adjacent lot in the early morning hours.

17 Go up one more slide. This is a comparative shadow
18 analysis that we did. From this, you can see notably that the
19 shadows cast on the proposed addition of -- by the proposed
20 addition on the rear yard are comparable to the shadows that are
21 cast today by the existing covered deck. The existing shadow is
22 in gray, the proposed addition is in blue. Additionally, the
23 shadows that will be cast by the proposed two-story addition on
24 the rear facade of the adjacent row dwelling will be no different
25 than the shadow that would be cast by a by-right 10-foot two-story

1 addition.

2 One other clarification for the record, we had relocated
3 the proposed stairs that lead up to the rear addition to the far
4 eastern side of the lot in order to provide a code compliant
5 parking space on our property. When we resubmitted those floor
6 plans into the record, unfortunately, it was just an error, and
7 the second story of the addition was not shown on the floor plans,
8 although it had been shown in the floor plans that are in Exhibit
9 6 that had been originally submitted with the application, so we
10 can update that when we resubmit our materials following this
11 hearing. But I did want to make sure that it was clear for the
12 record that these shadow studies were, as you can see on the
13 previous slide, always taken from a modeled two-story addition
14 which is what we're proposing.

15 As I previously mentioned, the proposed addition will
16 significantly improve the existing conditions on the property by
17 replacing the dilapidated deck with an architecturally pleasing
18 rear addition. We did want to know -- although it's reflected in
19 the record, that in response to a suggestion from the Office of
20 Planning, the applicant has elected to enhance the architecture
21 given that this is an end unit row dwelling. And so the
22 previously proposed CMU block at the base of the addition has been
23 modified to now be brick masonry just to kind of provide some
24 enhanced architecture given its visibility from the street.

25 Lastly, I just wanted to note for the record and to

1 clarify something that Mr. Moy had mentioned, the applicant has
2 taken great efforts to inform the ANC, the immediately adjacent
3 property owner and the surrounding community of this application
4 since really the inception. Even before filing the application,
5 the applicant met and proactively briefed the ANC informally at
6 one of their meetings and had conversations with his neighbors.
7 During these pre-submission discussions, there was no concern
8 expressed. The applicant also kind of went above and beyond and
9 posted several banners on his property, which directed just the
10 general community to a website he created that had information
11 about the proposed addition, the relief that was being requested
12 as well as any upcoming dates like the ANC date, today's hearing
13 date, and we received three positive letters of support from the
14 community which are Exhibits 28, 29, and 30 in the record.

15 The applicant formerly presented to the ANC Economic
16 Development and Zoning Committee. They considered the application
17 at their March hearing -- or their February hearing. And then the
18 full ANC considered the application at their March hearing and
19 they made -- they took a vote to take no position on the
20 application, so that's why there's nothing in the record from
21 them. We do have an email from the ANC clarifying that they would
22 be submitting nothing in the record based on that vote. And I
23 also would like to note, in light of the additional relief we're
24 requesting, that if you look at the ANC's Economic Development
25 Committee meeting minutes from February 17th, those reflect that

1 the ANC actually believes that we needed to see both lot occupancy
2 and rear yard relief. Although at the time, we thought we were
3 grandfathered and didn't need the lot occupancy relief that was
4 part of their deliberation and consideration.

5 And lastly, the applicant did correspond directly with
6 Gary Peterson with the Capitol Hill Restoration Society and I also
7 offered to discuss the application with him. So I would just note
8 for the record, we were a little surprised to see that letter of
9 opposition submitted to the record just two days ago without any
10 additional correspondence.

11 So that really is the summary of kind of the highlights.
12 For these reasons, we believe the Board may make the necessary
13 findings to approve the special exception and allow for the rear
14 facade to extend 10 feet beyond the adjacent facade and also to
15 maintain the existing 62 percent lot occupancy. We support and
16 agree with the Agency recommendations that are in the records and
17 are available to answer any questions that the Board may have.

18 CHAIRPERSON HILL: Okay. Thanks, Ms. Rogers.

19 Is it 18-feet 4-inches or 18-feet 6-inches?

20 MS. ROGERS: I believe it is 18-feet 6-inches. Let me
21 pull up the PowerPoint.

22 CHAIRPERSON HILL: And then also what happened when it -
23 - what did the next-door neighbor say, the one that's immediately
24 adjacent there to the left, if you are facing the back of the
25 property?

1 MS. ROGERS: When we originally reached out to the next-
2 door neighbor, there were no concerns expressed. Actually, we had
3 perceived kind of positive feedback and support for the
4 application. There appears to be some disagreement that was from
5 the husband who had lived next door. The wife had some concerns
6 about the additional shadow that we cast, really from any
7 additions she opposed --

8 CHAIRPERSON HILL: Okay. Okay.

9 MS. ROGERS: -- even by-right, a 10-foot addition.

10 CHAIRPERSON HILL: Okay. I'm sorry. You're clarifying
11 again that the distance as you're looking at the PowerPoint.

12 MS. ROGERS: Yes. I'm looking at the floor plans. It's
13 18-feet 6-inches, but that matches the existing footprint of the
14 deck.

15 CHAIRPERSON HILL: Okay. All right. Does anyone have
16 questions for the applicant? If so, raise your hand. Okay. I'm
17 going to turn to the Office of Planning.

18 MR. COCHRAN: Thank you, Mr. Chair. Steve Cochran with
19 the Office of Planning representing this Case No. 20414. The
20 Office of Planning continues to recommend the special exception
21 for the rear yard requirements from E 205.4 in particular. And
22 we're also comfortable newly recommending a special exception
23 relief from the lot occupancy requirements for E 304.1 to allow
24 the second floor to go to 62 percent lot occupancy. Other than
25 that, we are happy to stand on the record and to answer any

1 questions you have.

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

4 (Negative head shake.)

5 All right.

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

7 MR. YOUNG: We do not.

8 CHAIRPERSON HILL: Okay. All right. Okay.

9 So Ms. Rogers -- and I'm trying to get a little bit more
10 efficient today because we have to finish by 5:00. You're going
11 to have to come back to us, the earliest I can get you back is May
12 19th, okay.

13 MS. ROGERS: I (audio interference).

14 CHAIRPERSON HILL: So if you come back on May 19th then
15 we will have a continued hearing at that point. And then I guess
16 if we have any other information, we could -- I'm sorry -- any
17 questions we could ask at that time, otherwise, we'll possibly
18 deliberate on this matter. So with that, I'm going to go ahead
19 and close this hearing. There's nothing that we're requesting at
20 this point and we will see you on May 19th.

21 MS. ROGERS: Great. Thank you very much.

22 CHAIRPERSON HILL: All right. Thank you. Bye-bye,
23 everyone.

24 Give me one moment, Mr. Moy.

25 Okay. Mr. Moy, you can call our next case when you get

1 a chance.

2 MR. MOY: Very good. So this next application before
3 the Board is 20426 of Lia Dean. And this is captioned and
4 advertised for special exceptions from lot occupancy requirements
5 Subtitle E, Section 404.1; rear addition requirement Subtitle E,
6 Section 205.4; guardrail setback requirements Subtitle C, Section
7 1502.1. This would construct a one-story rear screened porch
8 addition with a roof deck to an existing attached two-story
9 principal dwelling unit, RF-2 Zone. This is at premises 1415 S
10 Street Northwest, Square 206, Lot 801.

11 CHAIRPERSON HILL: All right. Thank you. Give me one
12 moment. Are you guys having trouble pulling up the record?

13 MR. YOUNG: From Z docs, I'm fine.

14 CHAIRPERSON HILL: Okay.

15 MR. YOUNG: We have the ANC report. We have an
16 affidavit of posting and an affidavit of sign maintenance, which
17 are recent additions to the record.

18 CHAIRPERSON HILL: For some reason, I'm having trouble
19 pulling it up. No, it won't let me do it. I don't why.

20 Okay. All right. Mr. Williams, are you there? Mr.
21 Williams?

22 MR. YOUNG: He's unmuted, Mr. Chair.

23 CHAIRPERSON HILL: Mr. Williams, can you hear me? Mr.
24 Williams, you're still on mute.

25 MR. WILLIAMS: Hello.

1 CHAIRPERSON HILL: There we go. Perfect.

2 MR. WILLIAMS: I'm sorry. I'm watching on my phone.

3 CHAIRPERSON HILL: No problem. Are you presenting to
4 us, Mr. Williams?

5 MR. WILLIAMS: I can. I am the project designer. I
6 need to -- I'm sorry. I was listening on my phone. And I'm still
7 --

8 CHAIRPERSON HILL: Can you hear me now, Mr. Williams?

9 MR. WILLIAMS: Yes, I can hear you. I was just trying
10 to mute my phone.

11 CHAIRPERSON HILL: I understand. Mr. Williams, if you
12 can go ahead -- do you have any type of presentation we need to
13 pull up for you?

14 MR. WILLIAMS: If you can pull up the drawings.

15 CHAIRPERSON HILL: Do you know what exhibit that is, Mr.
16 Williams?

17 MR. WILLIAMS: Let me see. One second.

18 MR. YOUNG: Number 29, is that possible, the updated
19 architectural plans?

20 MR. WILLIAMS: Yes.

21 CHAIRPERSON HILL: All right. Mr. Williams, can you
22 hear me?

23 MR. WILLIAMS: Yes, I can.

24 CHAIRPERSON HILL: Okay. So once the drawings come up,
25 you basically have to make an argument to us that you are going to

1 meet the standard of the criteria for us to grant the relief
2 requested. And you are going to have 15 minutes to make your
3 argument and you can begin once the drawings are pulled up.
4 Exhibit 29, Mr. Young.

5 MR. YOUNG: Okay.

6 MR. WILLIAMS: Okay. Okay. The client, who's unable to
7 be here this morning, owns a row house, and she wants to add a
8 screened porch on the back. This is the cover sheet. If we can
9 go down a sheet, to the next page. Okay. There's the site plans.
10 It's a row house. There is an existing roof deck. It's really
11 like a balcony that extends about three or four feet on the second
12 floor. Then on the first floor, we want to add -- it's a one-story
13 screened porch that extends that balcony above so that it becomes
14 a roof deck over the screened porch. The three exceptions we are
15 asking for -- first, has to do with the 10-foot rule. It's on
16 both sides. On one side it's -- hold on just one second.

17 We're asking for a 12-foot-deep addition that will be
18 16-foot on one side from the house and 14-foot-4, on the other
19 side. This is over the 10-foot. Then we're asking for lot
20 coverage be allowed to go to 60.55 percent, which is over the 60
21 percent maximum. And then we want to use railings as opposed to a
22 parapet wall on two sides of the roof deck above. Okay. ANC has
23 approved it or recommended approval. We tried to contact all the
24 neighbors, both the ANC and we did, and we got no response either
25 positive or negative.

1 If we can go back to the drawings, we can show you the
2 shadow studies. Go down a couple pages. Well, we can stop there.

3 This is photos of the existing property. On the bottom
4 left, you can see a photo looking out to the neighbor's house
5 which has a carriage house on the back. And this is from the
6 existing balcony which will be extending out over where you see
7 the seating below. And then on the bottom left, looks to the
8 house on the left. And then above, you can see pictures that are
9 looking from the rear and also from the sky. So basically, the
10 seating that is shown on the top left, we're going to replace that
11 with a screened porch and extend the balcony that's above it.

12 If we can go down a couple pages. This view is from the
13 sky. Yeah, correct. This is our floor plan. We'd like to make
14 the screened porch 12-feet deep just to allow enough room inside
15 for her to enjoy the seating and things.

16 We can down and we'll see the shadow studies. Okay.
17 The addition is on the north side of the property. And because
18 it's one-story, the existing shadows of the two-story houses put
19 the whole screened porch in the shadow. So the work does not
20 affect any of the shadows on any other properties.

21 CHAIRPERSON HILL: All right. Mr. Williams, I'm going
22 to just interrupt you because I'm just flipping through all of
23 your burden of proof and all the drawings. Does the Board have
24 any questions of the applicant?

25 Mr. Young, could you pull down the slide deck? Okay.

1 Do you guys have any questions right now, and if so, raise your
2 hand? I am going to turn to the Office of Planning.

3 VICE CHAIR JOHN: Mr. Chair.

4 CHAIRPERSON HILL: Yes.

5 Mr. Williams, if you can mute your microphone for a
6 moment.

7 Ms. John.

8 VICE CHAIR JOHN: My question for Mr. Williams was about
9 the one-to-one setback. Can you explain why you're not able to
10 meet that setback requirement?

11 MR. WILLIAMS: By rule, we can do this as a parapet
12 wall, which we are doing on the one property line side. So rather
13 than having a parapet wall, we'd rather have open railings. We
14 just prefer to have the roof deck that large. We don't think it's
15 hurting anyone. Also, the railings allow any light and view to go
16 through, which seems to be more architecturally appropriate.

17 VICE CHAIR JOHN: If I could follow up. So the issue is
18 not the parapet wall, but why the railings are not being set back
19 as required?

20 MR. WILLIAM: We'd like to have the additional room on
21 the roof deck.

22 VICE CHAIR JOHN: And what --

23 MR. WILLIAM: I also think it looks better
24 architecturally. It looks funny to have a small, screened porch
25 and then set the railings back. It's just not --

1 VICE CHAIR JOHN: Okay. Thank you, Mr. Williams.

2 CHAIRPERSON HILL: All right. Mr. Williams, if you
3 could mute your microphone. And maybe the Office of Planning when
4 you give your report, you can also speak to Ms. John's question.

5 Can I hear from the Office of Planning? Could you
6 please introduce yourself for the record? You're on.

7 MS. BROWN-ROBERTS: Okay. Good morning, Mr. Chairman
8 and members of the BZA. I'm Maxine Brown-Roberts from the Office
9 of Planning on BZA Case 20426. The proposed addition for the
10 screened porch would increase the lot occupancy and would extend
11 10 feet beyond the rear wall of the adjacent houses, and the
12 railing of the roof deck would not meet the required one-to-one
13 setback. As outlined in our report, the one-story screened porch
14 would increase a lot occupancy and beyond -- and would go beyond
15 the adjacent buildings, and therefore, the submission is being
16 reviewed under Subtitle E, 5201. The light to the adjacent
17 buildings would be minimally affected due to the one-story
18 addition and adjacent fencing that can be seen in the applicant's
19 shadow study.

20 The privacy to the adjacent properties would be
21 minimized as the property would be closed. And also, with the
22 fencing, views from the porch and from -- also from the deck,
23 would be mostly into the rear yards of the adjacent -- into the
24 adjacent properties. The deck is also off a bedroom and therefore
25 it is not accepted that there would be a number of persons

1 gathering there, and so you, you know, have views into the
2 adjacent properties. There's also no -- from the adjacent -- from
3 the deck, there would be no direct views into living areas on the
4 adjacent property.

5 Let's see. Regarding the -- in addition to that, the
6 addition would not be viewed from the street, but it would be
7 visible from the alley. The addition (audio interference) and
8 along the alley, there are a number of buildings that has the
9 garage and rear additions and upper floor decks. So, in addition
10 to that, the property would have a roll up garage, which would
11 have views from the alley, and therefore, the privacy should not
12 be significantly impacted.

13 Regarding the penthouse or the deck railings that are
14 not set back, the railings are three-foot high and therefore, for
15 the one-to-one setback, it has to be set back through feet. This
16 deck is fairly small. And if the -- will be further reduced, if
17 they did not do the setbacks, if they had to do the setbacks. As
18 the applicant said that on two sides, there will be the railing on
19 one side, there will be a parapet wall, and the railings would
20 allow light and air to pass through them onto the neighboring
21 property.

22 The handrails would not be -- again, would not be highly
23 visible as they are at the rear of the property and not at the
24 highest portion of the building. Therefore, we do not see where
25 this would have a significant impact.

1 Regarding the general exception requirement, the rear
2 yard extension, the lot occupancy, and the deck railing setbacks,
3 (audio interference) light and air and privacy to the adjacent
4 properties and would not be inconsistent with the intent of the
5 regulations. The addition would cast some shadows on through rear
6 yards of the adjacent properties, but as shown in the shadow
7 studies, it would not be significant. And so, the Office of
8 Planning recommends approval of all three of the requested special
9 exceptions.

10 Thank you, Mr. Chairman, and I'm available for
11 questions.

12 CHAIRPERSON HILL: Okay, great. Thank you, Ms. Brown-
13 Roberts.

14 Does anybody have a question for the Office of Planning,
15 if so, please raise your hand? All right.

16 Ms. -- okay. Mr. Blake, sure, of course.

17 BOARD MEMBER BLAKE: Sure. I have one question with
18 regard to the deck size. Ms. Brown-Roberts indicated that it was
19 relatively small with the required setback. Could you just give
20 us a sense of what the actual dimensions are of the deck as
21 proposed and what it would be with the setback?

22 MS. BROWN-ROBERTS: Sorry. I don't have that off the
23 top of my head, but it's something I can get, or the applicant may
24 have that information.

25 CHAIRPERSON HILL: Mr. Williams, do you have that

1 information? Mr. Williams.

2 MR. WILLIAMS: My apologizes. It's hard to get used to
3 these online meetings. The deck will be -- the screen porch is
4 12-feet deep by 12-feet wide. And on the second floor, it's 18-
5 feet deep, which includes part that's existing plus the 12-foot
6 width.

7 CHAIRPERSON HILL: All right. Thank you, Mr. Williams.
8 Mr. Blake, are you good?

9 BOARD MEMBER BLAKE: Yeah. I think he said that the
10 deck will be 18 by 12, or 18 by 12 is what the total deck would be
11 with the proposed setback and with the --

12 MR. WILLIAMS: That's the (indiscernible).

13 MR. BLAKDE: -- with the setback, how big would it be?

14 MR. WILLIAMS: This is approximately two feet over what
15 would be allowed. We're allowed 10 foot, by right.

16 BOARD MEMBER BLAKE: Okay. Thank you.

17 CHAIRPERSON HILL: All right. Thank you, Mr. Williams.
18 All right. Anyone else?

19 Mr. Young, is there anyone here wishing to testify?

20 MR. YOUNG: We do not.

21 CHAIRPERSON HILL: Okay. All right.

22 Mr. Williams, I don't know if you are aware of this or
23 not, but because of some notice requirements, we're not able to
24 deliberate on this today, so we're going to have to have you come
25 back on May 19. And all you have to do is come back. It's for a

1 continued hearing. And if we have any additional questions, we'll
2 ask them at that time and then we'll be able to deliberate on
3 this. If we need anything from you, we'll let -- well we don't
4 need anything from you, so -- but we'll see you on May 19th. Do
5 you understand?

6 MR. WILLIAMS: Yes. What was the notice thing that came
7 up?

8 CHAIRPERSON HILL: There are some issues that we had on
9 our side. It's not anything that you guys did. And so because of
10 it, we can't deliberate on this until May 19th.

11 MR. WILLIAMS: Not a problem, no. I just want to tell
12 the client.

13 CHAIRPERSON HILL: It's not anything that you guys did.
14 All right.

15 MR. WILLIAMS: Great. Thank you.

16 CHAIRPERSON HILL: Okay. We'll see you on May 19th.

17 MR. WILLIAMS: Got it.

18 CHAIRPERSON HILL: All right. Well, I'm going to go
19 ahead and close this portion of the hearing.

20 Mr. Shapiro.

21 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. It's just
22 a clarification about your prior process on the previous case,
23 this case, the ones I have. Are we continuing the public hearing
24 or are we closing the public hearing, and then entering into just
25 deliberation on the next dates?

1 CHAIRPERSON HILL: It's actually a continued hearing.

2 COMMISSIONER SHAPIRO: Okay.

3 CHAIRPERSON HILL: So we're -- so the record is open,
4 although, we're not asking for anything from anyone. And then
5 we'll see what happens when we have our continued hearing on May
6 19th.

7 MR. SHAPIRO: Okay. Thank you, Mr. Chair.

8 CHAIRPERSON HILL: Okay. Sure, of course.

9 All right. Mr. Moy, you can call our next one when you
10 get an opportunity. Mr. Moy, can you hear me?

11 MR. MOY: Yes, I'm back.

12 CHAIRPERSON HILL: Okay. Just again, on that first
13 case, 20414, if you can make sure that we get the correct caption
14 if it needs to be updated for the lot occupancy relief?

15 MR. MOY: Oh, yes. Yes, of course. I've already
16 actually made the changes.

17 CHAIRPERSON HILL: Okay. So then you'll be able to
18 announce that correctly when we come back on the 19th, okay.

19 MR. MOY: Oh, yeah. For sure.

20 CHAIRPERSON HILL: Okay. All right.

21 Please call our next one.

22 MR. MOY: Okay. So this would be Application No. 20264
23 of Sledmere, LLC. This is captioned and advertised for a special
24 exception under Subtitle E, Sections 205.5 and 5201 from the rear
25 addition requirements of Subtitle E, Section 205.4. This would

1 | construct a three-story rear addition to an existing attached
2 | principal dwelling unit and convert it into a flat in the RF-1
3 | Zone on premises 1952 2nd Street Northwest, Square 3087, Lot 818.
4 | And -- let me see. I think -- yeah, as the Board is aware there
5 | was a revised self-certification, so that is in the record. I
6 | can't remember the exhibit number, but that's all I have to report
7 | at the moment.

8 | CHAIRPERSON HILL: Okay. All right. Thanks, Mr. Moy.
9 | Let's see.

10 | Mr. Hardy, are you there? Mr. Hardy. Mr. Hardy, are
11 | you there? Are you still on mute, Mr. Hardy?

12 | MR. YOUNG: Mr. Chair?

13 | CHAIRPERSON HILL: Yep.

14 | MR. YOUNG: I also have Ms. Worsley, who is on the
15 | phone, who is unmuted now.

16 | CHAIRPERSON HILL: Ms. Worsley, can you hear me?

17 | MS. WORSLEY: Yes, I can hear you. Can you hear me?

18 | CHAIRPERSON HILL: Yeah. Is Mr. Hardy presenting or
19 | you?

20 | MS. WORSLEY: I can present. He said he was having some
21 | technical difficulties with his speaker, so I can present.

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

24 | MS. WORSLEY: Sure. My name is Gayll Worsley. I'm the
25 | architect for the project and I'm representing Sledmere, LLC.

1 CHAIRPERSON HILL: Okay. So, I guess --

2 MS. WORSLEY: We had met earlier. So this is a couple
3 of adjustments that we made, but I'd be happy to walk you all
4 through them.

5 CHAIRPERSON HILL: Yeah. If you can go ahead and tell
6 us what happened since the last time you were here. And then give
7 your argument as to why you believe that you're meeting the
8 criteria for us to grant the request for relief. I don't know
9 which one -- if you want, what you would like us to pull up.

10 MS. WORSLEY: Yes.

11 CHAIRPERSON HILL: I'm looking at Exhibit 51 right now.
12 I don't know if that's --

13 MS. WORSLEY: That's it. Yep.

14 CHAIRPERSON HILL: Okay.

15 MS. WORSLEY: Exhibit 51 is perfect. If you could pull
16 up. Actually, start with the front page, you can see the revised
17 elevation. And that was sort of the crux of the discussions that
18 we were having with the ANC and the BZA regarding the appeared
19 height and articulation of the building elements. So what we did
20 was, originally, we had presented a three-story bay and we reduced
21 that to two stories. We also worked on the roofline. We have a
22 mansard roof, which sort of in essence aligns with the top edge of
23 the adjacent property, trying to create some datums along the
24 street line. And it's kind of a cross between sort of a more
25 traditional, I would say more masonry feel to the bay than more of

1 a glassy feel to the bay, which we had originally presented.

2 It's still got some modern articulation in the types of
3 windows that we're using, but we definitely tried to sort of
4 reduce the more modern look and have it not stick out quite as
5 much, but still making it a bit different than the row houses that
6 are on the block. We are that odd lot between sort of the
7 Victorians to the north and the more Wardman styles to the south.
8 So we have a unique opportunity to draw from both influences or
9 create something that was different. And it worked well with the
10 neighbors. The ANC seemed to be happy. The HPRB also was happy
11 with the changes that we made.

12 There were no changes to the overall size of the
13 project, just the articulation. There was some discussion a
14 little bit about the garage. It's still going to be two stories
15 as presented before. And the use above -- the space above will
16 just be used for storage. There's no intended use for any
17 occupancy or anything like that, but it's just additional storage
18 for the people who own the two-family flats, so that's the crux of
19 our changes. There was some minor movement in terms of like the
20 stair access to the -- to that storage area but outside of that,
21 there were no other changes to the project.

22 CHAIRPERSON HILL: Okay. Are you over the lot
23 occupancy? I mean, I'm just checking --

24 MS. WORSLEY: Oh, we reduced that. We actually pulled
25 the rear wall back, I think it was about five inches to get us

1 under the 60 percent.

2 CHAIRPERSON HILL: The 60 percent.

3 MS. WORSLEY: Correct.

4 CHAIRPERSON HILL: Okay.

5 MS. WORSLEY: And we also -- you asked for some sun
6 studies which are also -- that's Exhibit 50. If you want to take
7 a look at those. You had requested that, and we included that in
8 our submission.

9 CHAIRPERSON HILL: Okay, great. All right. Does anyone
10 have any questions for the applicant? And if so, raise your hand.

11 Mr. Shapiro.

12 COMMISSIONER SHAPIRO: Thank you. Just building on your
13 question. Is there a revised self-certification that reflects the
14 reduction in lot occupancy from the 60.1 to the 60 percent?

15 MS. WORSLEY: I believe so. Let me check the exhibits.
16 Let me grab that. We have a lot of exhibits, I apologize. Let's
17 see.

18 VICE CHAIR JOHN: Is that Exhibit 13 or was there one
19 after that?

20 MS. WORSLEY: There should be one after -- let's see.
21 Let me grab that one and see it. There's one after that, but I
22 don't -- I may not have -- we uploaded a bunch of stuff but I'm
23 not sure if the expediter got that in there. I certainly can get
24 it loaded in there. We are under the 60 percent. The new --
25 let's see, next. Yeah, I think that he might have missed that

1 one, but we have a new one, which shows it's under, so we didn't
2 make that adjustment in the actual -- in the drawings.

3 CHAIRPERSON HILL: Okay. If you can add that to the
4 record, please?

5 MS. WORSLEY: Yes, will do. Let me grab it.

6 CHAIRPERSON HILL: Okay.

7 And then, Mr. Moy, you did not -- you, when you read the
8 case, you read it without the lot occupancy, correct?

9 MR. MOY: I read it without the lot occupancy, correct.

10 CHAIRPERSON HILL: Okay, because I didn't see it there.
11 All right. Okay.

12 Does anyone have any more questions for the applicant?

13 Ms. John.

14 VICE CHAIR JOHN: So do the plans show the reduction in
15 the lot occupancy? What --

16 MS. WORSLEY: Yes, yes, they do.

17 VICE CHAIR JOHN: -- exhibit would show that?

18 MS. WORSLEY: Let's see if -- 50, If you go to page --

19 CHAIRPERSON HILL: Are you in 51 you mean?

20 VICE CHAIR JOHN: I'm in --

21 MS. WORSLEY: Yes, in 51, correct.

22 VICE CHAIR JOHN: Yes, I'm in 51. What slide is that?

23 MS. WORSLEY: It would be HR -- I'm sorry. It is the
24 HR16, the very last page.

25 VICE CHAIR JOHN: Okay. And the size of the -- the

1 length of the addition then would be reduced to what?

2 MS. WORSLEY: Would be reduced to -- I'm sorry. It's so
3 small, I apologize. I'm going to open my version. I can't zoom in
4 on my computer. Hold on. Let me take --

5 VICE CHAIR JOHN: It's like 15-feet 8-and-a-half-inches?

6 MS. WORSLEY: Correct. It was 16 feet before.

7 VICE CHAIR JOHN: Okay. All right. And you put in sun
8 studies not shadow studies. Do you have anything that shows the
9 impact on the neighboring properties?

10 MS. WORSLEY: No. We did sun studies. I can add shadow
11 if you'd like.

12 VICE CHAIR JOHN: Yes, that would be helpful.

13 MS. WORSLEY: Okay.

14 CHAIRPERSON HILL: Okay. So Ms. John, you want to hear
15 -- you want -- and it's fine. We don't have to put this off
16 today. We can actually deliberate on this today because it was a
17 previous hearing. Is that correct, Mr. Rice?

18 MR. RICE: Yes, sir.

19 CHAIRPERSON HILL: Right. So Ms. John, and it's
20 completely fine. If you need the shadow studies to be able to --
21 and you can think about it and let me know. If you need the
22 shadow studies, then we'll go ahead and we're going to have to put
23 this off, so just let me know. Can I turn to the Office of
24 Planning?

25 MS. MYERS: Crystal Myers with the Office of Planning.

1 The Office of Planning was recommending approval of this case. We
2 recommended approval of the original version and have seen the
3 updates which do not impact the relief request, so we are still in
4 support, and we can stand on the record of the staff report. We
5 did note it in our report about the lot occupancy issue, but it
6 sounds like the applicant is going to be submitting the correct
7 material to verify that they are now meeting this lot occupancy
8 requirement. And with that, comes down to the record of the staff
9 report.

10 CHAIRPERSON HILL: Okay. Sure. Mr. Shapiro.

11 COMMISSIONER SHAPIRO: All right, Mr. Chair. Can we
12 take action if there's not a revised self-cert in the record?

13 CHAIRPERSON HILL: You're asking the Office of Planning?

14 COMMISSIONER SHAPIRO: (Audio interference) but --

15 CHAIRPERSON HILL: All right. Mr. Rice. Mr. Rice.

16 MR. RICE: There is nothing preventing you from taking
17 action, sir. But it would probably be a best practice to get the
18 self-certification from the applicant reflecting what they're
19 holding the lot occupancy out to be.

20 CHAIRPERSON HILL: Okay. I don't like any of you people
21 today, okay? So that's fine. So we're not going to do anything
22 today. We're going to put everything off.

23 All right. Mr. Moy?

24 MR. MOY: Yeah. I was going to add, Mr. Chairman, the
25 Board is on record of these kind of instances where you could

1 | actually move forward and vote, but we're not going to issue the
2 | order until we have this additional information. So that's a
3 | conditional support, if you want to move forward; or, you can do
4 | the route that Mr. Rice has said, and we put this off until May.
5 | So you have two choices.

6 | CHAIRPERSON HILL: Okay. I'll let the Board decide in a
7 | minute when we get to there. I'm fine. But you all can do what
8 | you want to do. Like, I'm just one person, right? So all right.
9 | Let's see.

10 | Does anybody have any more questions for the Office of
11 | Planning?

12 | (Negative head shake.)

13 | Okay. Mr. Young, is there anyone here wishing to
14 | testify? I'm sorry. Mr. Young? I'm sorry, Ms. John. Let me
15 | first see.

16 | Mr. Young, is there anybody here wishing to testify?

17 | MR. YOUNG: We do not.

18 | CHAIRPERSON HILL: Okay.

19 | Ms. Young -- I'm sorry. Ms. John, what's your question,
20 | please?

21 | VICE CHAIR JOHN: Well, if it's possible we could decide
22 | today, I'd like to have the Office of Planning discuss the
23 | shadowing for the neighbor next door.

24 | CHAIRPERSON HILL: Got it. Ms. Myers, can you hear me?

25 | MS. MYERS: Yes, I can. Our position is that this --

1 the property that the relief is needed from is to the south. And
2 so when it comes to the concerns about shadowing, we didn't -- it
3 wouldn't really impact them. And the house to the north, the
4 addition would be in line with that house, so we did not think
5 there will be a substantial impact to the adjacent neighbors.

6 VICE CHAIR JOHN: Okay. Thank you so much.

7 CHAIRPERSON HILL: Okay. Mr. Smith.

8 BOARD MEMBER SMITH: Just really quickly. Just could
9 you expound on how you arrived at how there will be very minimum
10 impact to the property to the south.

11 MS. MYERS: Well, in cases where the addition is
12 happening to the north of a property, just the way the sun rises
13 and sets, it usually doesn't have much of an impact on a property
14 to the south, on a house to a south. And so we kind of, you know,
15 still have that same mindset -- we said that it would not have a
16 substantial impact, would not be to an undue level.

17 BOARD MEMBER SMITH: Okay. Thank you. I just want it
18 on the record.

19 CHAIRPERSON HILL: Okay. All right. So let's see. And
20 I'm sorry. Ma'am, what's your name again?

21 MS. WORSLEY: Oh, Ms. Worsley; are you talking about the
22 applicant?

23 CHAIRPERSON HILL: Ms. Worsley, yeah. Ms. Worsley. I'm
24 sorry. I don't see your name in front of me.

25 So, Ms. Worsley, do have any questions for the Office of

1 Planning?

2 MS. WORSLEY: No, I understand. I'm going to upload
3 this shortly.

4 CHAIRPERSON HILL: Okay. All right. So I'm looking at
5 my fellow Board members. I mean I'm fine voting on this. And
6 then we can leave the record open for the revised self-cert
7 because basically, they're going from 60.1 to whatever the --
8 they're taking it off, like if it's five inches.

9 MS. WORSLEY: Yes (audio interference).

10 CHAIRPERSON HILL: Right. So I'm fine moving forward.
11 Mr. Shapiro?

12 COMMISSIONER SHAPIRO: Yeah, no objection at all, Mr.
13 Chair. We can move forward.

14 CHAIRPERSON HILL: Okay. All right.

15 Then Ms. Worsley, do you have anything else you'd like
16 to add at the end?

17 MS. WORSLEY: No. Thank you. Thank you for the time.

18 CHAIRPERSON HILL: Okay. Thank you. I'm going to close
19 the hearing and the record. If you could please excuse everyone,
20 Mr. Young.

21 Mr. Shapiro?

22 COMMISSIONER SHAPIRO: I assume we're closing the record
23 with the exception of the revised self-cert.

24 CHAIRPERSON HILL: Yes. Thank you. Thank you for that
25 clarification. Yeah. I'm closing the record except for the

1 revised self-cert indicating that they no longer are seeking the
2 lot occupancy relief. And so, Mr. Moy, if you can, you know,
3 follow up with that prior to, you know, making sure that that does
4 happen. In terms of deliberating on this case, I don't have any
5 issues with it. You know, they've made significant changes since
6 the last time they were here with us. And I would agree with the
7 analysis that was provided by the Office of Planning, as well as
8 that from ANC 1B and then as well as DDOT and HPRB, and I'm going
9 to vote in favor of this application.

10 Mr. Shapiro, do you have anything you'd like to add?

11 COMMISSIONER SHAPIRO: (Negative head shake.)

12 CHAIRPERSON HILL: No.

13 Mr. Smith, do you have anything you would like to add?

14 BOARD MEMBER SMITH: (Negative head shake.)

15 CHAIRPERSON HILL: No.

16 Chair John, do you have anything like you'd like to add?

17 VICE CHAIR JOHN: No.

18 CHAIRPERSON HILL: Mr. Blake, do you have anything you'd
19 like to add?

20 BOARD MEMBER BLAKE: No, I do not. I have read into the
21 case and I feel comfortable voting on this.

22 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Blake.

23 All right. I'm going to make a motion to approve
24 Application No. 20 --

25 COMMISSIONER SHAPIRO: Mr. Chair.

1 CHAIRPERSON HILL: Yes, Mr. Shapiro?

2 COMMISSIONER SHAPIRO: I should say what Mr. Blake said
3 as well, since I was not here when this first came before us. I
4 also read into the case, so I'm comfortable taking action.

5 CHAIRPERSON HILL: All right. Perfect. Thank you, Mr.
6 Shapiro.

7 I'm going to go ahead and make a motion to approve
8 Application No. 20264 as read by the secretary and then waiting
9 for the revised caption from the applicant and ask for a second,
10 Ms. John?

11 VICE CHAIR JOHN: Second, Mr. Chairman, as to the fact
12 that we're waiting for the revised self-cert.

13 CHAIRPERSON HILL: Thank you. The motion has been made
14 and seconded.

15 Mr. Moy, could you take a roll call?

16 MR. MOY: Yes. Thank you, Mr. Chairman.

17 When I call your name, if you would please respond with
18 a yes, no, or abstain to the motion made by the Chairman. The
19 motion was seconded by Vice Chair John.

20 Zoning Commissioner Peter Shapiro.

21 COMMISSIONER SHAPIRO: I vote yes.

22 MR. MOY: Mr. Smith.

23 BOARD MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake.

25 BOARD MEMBER BLAKE: Yes.

1 MR. MOY: Vice Chair John.

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill.

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: Okay. Staff would record the vote as 5-0-0.

6 And this is on the motion made by Chairman Hill to approve,
7 seconded by Vice Chair John. Also in support of the motion is Mr.
8 Smith, Mr. Blake, and Zoning Commissioner Peter Shapiro. Motion
9 carries 5-0-0.

10 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

11 Okay. You guys, let's go ahead and take a break, if
12 that's good with you all and then we'll come back in like -- I
13 don't know. 15 minutes or so. Okay. Thank you. Bye-bye.

14 (Whereupon, the above-entitled matter went off the
15 record and then resumed.)

16 CHAIRPERSON HILL: Okay. All right.

17 Mr. Moy, you can go ahead and call us back in and call
18 our next case.

19 MR. MOY: Thank you, Mr. Chairman. After a quick --
20 very quick break, the Board is back in session and the time is at
21 or about 10:54. So if we can have parties to the table to case
22 application No. 20436 of Schmidt Development, LLC. This is
23 captioned and advertised for a special exception from the
24 residential conversion requirements Subtitle U, Section 301.2(b),
25 rooftop and upper floor restrictions Subtitle E, Section 206.1.

1 This would construct a third story with rear and side additions to
2 construct six residential units to an existing two-story detached
3 building, RF-1 Zone, at 1300 I Street Northeast, Square 1026 and
4 Lot 802. The one thing I had for you, Mr. Chairman, is that
5 there's a request to waive the 21-day rule because the applicant
6 filed revised plans to respond to the recommendations in the OP
7 report.

8 CHAIRPERSON HILL: Okay, great.

9 Mr. Sullivan, could you introduce yourself for the
10 record?

11 MR. SULLIVAN: Thank you, Mr. Chair, and members of
12 Board. Martin Sullivan with Sullivan & Barros on behalf of the
13 applicant.

14 CHAIRPERSON HILL: Okay, great. Unless the Board has an
15 objection, I don't have any issues with waiving of 21-day rule
16 because we want to see those plans and also in response to the
17 Office of Planning's comments. So unless anyone has an issue, I'm
18 going to go ahead and do that. If so, raise your hand if you have
19 an issue. I don't see anyone raising their hand. Okay. So
20 that's that.

21 Mr. Sullivan, I guess I have your slide deck up. The
22 only -- a couple of things if you could kind of speak to. The
23 DDOT issue about the driveway and the trash and parking; the ANC
24 about the bike rack. And then if you can, you know, just clarify
25 that this home was here before 1958, and so that's it. I got 15

1 minutes on the clock there and you can begin whenever you like.

2 And I guess Mr. Young, if you could pull up the slide
3 deck for Mr. Sullivan.

4 MR. SULLIVAN: Thank you, Mr. Chair, members of the
5 Board. Regarding the 58 question, the first time I've ever had
6 that. I guess I would say it's obvious, but we can find the
7 information on History Quest and get an exact date for you, and
8 I'll have that probably by the end of this hearing.

9 COMMISSIONER SHAPIRO: Mr. Chair.

10 CHAIRPERSON HILL: Yes. Mr. Shapiro.

11 COMMISSIONER SHAPIRO: I apologize for interrupting. I
12 did have a communication with Mr. Rice with the Office of the
13 Attorney General, who specifically said for this -- there may be
14 other cases where this applies, but his most recent recommendation
15 is, as of an email last night. For this case, it actually isn't
16 relevant. We don't need to get the information. I can read his
17 comments if you want. But the short version of it is, we don't
18 need to know this for this case.

19 CHAIRPERSON HILL: Okay. All right.

20 Mr. Shapiro -- I mean Mr. Sullivan, I guess that I don't
21 need to know that, so you can ignore that request.

22 COMMISSIONER SHAPIRO: And to his point, we're looking
23 at it, it probably is anyhow.

24 CHAIRPERSON HILL: Yeah. Well, I -- you know, again,
25 I'm just moving along here, Mr. Shapiro, so -- but yes. Okay.

1 All right, Mr. Sullivan.

2 MR. SULLIVAN: Mr. Chair, and members of the Board.
3 Again, Martin Sullivan with Sullivan & Barros on behalf of the
4 applicant and a representative of the applicant is here with us as
5 well, Ryan Amons. And I don't think that he needs to present
6 anything himself, but he's here available to answer questions.

7 CHAIRPERSON HILL: Okay.

8 MR. SULLIVAN: So if he's -- I don't know if he's out
9 there, Mr. Chair but --

10 CHAIRPERSON HILL: I don't think -- let's see if we need
11 him, Mr. Sullivan.

12 MR. SULLIVAN: Okay. Thank you. So first of all, the -
13 - on the question of the -- it was the DDOT recommendation that
14 the curb cut go away and they prefer the 13th Street side, and so
15 we've submitted two alternatives. We'd like flexibility.
16 Understanding that this is going to be continued, maybe the Board
17 doesn't need to address this today because it's likely that we'll
18 have more information by the time we get to the continued hearing.
19 But for the time being, we just got these comments from DDOT in
20 the last couple of weeks and so we're presenting the 13th Street
21 option. We can do that. The person that wrote the report has
22 indicated that they would support a 13th Street curb cut. So we
23 do believe we are getting a curb cut and we don't need to ask for
24 parking relief. However, we would like -- because we haven't run
25 that by the ANC. And we think Florida, or the applicant thinks

1 Florida is a better option. And so they want to leave open the
2 possibility that DDOT would change their recommendation, so that's
3 why we're still presenting both at this point.

4 CHAIRPERSON HILL: Okay. All right. Just talk it
5 through. I see your slide back, so yeah.

6 MR. SULLIVAN: Okay. Thanks. Okay. Next slide,
7 please. So this is the RF-1 Zone. It's an existing two-story
8 building that was previously used as a church. And we're
9 proposing to construct a rear inside addition to the building and
10 convert it to six units. OP is recommending approval. We do have
11 unanimous ANC support and then I mentioned the driveway issue. So
12 two areas of relief because we don't meet the 900-square foot
13 rule, we are asking for special exception relief for this, and
14 we'll go through those requirements of special exception relief
15 for the 900-foot. It is a special exception for non-residential
16 buildings as opposed to residential buildings where it would be a
17 variance. Also, altering a rooftop element by altering the
18 cornice and essentially taking it up another story.

19 Next slide please. Here's a photo of the building and
20 you can see the photo of context top left and the additions going
21 to the rear towards Florida Avenue and then to the side, just to
22 the east and adding one story. All within development standards,
23 the height -- lot occupancy and meeting this. Even though there's
24 no side requirement, we are providing a five-foot side yard on the
25 east side as well.

1 Next slide please. These are the two curb cut options.
2 I call them options. I don't know that DDOT sees them as options
3 at this point. They would prefer the 13th Street.

4 Next slide please. And there's the Florida option, you
5 see where the parking spaces are.

6 Next slide, please. And this is the other option.
7 There is a -- the property line aligns with the building and that
8 somewhat limits because there is a lot of public space that
9 somewhat limits the available room for parking, but we do meet the
10 parking requirement of three spaces.

11 Next slide, please. Floor plans.

12 Next slide -- next few slides are floor plans.

13 If you go to slide 10, please. Here's the existing and
14 proposed front elevation.

15 Next slide, please. The rear.

16 Next slide, please. It's the right-side elevation. And
17 this is the elevate -- this is the side that faces the neighboring
18 buildings. So there's a five-foot side yard here and there's no
19 windows on the neighboring buildings facing this.

20 Next slide, please. And there's the elevation that
21 faces 13th Street.

22 Next slide, please. I'll go through the special
23 exception requirements briefly. We still believe we meet the
24 general special exception requirements as the relief will be in
25 harmony with the general purpose intent of the RF-1 Zone. The

1 development itself will conform, so it's -- while four units is
2 permitted, we're proposing six units under the 900-foot rule.
3 That's the extent of the relief. There's no relief requested for
4 the building itself. And the applicant is replacing the cornice
5 that's moving essentially from the top of the second story to the
6 top of the third story. Proposed conversion is not likely to
7 adversely affect the use of neighboring properties because of that
8 five-foot side yard and those properties don't have windows on
9 that side.

10 Next slide please. The specific requirements, light and
11 air available to neighboring property should not be unduly
12 affected because the structure is in conformance with the (audio
13 interference) development standards. Again, there's no windows on
14 that side. Privacy, while the east side of the building has
15 limited -- has less windows than it does on the west side. Again,
16 it doesn't impact anybody's privacy because of there's no windows
17 on those buildings on that side and it's five feet away as well.

18 And regarding the proposed project not substantially
19 visually intruding upon the character, scale, and pattern of
20 houses, I would defer to the Office of Planning's report for a
21 determination on that, and we do have the support of the ANC on
22 that point as well.

23 Next slide, please. I think that might be it. So if
24 you have any questions for myself or for Mr. Amons. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Sullivan. I mean I just

1 (audio indiscernible) it on slide 13. So that bike rack, that's
2 the bike rack, that sad little U thing next to the door, that's
3 what you guys put forward there?

4 MR. SULLIVAN: I don't know if that's the only one or
5 not. But since we have a continued hearing, I can clarify it for
6 you.

7 CHAIRPERSON HILL: No, I'm just -- you just -- I mean
8 it's a sad little U thing right there. That's the bike rack. I
9 mean, you know, so if you can clarify it, that'd be great. It's
10 going to be a continued hearing.

11 MR. SULLIVAN: Clarify or strengthen, yes. I
12 understand.

13 CHAIRPERSON HILL: Right. The little noodle you put in
14 the ground there. All right. Let's see. Okay. I guess this is
15 my only question again, right. So you are coming back to us. You
16 can see what DDOT has about the Florida versus 13th Street curb
17 cut. The Florida is existing now, correct?

18 MR. SULLIVAN: That's correct. But because of the
19 change of use, we're not entitled to keep it. We have to reapply.

20 CHAIRPERSON HILL: Got it. Okay. Then see -- yeah. So
21 just let us know what happens with DDOT's recommendation there,
22 okay.

23 Does the Board have any questions for the applicant? If
24 so, please raise your hand.

25 Mr. Shapiro?

1 COMMISSIONER SHAPIRO: Yes, sir. I think the bike rack
2 issue, if we go to slide 6, as an example. Can you pull that back
3 up, Mr. Young?

4 CHAIRPERSON HILL: Right. And there was that whole
5 question as to whether or not that bike rack is on your property.
6 Is that what you're also going to ask, Mr. Shapiro?

7 COMMISSIONER SHAPIRO: Yes, sir.

8 CHAIRPERSON HILL: Okay.

9 Mr. Sullivan, I don't know if you can see it there?

10 COMMISSIONER SHAPIRO: So there's a bike rack noted, but
11 it looks like it's not on your property.

12 MR. SULLIVAN: I believe that's in public space, yes. I
13 mean it's within the fence line. Actually, the cover sheet, if
14 you look at page 1, it shows the amount of public space between
15 the building and the fence line.

16 COMMISSIONER SHAPIRO: So when you're clarifying the sad
17 little bike rack up front, if that is one, if you could clarify,
18 just make sure that it's copacetic with this bike rack where it
19 is.

20 MR. SULLIVAN: Okay. Will do.

21 CHAIRPERSON HILL: Okay. I can't see everybody. Mr.
22 Young. Thanks, Mr. Young.

23 Does anyone else have a question? If so, raise your
24 hand.

25 Mr. Smith.

1 BOARD MEMBER SMITH: Mr. Sullivan, I just -- I have a
2 question regarding compliance with U 320.3, sub bullet 3, ensuring
3 that the proposed structure does not visually intrude upon the
4 character, scale, and patterns of houses along the subject street.
5 And I recognize what the staff report says, and I would ask OP for
6 some additional clarification. Could you expand on how it does
7 not visually intrude? Was it -- what is the height of this
8 building? And I understand it's three stories and the adjacent
9 properties are two stories, but this is a new building. The other
10 -- the older buildings may have lower height ceilings, everybody
11 moved to nine-foot ceilings. What is the height of this structure
12 in comparison to the adjacent row homes, and also the character of
13 the block, on all the blocks are rowhomes, and this proposed
14 structure as designed is one large facade. There is no
15 oscillation of their facade to reflect the character of the
16 rowhomes along the street. Could you speak on that and speak on
17 how you arrived at this design and how it is in keeping with the
18 character of the rowhomes along the street?

19 MR. SULLIVAN: I think because we -- the architect is
20 not with us; I'd prefer to have them submit something if I could.
21 I think that will be a better testimony.

22 BOARD MEMBER SMITH: Since it is a continued hearing.

23 MR. SULLIVAN: Right.

24 BOARD MEMBER SMITH: Yes. This is a continued hearing,
25 that would be great.

1 MR. SULLIVAN: Okay.

2 CHAIRPERSON HILL: Okay. Anyone else?

3 All right. Can I turn to Office of Planning please?

4 MS. VITALE: Good morning, Mr. Chair, members of the
5 Board. Elisa Vitale with the Office of Planning. The Office of
6 Planning is recommending approval of the requested relief for the
7 rooftop architectural element as well as for the conversion of a
8 non-residential building. We'll rest on the record of the staff
9 report and are available to answer any questions. Thank you.

10 CHAIRPERSON HILL: Sure. Does anybody have any
11 questions for the Office of Planning? If so, please raise your
12 hand.

13 Mr. Smith.

14 BOARD MEMBER SMITH: So Ms. Vitale, you know, I will
15 pose the same question to you that I posed to Mr. Sullivan.

16 MS. VITALE: About the character and scale?

17 BOARD MEMBER SMITH: Yes.

18 MS. VITALE: Yes, certainly. I'm happy to respond to
19 that. And obviously, if the applicant wants to supplement the
20 record on that, you know, that would be beneficial. The 1300
21 block of I Street, you know, the square in which this property is
22 located in the block that it would be fronting on, on I Street,
23 that is predominantly two-story rowhomes, but directly across 13th
24 fronting on Florida actually is another three-story structure.
25 It's actually, I believe more of a mixed-use structure with

1 residential above ground floor retail. There are also, I would
2 say, approximately four-story residential buildings along the
3 Florida Avenue corridor. So I don't think the three-story height
4 that's proposed in this instance would be out of character with
5 the surrounding neighborhood. Certainly the block face directly
6 adjacent to this proposed new construction is two-story in
7 character, but you do find quite a mix in this area and you do see
8 a number of three to four-story residential buildings particularly
9 as you move to the north side of the square as you front Florida.

10 BOARD MEMBER SMITH: Okay. Thank you for that. It
11 would be great and, you know, we get into this a lot with the
12 special exceptions and this question about character, and I do
13 recognize it's just an additional floor, but it would be great to
14 have that technical analysis in the documents that we have in
15 order to verify that, so I thank you for that discussion.

16 CHAIRPERSON HILL: Okay. Anyone else?

17 Does the applicant have any questions for the Office of
18 Planning?

19 MR. SULLIVAN: No. Thank you.

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

22 MR. YOUNG: We do not.

23 CHAIRPERSON HILL: Okay. All right.

24 So Mr. Sullivan, I guess if you can clarify the driveway
25 issue, the bike rack, the character and scale issue, and then

1 we're going to bring you back again on May 19th. Okay. All
2 right. I'm going to close the hearing other than what we had
3 asked for, however, I guess the record is open, I don't know. So
4 please excuse the applicant and everyone there. Thank you.

5 Okay. Let's see. I'm going to let my fellow Board
6 members think about this for a minute. So I think the last two
7 cases are going to take a little bit of time. I'll let you all
8 think about when you want to break for lunch. We have one more
9 case and then the last two cases. And so my -- what I'm saying,
10 it will be an early lunch, so I don't know. Like we might hear
11 this last case and then take -- this next case and then take
12 lunch, but I'll let you all think about it, or we might do at
13 least one of the last two cases and then take lunch, so you all
14 can think about that.

15 Mr. Moy, you can go ahead and call our next case.

16 MR. MOY: Thank you, Mr. Chairman. So this would be
17 Case Application No. 20434 of John F. Williams and Daniel S.
18 Williams. This is captioned and advertised for a special
19 exception under the residential conversion requirements Subtitle
20 U, Section 320.2. This would convert an existing two-story
21 detached principal dwelling unit to a three-unit apartment house,
22 RF-1 Zone. This is at 929 M Street, Northwest, Square 368, Lot
23 124. Again, this application is requesting a waiver of the 21-day
24 rule for revised plans regarding detailing on their floor layouts
25 for the two units and the basement, the third unit and the main

1 house. And that's it for me, sir.

2 CHAIRPERSON HILL: Okay, great.

3 Mr. Sullivan, could you introduce yourself for the
4 record, please?

5 MR. SULLIVAN: Thank you, Mr. Chair. I'm Marty Sullivan
6 with Sullivan and Barros on behalf of the applicant.

7 CHAIRPERSON HILL: Okay, great. Unless the Board has
8 any issues. I don't have any issue with waiving the 21-day rule
9 because I would like to see that information in the record, and I
10 don't think that prejudices any party. If the Board has any
11 opposition to that, please raise your hand. None raising their
12 hand. So we're going to go put that into the record.

13 Mr. Sullivan, I don't have any issues to begin with, so
14 I'm going to go ahead and let you give your presentation, and you
15 can begin whenever you're like.

16 MR. SULLIVAN: Thank you, Mr. Chair. I believe we have
17 a PowerPoint. Thank you.

18 So this is 929 M Street, and the request is for -- if
19 you go to slide 2, please -- special exception relief to convert a
20 single family into a three-unit building under U 320.2. There is
21 no exterior work planned. This is merely an interior renovation.
22 So we have no plans to show you and obviously, no impact from any
23 proposed addition. ANC 2F is in support, Office of Planning is
24 recommending approval. And the reason for the late filing was to
25 sort of upgrade the floor plans at the request of the Office of

1 Planning.

2 Next slide, please. We meet the general special
3 exception requirements. The proposal is in harmony with the
4 general purpose and intent of the regs and maps as we are not
5 asking for any relief structurally and three units is permitted by
6 this relief and will not tend to affect adversely the use of
7 neighboring property. The specific criteria of the building is in
8 existence on the property, just three units, we're not doing four
9 units, so we meet that requirement. And there is a minimum of
10 900-square feet. The lot is 2760. So we meet the specific
11 special exception criteria as well. And that's all we have, so
12 any questions?

13 CHAIRPERSON HILL: Mr. Young, if you get -- thank you,
14 Mr. Young.

15 Does the Board have any questions for the applicant and
16 if so, please raise your hand?

17 Mr. Shapiro?

18 COMMISSIONER SHAPIRO: Mr. Chair. I don't have any
19 strong concerns with this. Though I do need some clarification
20 around the general special exception standards and the adverse
21 impacts. There's nothing in the -- our read of the
22 recommendations that says that adverse impacts cannot be
23 considered just because there's no exterior work being proposed.
24 So, again, I don't have any concerns from what I'm seeing, but I'm
25 not sure that that argument, what you're contending is actually

1 helpful or relevant, that there's no exterior work being done.

2 CHAIRPERSON HILL: Mr. Sullivan, can you speak to Mr.
3 Shapiro's question?

4 MR. SULLIVAN: Yeah. I can have -- this is Logan
5 Circle. It's a very dense area, where an additional unit, three
6 units would not have much of an impact. We do have support from
7 one of the immediate neighbors, and no opposition from the other
8 immediate neighbor. And I think the Board has approved 60 or 70
9 views without ever mentioning the third unit as being a potential
10 adverse impact issue.

11 COMMISSIONER SHAPIRO: And Mr. Chair, that's helpful
12 just as it is because I don't think there will be any adverse
13 impact as you're describing it. It's just that the fact that
14 there's no exterior work doesn't exclude you from making that
15 case, so case heard and I'm fine.

16 CHAIRPERSON HILL: Okay. All right. All right.

17 Anyone else have any questions for the Applicant? All
18 right. I'm turning to the Office of Planning, which is not there.

19 MS. MYERS: Can you hear me?

20 CHAIRPERSON HILL: Yes.

21 MS. MYERS: Yeah, I don't -- okay. Now, I can get my
22 video going now. All right. So Crystal Myers for the Office of
23 Planning. The Office of Planning is recommending approval of this
24 case and can stand on the record of the staff report.

25 CHAIRPERSON HILL: Okay, great. Does the Board have any

1 | questions for the Office of Planning, and if so, raise your hand?

2 | Does the Applicant have any questions for the Office of
3 | Planning?

4 | MR. SULLIVAN: Thanks.

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

7 | MR. YOUNG: We do not.

8 | CHAIRPERSON HILL: Okay. All right. Okay. There's
9 | nothing that we're asking of you, Mr. Sullivan. We're going to
10 | bring you back again on the 19th.

11 | COMMISSIONER SHAPIRO: Mr. Chair.

12 | CHAIRPERSON HILL: Yes.

13 | COMMISSIONER SHAPIRO: Sorry. There was one other issue
14 | that was brought to our attention, which is that there's a
15 | reference to the existing structure including English basement and
16 | a carriage house. And you're saying that the carriage house is
17 | going to remain unchanged and would only be incidental space for
18 | one of the apartments. If you could just take a minute to explain
19 | that, to clarify that.

20 | MR. SULLIVAN: Yes. So the carriage house, you can use
21 | the carriage house under certain conditions as your third
22 | principal dwelling unit subject to this special exception relief,
23 | but he's not asking for that, in which case then, that space is
24 | only permitted to be used as incidental space, meaning you can't
25 | have a separate kitchen and it can't be separate living quarters,

1 but it can be a den or an home office or storage, and any other
2 use that's just incidental to one of the three principal dwelling
3 units.

4 COMMISSIONER SHAPIRO: Okay. Thank you for that further
5 explanation. That's all I have, Mr. Chair.

6 CHAIRPERSON HILL: Okay. Thank you.

7 All right. So I'll go ahead and close this hearing, and
8 we'll see you Mr. Sullivan on the 19th. Thank you.

9 Okay. So I'm back to that original question. Do we
10 want to -- and I can go either way -- do we want to take lunch, or
11 do we want to do one more case? Does anybody have a preference?

12 COMMISSIONER SHAPIRO: I kind of prefer one more case
13 but I'm not -- I don't have a strong preference.

14 CHAIRPERSON HILL: That's -- I needed somebody. Okay.
15 All right.

16 So then Mr. Moy, you can go ahead and call our next
17 case.

18 MR. MOY: Thank you, Mr. Chairman. So this would be a
19 Case Application No. 20428 of 1730 Pennsylvania Avenue, LP. This
20 is captioned and advertised in the record for special exception
21 from the penthouse wall enclosure requirements of Subtitle C,
22 Section 1500.9(a), as well as from the filing from the applicant
23 for area variance from the penthouse use restrictions of Subtitle
24 C, Section 1500.3(d). This would convert an existing mechanical
25 penthouse space to habitable penthouse space and to construct a

1 permanent penthouse canopy to an existing office building in the
2 D6 Zone. This is at premises 1730 Pennsylvania Avenue, Northwest,
3 Square 168, Lot 51. And the preliminary matter here is a waiver
4 for the applicants to submit notarized affidavits of posting and
5 maintenance. I believe that would -- that filing is under Exhibit
6 30. And that's it from me, sir.

7 CHAIRPERSON HILL: Okay.

8 Ms. Prince, are you there? Ms. Prince?

9 COMMISSIONER SHAPIRO: She's on mute, Mr. Chair.

10 MS. PRINCE: I'm here.

11 CHAIRPERSON HILL: Great. Can you hear me?

12 MS. PRINCE: I can hear you.

13 CHAIRPERSON HILL: Oh, great. Could you introduce
14 yourself for the record, please?

15 MS. PRINCE: Yes. I'm Allison Prince with Goulston and
16 Storrs. I'm here on behalf of the applicant, the owner of the
17 building.

18 CHAIRPERSON HILL: Great. Ms. Prince, this is first
19 time you've been with us since the pandemic.

20 MS. PRINCE: It is. And I want to congratulate your
21 Board for getting through the pandemic with this really pretty
22 miraculous technology and I know it's taken a huge effort by you
23 and the staff. And you could have just stopped dead in your
24 tracks, and you didn't, so I and other applicants are very, very
25 appreciative.

1 CHAIRPERSON HILL: That's kind of you to say. Well,
2 welcome, Ms. Prince. All right.

3 Mr. Lawson, are you there?

4 MR. LAWSON: I am, Mr. Chair. Thank you.

5 CHAIRPERSON HILL: Could you introduce yourself for the
6 record, Mr. Lawson.

7 MR. LAWSON: Sure. I'm sorry.

8 My name is Joel Lawson. I'm with the D.C. Office of
9 Planning.

10 CHAIRPERSON HILL: Yeah, Mr. Lawson. I'm just kind of -
11 - like the big guns are out on this one, huh? So we got -- I just
12 had to make sure that was you.

13 MR. LAWSON: That's fine. I wasn't expected to be
14 admitted at this point, but I'm happy to be here. Thank you.

15 CHAIRPERSON HILL: Okay. Well, welcome as well, Mr.
16 Lawson. I know you haven't been with us since the pandemic, I
17 don't think either.

18 All right. I guess so -- well, first of all, in terms
19 of the waiver, I don't have any issue with the waiver and the
20 notarized thing is because I guess we haven't figured out how to
21 do that during the pandemic, so we're getting -- unless anybody
22 has any issues, I'm going to allow that into the record. And if
23 so, raise your hand if you got a problem. Nobody's raising their
24 hand. Okay. So that's one.

25 The first thing Ms. Prince, I guess, and I hate -- I

1 | should say -- I don't want -- I'm going to say I hate to do this,
2 | but I do kind of hate to do this is that the discussion as to
3 | whether or not this should be an area variance or a use variance,
4 | okay. And I know what you believe, and I know what the Office of
5 | Planning believes. We have had a discussion internally. And I
6 | kind of now am kind of thinking it is actually also a use
7 | variance, but I will go ahead and let you argue why you think it's
8 | an area variance. I know that in the past, we, the Board, have
9 | also done something very near this, it was an area variance and I
10 | think that was actually kind of a mistake on our part because
11 | after -- and I'm not -- I'm sorry to argue this case in point
12 | right now. But because I went to see, you know, whatever, seeing
13 | the regulation then went to the other part of the regulation. So
14 | I'll let you go ahead and argue why you think this is an area of
15 | variance rather than a use variance. Let's start with that first,
16 | please.

17 | MS. PRINCE: I'm happy to do that. And I really request
18 | your patience because I need about five minutes of your time on
19 | this, it's an important issue and I want to make sure we all get
20 | it right. So as you can imagine, I don't agree with the position
21 | that it's a use variance. So let me start by noting -- and I hope
22 | the Board fully appreciates what I'm going to say here -- it is so
23 | critically important to have consistency in decision-making by
24 | this Board particularly during this uncertain time. And this
25 | Board has considered three, not one, three habitable penthouse

1 cases since 2016 using an area variance burden of proof. So to
2 change the burden of proof at this stage should not be done absent
3 an extenuating circumstance. But I don't think it's necessary
4 because I think this fits squarely within the area variance
5 standard. And not only were there these three recent cases, but
6 notably, back in 1990, so 30 years ago, an applicant went to the
7 Board of Zoning Adjustment, this is case 15330, to secure
8 permission to use a roof, like a penthouse room. And at that
9 time, the regs didn't even specifically address the ability to use
10 a penthouse at all. Nonetheless, the Board engaged in a
11 discussion at that hearing and agreed that since the use was
12 permitted in the zone, it was an area variance and not a use
13 variance. So this is an issue that's been considered by the
14 Board, you know, many times.

15 Now as the Board is aware, and I don't have to tell you,
16 a use variance is required to allow a use that's not permitted in
17 a zone district and the regs are very clear on that. So if the
18 use is flat out not permitted as a matter of right or by special
19 exception or if it's expressly prohibited, it's a use variance.
20 You deal with them all the time. A restaurant in a single-family
21 zone, a nail salon in the multifamily zone. You deal with
22 apartment houses in the single-family zone. These are all use
23 variances. That's not what we have here. None of those kinds of
24 situations are applicable.

25 Use variances, and the court just said this in the D.C.

1 Court of Appeals case for the Neighbors for Responsive Government,
2 which is the shelter case that your Board handled, use variances
3 are not open-ended. They are very specific. We have to meet one
4 of those criteria. The use has to be prohibited in the zone,
5 prohibited in the zone. So that's the criteria. And so here, we
6 don't have a use that's prohibited in the zone. Office use is
7 permitted in the D-6 Zone. It's permitted. It exists in our
8 building.

9 The only reason that we need to be here today is to put
10 the use in a portion of the building where it's not allowed.
11 That's no different than if a building has a mandatory retail
12 requirement on the ground floor. If an owner wants to go in to
13 get permission to put some office on the ground floor in the D-6
14 Zone, that's not a use variance, that's an area variance. Here in
15 the D-6 Zone, we know that office use is permitted, it
16 predominates the entire zone. Habitable penthouse space devoted
17 to office use is office use. There's no separate use category for
18 penthouse habitable space. It's simply doesn't exist.

19 When we get a certificate of occupancy for the space, it
20 will say "office use" or "office amenity use".

21 What do you do in use variance cases? In use variance
22 cases, you examine whether the use, the prohibited use will
23 undermine the character of the district in which an applicant is
24 asking to locate the use. That's not what we have here. We have
25 a permitted use. It fits squarely under Subtitle 10, Section

1 1001.3(c) of the regulations, which gives an example of an area
2 variance.

3 It's a request to deviate from limitations on the extent
4 to which the gross floor area of a building may be occupied by a
5 matter of right use. That's exactly what we're doing here. The
6 court also said in the Responsive Government case, the shelter
7 case. Unlike use variance, area variances are more open-ended in
8 nature. They affect the size, the location, the placement of
9 buildings or other structures. That's what we have here. We had
10 -- we meet the open-ended definition of an area variance.

11 And the section of the regulations to which Mr. Rice has
12 referred does not prohibit habitable penthouse space in the D-6
13 Zone, rather, the section restricts habitable penthouse space in a
14 designated area. The regulations use that exact word, "area,"
15 solely to address any potential security concerns of the Secret
16 Service. The Office of Planning and Mr. Lawson is here. The
17 Office of Planning never questioned the appropriateness of office
18 use of a penthouse when they drafted the habitable penthouse
19 regulations.

20 The very language that Mr. Rice cites as an issue
21 further validates that the standard is an area variance standard.
22 Office use is permitted throughout the zone. The use of the
23 penthouse is simply restricted in a small portion of buildings in
24 a designated area. We're prepared to present an area variance
25 argument today. We could also present a special exception

1 argument because the Zoning Commission has already decided that
2 these cases should be allowed by special exception, but the final
3 rulemaking on that case is uncertain.

4 And as I said at the beginning, there is no time more
5 than now that we need certainty. And I have to ask, Mr. Shapiro
6 is here and maybe can answer this, but would the Zoning Commission
7 have made a change to a special exception burden of proof if in
8 fact the use were flat out prohibited as Mr. Rice suggests; I
9 think not. But even if you determined that the use variance
10 standard is applicable, and I hope that you don't because I don't
11 think it's correct. But even if you determine that, we happen to
12 meet it here because the penthouse is unusually large, all of the
13 neighboring penthouses are smaller. And why is it so large?
14 Because when it was built, the technological equipment needed to
15 run a building was much bulkier. In addition, this penthouse has
16 several kind of PEPCO vaults on the roof, which is never done now
17 but was done then, and that took up a lot of space on the roof.

18 So the penthouse is unusually large, the building system
19 is being completely modernized and we don't need that space. So
20 what do you have, a void, a volume of space that has no use unless
21 you use it for mechanical equipment, which we don't need it for.

22 So we're seeking relief to use a void of space that has
23 no other purpose, for a use that's permitted under the
24 regulations.

25 And I'd like to close by noting even though I think we

1 meet any burden of proof that could possibly be before you, I just
2 really do want to reiterate the incredible importance of
3 consistency and decision-making from this Board. We've relied on
4 this Board for -- I've relied on this Board for 37 years. I rely
5 on the principle of consistency. If you're going to make a change
6 and a burden of proof that basically says you got it wrong before;
7 you got it wrong in the three cases under the 2016 regulations,
8 and your predecessors got it wrong in 1990. If you're going to do
9 that, you need a very, very compelling reason. And that's my
10 thought on the preliminary issue that's been raised, and I really
11 thank you for your patience.

12 CHAIRPERSON HILL: Okay. Well, I don't like it either,
13 Ms. Prince. I don't know what to say. So I'm going to -- I'm,
14 you know. We might take a break anyway because you guys can think
15 about it and I might think about this, you all think about this.
16 Does the Board have any questions? I don't like -- what are the
17 three -- I don't like the fact that there's the three cases. I
18 know the one that I was on, which was however long ago that was,
19 it wasn't that particularly long ago. But nonetheless, I
20 understand your argument, Ms. Prince. Does -- and I want to hear
21 from Mr. Lawson in a moment.

22 But does the Board have any questions for Ms. Prince on
23 this matter and/or do you all want to start talking about it?

24 BOARD MEMBER SMITH: I would prefer to hear from Mr.
25 Lawson.

1 CHAIRPERSON HILL: Okay.

2 Mr. Lawson, are you there?

3 MR. LAWSON: I am. Yes. I'm going to try to start my
4 video. Usually, Webex kicks me out but lately it has worked, so
5 we'll try.

6 Good morning, Mr. Chair, and members of the Board. I
7 don't think there's an awful lot that I can add to this
8 discussion. The Office of Planning, of course, is not the
9 division which determines what relief is required, so we would
10 look to you to make that decision. We were comfortable with this
11 being considered in the area variance as the past cases were. But
12 you know, again, if the Board determines that this should be
13 reviewed as a use variance, then we would be comfortable with
14 addressing the use variance criteria today once the hearing opens,
15 and I'm available for questions.

16 CHAIRPERSON HILL: Okay.

17 Mr. Rice, can you hear me?

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

19 CHAIRPERSON HILL: What was it again? I was looking
20 through the regs last night and I'm trying to think, where is it
21 in the regs that it sends me to 1500.3(d)?

22 MR. RICE: I believe you're referring to Subtitle U,
23 100.5 which states, "Uses permitted within a penthouse shall be in
24 accordance with Subtitle C, 1500.3."

25 CHAIRPERSON HILL: Okay. All right. I'm going back to

1 | the Board here because I'm looking this up for me. Does the Board
2 | have some questions?

3 | VICE CHAIR JOHN: I'd like to ask Ms. Prince, how she
4 | would interpret the plain language of the regulations starting
5 | with 100.5 -- U 100.5, then C 1500.3. And then explain why the
6 | fact that the regulation specifically states that in this sub
7 | zone, which is the Capitol Hill area, that this habitable
8 | penthouse use should not be allowed. And then if you could also
9 | refer to the definition of "habitable penthouse" when you respond.

10 | MS. PRINCE: All right. So yes, U does direct us to
11 | 1500.3 on habitable penthouse, and that section speaks to not an
12 | entire building and not an entire zone. It speaks to a portion of
13 | a building and a portion of a zone. Though in the D-6 Zone, we
14 | have habitable penthouses matter of right on one side of this
15 | restricted area line, and then on the other side of the -- within
16 | the restricted area, we need to seek a variance. We don't
17 | question that we need to seek a variance. But what this section
18 | doesn't say, it doesn't say that a habitable penthouse is not
19 | permitted in the D-6 Zone.

20 | The definition of habitable penthouse, which I'm
21 | familiar with, just clarifies once again, that a habitable
22 | penthouse in and of itself is not a use. It speaks to the use
23 | permitted in the zone unless otherwise restricted, and in our
24 | zone, it is otherwise restricted. How is it restricted? it's
25 | restricted on the basis of area, it's restricted on the basis of

1 | the geographic area it's in, and it's restricted on the basis of
2 | the portion of the building that it's in, the penthouse. But to
3 | read this regulation as some kind of inadvertent or otherwise
4 | attempt to use the use variance standard in these cases so
5 | undermines the whole -- I participated in all the habitable
6 | penthouse cases. I know all about the process on optimizing the
7 | use of rooftop space. There was never a single discussion that
8 | this use should be subject to a use variance standard. In fact,
9 | the Office of Planning originally had it permitted zone wide and
10 | it was the Secret Service that came in with NCPC input and said,
11 | "Wait a minute. We need to look at these cases"; not, "We need
12 | to look at the use." Ironically, the use that the Secret Service
13 | was worried about was residential use because they were worried
14 | about people in the penthouse of building, looking at the White
15 | House. They weren't concerned about office use.

16 | So to try to look at the sections of the regulations
17 | that Mr. Rice has cited and say that those need to be looked at in
18 | a vacuum without a consideration of the whole process for allowing
19 | habitable penthouses in the first place. and the fact that the D-6
20 | Zone still absolutely allows habitable penthouses, I think really
21 | undermines the whole premise for optimizing rooftop space. But as
22 | I said, if you force me into that standard, which I think it's
23 | inapplicable, I happen to meet it here because I've got this
24 | "white elephant" void of space that has no other use under our
25 | regulations, but that's not what the -- that's not what was

1 | intended. That's not what the Board has done not once, not twice,
2 | but three times. And that's not what the Board decided in 1990
3 | when penthouse use wasn't even specifically allowed.

4 | So to try to exploit two sections of the regulations
5 | which I understand where you could look at those sections and
6 | saying, wow, that sounds like a prohibition. But we have to go
7 | beyond that and say it's not a flat-out prohibition in the zone.
8 | It's not permitting the use in an area. If you look at the second
9 | section that Mr. Rice has cited, it specifically says "area."
10 | It's area bounded by -- it describes the area bounded by --

11 | CHAIRPERSON HILL: Where are you looking at Ms. Prince,
12 | when you're talking about that again, please?

13 | MS. PRINCE: 1500.3(d), penthouse habitable --

14 | CHAIRPERSON HILL: Say that again -- I'm sorry, say it
15 | again please.

16 | MS. PRINCE: C 1500.3: "Penthouse habitable space is
17 | not permitted on any building within an area bounded by area."
18 | The use itself is absolutely permitted, has always been permitted
19 | in the D-6 Zone. It is not -- you know, when we think about
20 | prohibited uses under the zoning regulations, we think about, you
21 | know, the uses that are only allowed in the industrial zone, that
22 | are only allowed in the residential zone, and commercial uses in
23 | the residential zone, it's a prohibited use. That's what
24 | prohibited uses are. To have the regs say in this specific
25 | geographic area and in this specific part of a building, we want

1 to look more closely at a use that is permitted in the zone, but
2 just restricted in this area. That's where the area variance
3 standard kicks in. And I feel pretty strongly about the (audio
4 interference). Only because I just -- I think that this is the
5 way the Board has acted in so many past cases involving use versus
6 area variances. And I'm happy to give you the three cases that
7 you consider the case numbers. I can submit that for the record,
8 or I'll read it for the record.

9 CHAIRPERSON HILL: Okay. Give me a second Ms. Prince.
10 So -- okay. So I have a question actually. So when -- so there's
11 a text amendment that's before the Zoning Commission that is going
12 to make this now a special exception; is that correct, Ms. Prince?

13 MS. PRINCE: Correct.

14 CHAIRPERSON HILL: Do you know what the criteria -- you
15 don't know what the criteria would be to grant the special
16 exception, correct? Because you haven't seen it yet.

17 MS. PRINCE: Well, the Notice of Proposed Rulemaking
18 isn't out yet. But I'm very confident -- this is an existing
19 space, so it does -- I can't envision a scenario under which we
20 wouldn't meet that standard.

21 CHAIRPERSON HILL: I understand.

22 MS. PRINCE: Why the heck aren't we just waiting?

23 CHAIRPERSON HILL: Okay. I will ask that real quick.
24 Why aren't you just waiting?

25 MS. PRINCE: Because the Notice of Proposed Rulemaking

1 has not been issued. There will be a comment period and then we
2 need to await a notice of final rulemaking. And as you're well
3 familiar, the Office of the Attorney General is overburdened at
4 this time of the pandemic. It's hard for them to turn around
5 work. I completely understand that. We're backed up and --

6 CHAIRPERSON HILL: Okay. All right. All right. So you
7 don't know, it could be three months, six months, you just don't
8 know.

9 MS. PRINCE: I have to -- Mr. Rice was kind enough to
10 let me know. He thinks it might be ready by the end of June, but
11 we have (audio interference) --

12 CHAIRPERSON HILL: Okay. All right. This is why I'm
13 asking you. I'm having a discussion with you and with the Board
14 because what I'm kind of leaning toward you guys, and we haven't
15 done an emergency closed meeting yet. So I'd like to hear this
16 discussion -- Mr. Lawson has weighed in. Then I'd like to go
17 ahead and do an emergency closed session to discuss with OAG, and
18 then I think we should take lunch. Okay. And then -- maybe
19 because like now I'm just getting hungry. And so -- or actually,
20 we'll probably come back, let Ms. Prince know where we stand on
21 this and then take lunch. That's kind of my thought process.

22 So Ms. Prince, to just finish with this discussion --
23 and I got a thumbs up from Commissioner Shapiro -- just to finish
24 -- I got another thumbs up. Just to finish this thought process
25 that I am trying to understand, and this is why I'm going to ask

1 OAG, is that I understand the precedent and I really understand --
2 and by the way, I know that you know, I actually care about all
3 this stuff, right? I have done this now for a while but, you
4 know, I care, right? And so my question now though to you, this
5 precedent goes away once the special exception thing gets settled,
6 correct?

7 MS. PRINCE: That is (audio interference).

8 CHAIRPERSON HILL: I'm asking you, Ms. Prince.

9 MS. PRINCE: If you were to determine today that this is
10 a use variance, you're saying, does that go away?

11 CHAIRPERSON HILL: Yes. I'm saying --

12 MS. PRINCE: Right. My argument is why on earth would
13 you change the burden of proof when the whole issue goes away when
14 the Notice of Final Rulemaking is issued?

15 CHAIRPERSON HILL: Okay. Good counterpoint. That's
16 fine. Okay.

17 MS. PRINCE: Why are we doing this now as it (audio
18 interference)?

19 CHAIRPERSON HILL: All right. Okay. That's fine.
20 Okay. Does anybody have any questions of Ms. Prince before I call
21 for an emergency closed session meeting with OAG?

22 VICE CHAIR JOHN: No.

23 CHAIRPERSON HILL: No? Okay. All right.

24 So I forget Mr. Moy, what do I have to read? Do I have
25 to read something? I don't have what I'm supposed to read, I

1 don't think, for the emergency closed session.

2 MR. MOY: Yeah. Mr. Chairman, I'll get that to you
3 while Mr. Young is sending you a --

4 CHAIRPERSON HILL: Okay. I got it right here.

5 MR. MOY: Okay. Cool.

6 CHAIRPERSON HILL: (Audio interference) to enter an
7 emergency closed session. So I'm going to make a motion to
8 adjourn the public session. I'm making the motion right now and
9 enter an emergency closed session. The reason for this emergency
10 closed session is to discuss with OAG. This -- the discussion
11 we're having about use versus -- use variance versus area
12 variance. We're going to suspend the public session. All video
13 and audio feeds will be turned off. The Commission and Board
14 members -- so I'm going to get a separate audio line to be
15 provided by the secretary, and then I have to read into that
16 closed session.

17 So Mr. Moy, how do we get into the closed session?
18 You're going to send us something?

19 MR. MOY: That's correct. We're going to be sending you
20 a separate link for that as we do typically for a hearing.

21 CHAIRPERSON HILL: Got it.

22 MR. MOY: So you'll receive that by email.

23 CHAIRPERSON HILL: Okay. So we're going to go into this
24 closed session and then we're going to come back. We're going to
25 let the applicant know where we stand so that they can prepare for

1 either a use variance argument or an area variance argument, and
2 then we're going to have lunch. Okay. So we will, I guess I'm
3 just going to turn off my video and wait to see what link happens,
4 correct?

5 MR. MOY: Yeah. I need to take a vote count on your
6 motion for this so that we can see.

7 CHAIRPERSON HILL: Oh, sorry. Yeah. Thank you.

8 Ms. John, will you second my motion, please?

9 VICE CHAIR JOHN: Second.

10 CHAIRPERSON HILL: All right.

11 Can you take the roll call vote, Mr. Moy?

12 MR. MOY: Yes, sir. When I call your name, if you would
13 please respond with a yes, no or abstain to the motion made by the
14 Chairman to open an emergency closed session. The motion was
15 seconded by Vice Chair John. Zoning Commissioner, Peter Shapiro.

16 COMMISSIONER SHAPIRO: I vote yes.

17 MR. MOY: Mr. Blake?

18 BOARD MEMBER BLAKE: Yes.

19 MR. MOY: Mr. Smith?

20 BOARD MEMBER SMITH: Yes.

21 MR. MOY: Vice Chair John.

22 VICE CHAIR JOHN: Yes.

23 MR. MOY: Mr. Hill -- Chairman Hill.

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: Staff would record the vote as 5-0-0. The

1 motion carries, sir.

2 CHAIRPERSON HILL: Oh, I can. I just got the link. So
3 now, do we leave? Can I just ask you guys, do we leave this
4 thing?

5 VICE CHAIR JOHN: Yes. We have to sign out and sign
6 back in.

7 MR. YOUNG: No. You should be able to stay on here.

8 VICE CHAIR JOHN: Okay.

9 MR. YOUNG: You just mute yourself on here and turn your
10 camera off. And then I'm going to start the closed meeting and
11 you should be able to join that.

12 CHAIRPERSON HILL: Okay. Just my suggestion. I think
13 we should leave this thing, just in case -- yeah. I'm going to
14 leave this thing just in case we forget and don't mute the thing
15 and all that stuff, so I'm leaving. Okay. And I'll come back.
16 Bye-bye.

17 (Whereupon, the above-entitled matter went off the
18 record and then resumed.)

19 CHAIRPERSON HILL: Okay. Mr. Young, can you please
20 bring the applicant back? Okay.

21 Mr. Smith, are you there? Okay. Can everybody hear me?

22 Mr. Smith, can you hear me.

23 BOARD MEMBER SMITH: Yes.

24 CHAIRPERSON HILL: Okay. All right.

25 So Ms. Prince, we've had a long discussion, and I'm

1 going to take lunch so that you can gather yourself together. But
2 it looks like we're going to -- you're not going to like the
3 outcome. All right.

4 Ms. John, do you have something you'd like to say?

5 VICE CHAIR JOHN: Yes. Thank you, Mr. Chairman. And I
6 wanted to make sure I had my -- I expressed myself clearly, so I'm
7 just going to read something.

8 And basically, I am aware that in past cases that we
9 have viewed this issue as an area variance. And in taking a fresh
10 look at the regulations, I believe that the determination of the
11 issue requires analysis and consideration of Sections U 100.5 and
12 C 1500.3(d). And those two sections provide for the regulation of
13 uses in penthouses in a certain area. And so considering the
14 plain language of the regulations as a whole, I believe a use
15 variance is required for relief from C 1500.3(d). And I tried to
16 -- no, not I tried, I appreciate Ms. Prince's clarification of the
17 history of the section. But we have to interpret statutes and
18 regulations based on the plain language, and where that language
19 is unambiguous. As this is, I don't see any way to come up with a
20 different interpretation, so that would be my recommendation, Mr.
21 Chairman.

22 CHAIRPERSON HILL: Okay. You got a second, Mr. Smith.

23 BOARD MEMBER SMITH: I second.

24 CHAIRPERSON HILL: Okay. That's the motion.

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

1 MR. MOY: Yes. When I call your name, if you would each
2 respond with a yes or no, abstain to the motion made by Vice Chair
3 John that this -- the relief for this application is interpreted
4 as a use variance, and the motion was seconded by Mr. Smith.

5 Zoning Commissioner Peter Shapiro.

6 COMMISSIONER SHAPIRO: I vote yes.

7 MR. MOY: Mr. Blake?

8 BOARD MEMBER BLAKE: I vote yes.

9 MR. MOY: Mr. Smith?

10 BOARD MEMBER SMITH: Yes.

11 MR. MOY: Vice Chair John.

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill.

14 CHAIRPERSON HILL: Vice Chair John, I humbly disagree.
15 I humbly disagree. I vote no.

16 VICE CHAIR JOHN: As well you may.

17 MR. MOY: Staff would record the vote as 4-1-0. And
18 this is on the motion made by Vice Chair John, seconded by Mr.
19 Smith. Also, in support of the motion is Zoning Commissioner
20 Peter Shapiro and Mr. Blake. Opposed to the motion is Chairman
21 Hill. The motion carries 4-1-0.

22 CHAIRPERSON HILL: Okay. All right.

23 So Ms. Prince we'll come back after lunch and you can
24 make your argument for a use variance. And let's say -- I mean I
25 know we got a -- there's another case that's going on that

1 hopefully -- well, wait. What do you all think like, let's say
2 1:45? Okay. Let's shoot for 1:45, okay? Okay. Thank you. Bye-
3 bye.

4 (Whereupon, the Board recessed for lunch at 12:54 p.m.
5 and resumed at 1:50 p.m.)

6 CHAIRPERSON HILL: Mr. Moy, you can call us back. And
7 Mr. Young, if you could please allow the applicants back into the
8 room.

9 MR. MOY: Thank you, Mr. Chairman. The Board is back in
10 session after lunch recess. And the time is at or about 1:50 p.m.

11 It's all yours, Mr. Chairman.

12 CHAIRPERSON HILL: Thank you.

13 Ms. Prince, are you there?

14 MS. PRINCE: I'm trying to be -- there we go.

15 CHAIRPERSON HILL: Okay, great. I have a question for
16 you, Ms. Prince. And then maybe OAG can also answer this but --
17 and I'm not trying to throw more of a wrinkle into this whole
18 thing thus far. But if you argue -- and I don't know what's going
19 to happen at all -- if you argue a use variance and you all fail,
20 right, then you can't come back for a special exception with that
21 same application, right? You'd have to refile, redo everything,
22 blah, blah, blah. But if you waited and then came back and went
23 from a variance to a special exception, you can leave all this --
24 you can use everything that's going, correct?

25 MS. PRINCE: I'm confident we can meet the use variance

1 standard, but I am also confident that the Board will alert me in
2 the event that you feel I have not, in which case, I will seek a
3 special exception.

4 CHAIRPERSON HILL: Okay. All right. Okay. I don't --
5 I kind of think I understand what you just said, but we'll see
6 what happens. Okay. All right.

7 And you can begin whenever you like, Ms. Prince.

8 MS. Prince: Great. And thanks for your time, Chairman
9 Hill and members of the Board.

10 I'm pleased to present our application for an occupiable
11 penthouse that will result in a \$300,000 payment to the City's
12 Affordable Housing Trust Fund and will give us the ability to use
13 vacant penthouse space that's already there, that's been there for
14 50 years. I think we're clear that the notice has been proper,
15 and exhibits have been allowed into the record, you alluded to
16 that at the beginning. So I can dive right into the presentation,
17 which is that we're going to demonstrate today that we made meet
18 the use variance burden of proof for this roof structure.

19 And I have to admit, when I first heard from Mr. Rice
20 that he thought a use variance standard was applicable, I was
21 concerned that we wouldn't be able to meet it. So I spent a lot
22 of time studying the site with the architect's assistance and
23 became confident that we do.

24 So as the Board knows, is well aware, the first part of
25 a use variance test is to show uniqueness. And what is unique

1 | about our existing roof structure? Well, it's actually quite
2 | unique. A portion of it is 27-feet tall, which would never be
3 | permitted under the current regulations and it is unusually large.
4 | We have actually gone to the trouble with measuring the enclosed
5 | penthouse space in the surrounding penthouses to demonstrate that
6 | our penthouse is larger than any of the penthouses directly across
7 | the street or directly west of us.

8 | Why is it larger? It's larger because at the time the
9 | building was constructed, technology was such that the penthouse
10 | needed to be the size that it is. And as I mentioned earlier, a
11 | very strange condition that I had never seen before, the PEPCO
12 | vaults associated with this project are on the roof. They take up
13 | 1400-feet of the roof. And that also forced the penthouse to be
14 | larger than one never would have constructed a penthouse today.

15 | So what does that uniqueness result in? It results in a
16 | situation where we've got this oversized penthouse, and we have a
17 | desire to make our building a whole lot more efficient
18 | technologically. And by updating all the building systems as we
19 | plan to, and you'll hear more about that from the owner, we're
20 | left with this void of space, this space that you don't need for
21 | mechanical equipment, which is in fact, the only use permitted.
22 | So we have a void of about 2600-feet of space that is freed up by
23 | virtue of our effort to make the building more energy efficient.
24 | And this just reminded me so much of the old Clerics of Saint
25 | Viator case from 1974 where a seminary was built in 1961 and as

1 | priests just dropped off, it was too big for its purpose. And
2 | they tried to market it for any other permitted use -- here, we
3 | don't have another permitted use beyond mechanical -- they
4 | couldn't find another permitted use. So that was the (audio
5 | interference) could've established that when you've created a
6 | structure, that's just too big for the permitted use, you need to
7 | be able to get a use variance to bring the site to a viable use.
8 | Because our practical difficulty, or actually our hardship here,
9 | is we need to meet the hardship burden in a use variance case.
10 | Our hardship is if you don't let us use this space, there is no
11 | use of the space. We don't need it for mechanical equipment
12 | purposes. We should be incentivized to upgrade our mechanical
13 | systems and make them more energy efficient. And we literally
14 | would have a void of 2600 feet of space on top of a building, one
15 | building (audio interference) from the White House. That is
16 | clearly an undue hardship.

17 | And in terms of the third part of the variance, there's
18 | just absolutely, you know, no damage to the public good as a
19 | result of granting a use variance in this case. Office use
20 | predominates in the zone. There's more -- the building is an
21 | office building. There's just absolutely no detriment to the
22 | public good. In fact, I would say that there's a strong benefit
23 | to the public, which is something we've heard a lot since the
24 | pandemic is the need for open space for office workers, and the
25 | need to create as much open space as possible as we can in the

1 office zones in this post-COVID environment. And that's what this
2 occupiable space on the roof will do that will facilitate more use
3 of the rooftop terrace and then provide some interior space and a
4 large value. So I don't often argue use variance cases, but I was
5 happy to argue this one because I think we meet the standard
6 because the situation is quite unique.

7 If the Board has no questions of me, I'm going to
8 proceed with the testimony of the building owner of Tishman
9 Speyer, Eric Phillips, and he'll walk through why they want to do
10 this. And then we have Hiroshi Jacobs, who's an expert in
11 architecture that the Zoning Commission has qualified before, but
12 just in case you wanted to see his resume, we filed that as well.

13 CHAIRPERSON HILL: Okay.

14 Ms. Prince, we might have questions for you later, but
15 we can go ahead and move forward.

16 MS. PRINCE: Sure. Sure. So is Eric on?

17 CHAIRPERSON HILL: What's Eric's last name?

18 MS. PRINCE: Phillips.

19 CHAIRPERSON HILL: Eric Phillips.

20 MR. YOUNG: I do not see him on.

21 MS. PRINCE: No. We can go straight to Hiroshi if
22 needed.

23 CHAIRPERSON HILL: Mr. Jacobs, can you --

24 MS. PRINCE: Yeah. Why don't we go on with Hiroshi?

25 CHAIRPERSON HILL: Mr. Jacobs, can you hear me?

1 MR. JACOBS: Yes, I can. Can you hear me?

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

4 MR. JACOBS: Yes. Good afternoon, Mr. Chair and members
5 of the Board. My name is Hiroshi Jacobs with Studios
6 Architecture.

7 CHAIRPERSON HILL: Okay. Ms. Prince, go ahead whatever
8 you want to do.

9 MS. PRINCE: Hiroshi is going to present his testimony.
10 You should have his PowerPoint in the record.

11 CHAIRPERSON HILL: I don't see the PowerPoint. If the
12 staff could upload the PowerPoint for us, I would allow it. I
13 want to allow it into the record, unless the Board has any issues
14 with that. And then I don't know, Mr. Young, if you have Mr.
15 Jacobs' presentation, do you?

16 MR. YOUNG: I do.

17 CHAIRPERSON HILL: Okay, great. So if you can bring
18 that up then for Mr. Jacobs. And then I'll just wait for it to
19 get loaded up so we can take a look as well.

20 COMMISSIONER SHAPIRO: While you're doing that Mr.
21 Chair, can I ask Ms. Prince a question?

22 CHAIRPERSON HILL: Sure, of course.

23 COMMISSIONER SHAPIRO: Thank you. So I just want to be
24 clear about the undue hardship. I don't hear you arguing at the
25 issue is the inability to use the property for its highest and

1 best use. What I heard you argue was that effectively that you
2 would be unable to use the penthouse for any use.

3 MS. PRINCE: Correct.

4 COMMISSIONER SHAPIRO: Okay.

5 MS. PRINCE: Yeah. You don't see that often, but that's
6 literally the circumstance here because mechanical equipment use
7 is the only use permitted in the penthouse, and we're upgrading
8 the systems and don't need that much space.

9 COMMISSIONER SHAPIRO: Okay. Thank you. That's all.

10 MS. PRINCE: And we're being deprived of any reasonable
11 use of the property.

12 COMMISSIONER SHAPIRO: Thank you.

13 MR. MOY: Mr. Chairman.

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Would this would be a good time for me to
16 administer the oath to Mr. Jacobs.

17 CHAIRPERSON HILL: Yes. Please, Mr. Moy.

18 MR. MOY: Okay. Are you still here, Mr. Jacobs?

19 MR. JACOBS: Yes, I'm still here.

20 MR. MOY: All right.

21 Whereupon,

22 HIROSHI JACOBS,

23 a witness, first duly sworn, and was examined and testified as
24 follows:

25 MR. JACOBS: Yes, I do.

1 MR. MOY: Thank you.

2 MR. JACOBS: Okay. Thank you, again, for allowing me to
3 speak. This is the presentation of the design for 1730 Penn
4 rooftop.

5 And go to the next slide, please. A lot of this has
6 already been stated, but I'll just kind of reiterate the project
7 summary here. This is an existing office building at 1730
8 Pennsylvania Avenue, Northwest. We are in the process of
9 upgrading mechanical systems in the building to use smaller, more
10 efficient mechanical systems that are more distributed throughout
11 the building. So what this is going to do is it's going to free
12 up space within the penthouse that, as has been stated, could only
13 be used for mechanical space or what we are asking for here as
14 tenant space. This is going to come with some facade improvements
15 at the penthouse to open up the penthouse facade and to have more
16 (audio interference) for visibility out and also the addition of a
17 permanent canopy. Currently, today, there's a temporary canopy up
18 on the space -- up on the roof.

19 We're asking for the relief to allow for the habitable
20 penthouse within the White House security zone. And also, the
21 special exception for the unit -- from the uniform height
22 requirement to add a permanent canopy to the penthouse.

23 CHAIRPERSON HILL: And I apologize to interrupt you, Mr.
24 Jacobs. I made -- I didn't see the PowerPoint. It is in there
25 for my colleagues. It's the second to last exhibit.

1 MR. JACOBS: Okay, great.

2 Next slide please. So just -- the location of the
3 building is located on Pennsylvania Avenue between Pennsylvania
4 and G Street and between 17th Street and 18th Street, just a block
5 away from the White House. As you can see, the building height is
6 130-feet, plus the penthouse, which will remain unchanged as well
7 as the number of stories at 12. The penthouse area will increase
8 slightly and that is due to the addition of the penthouse canopy,
9 so it's not interior space, but really just the area under the
10 canopy that will count towards the FAR and that will result in a
11 .02 increase in the FAR.

12 Next slide please. Here you can see some photographs of
13 the existing building from the street. The building underwent a
14 facade renovation in 2008 and so you can see that it's been
15 upgraded on the facade.

16 Next slide, please. This is a diagram that illustrates
17 the building heights in the surrounding area. As you can see, all
18 of the buildings on the block where our site is located are at
19 130-feet plus the penthouse is above that. Notable is that the
20 buildings to the south of our site are below 130 feet. So you can
21 imagine that there are pretty unimpeded views from the rooftop
22 area of this building towards the mall.

23 Next slide, please. Here's some -- a photograph of the
24 existing penthouse. And I think one of the notable things with
25 the existing penthouse is that it's fairly attractive as

1 penthouses go. It's got a brick cladding and it has these
2 decorative panels on the side. There's also an existing rooftop
3 terrace on this roof with access from one elevator that goes up to
4 the roof and a corridor that leads out to the exterior. And you
5 can see there the temporary canopy that's on the building today.

6 Next slide, please. So what we are proposing is to
7 increase the amount of glazing on the facade and the area where we
8 would have the occupied space. We would open up the facade there
9 and add this canopy that's shown here along the edge of the area
10 that's occupied and dress up the facade of the penthouse along
11 with that.

12 Next slide, please. This is an existing plan of the
13 penthouse. As you can see and as Allison has mentioned, it's
14 fairly sizable for the size of building here. The area in dark
15 gray that you can see there are the PEPCO Vaults that Allison
16 mentioned. You can see in the white, the corridor that leads from
17 the elevators that go up to the roof and the existing terrace.
18 Also, you can see on this plan the setbacks of the penthouse from
19 the edge of the roof. On the southern edge, you can see it's a
20 40-foot setback from the edge of the building. The roof terrace
21 itself is setback 15 feet from the edge. There's also a 47-foot
22 setback on the northern edge of the building.

23 Next slide. So here you can see in blue, the area that
24 we are proposing to convert from mechanical space into tenant
25 space. Whether it's a tenant amenity or tenant office space is to

1 | be determined. You can see in the black dashed line to the south,
2 | the footprint of the canopy that we're proposing to add to the
3 | building.

4 | So I'll just reiterate some of the reasons why we think
5 | this project meets the relief requirements. It is a very unique
6 | penthouse within this area. As Allison mentioned, we did an
7 | informal survey of the different penthouses in this area across
8 | the street. I'll just name a few: 1701 Pennsylvania, 1717
9 | Pennsylvania, 1776 G Street are all penthouses that have point 0.1
10 | or less FAR in terms of the size of the penthouse. So they're
11 | much, much smaller than this penthouse, so we think it's unique
12 | from that perspective.

13 | The inclusion of the PEPCO vaults is also pretty unique.
14 | We would never do something like that today if this was a new
15 | building. And also the addition of the 27-foot-tall portion of
16 | the penthouse that's above the elevators is also something that
17 | would never be allowed today, so those are reasons why we think
18 | that the penthouse is unique. In addition to the fact that
19 | there's an existing terrace up on this roof which is pretty
20 | unusual for a roof that doesn't have any occupied space, and to
21 | have a terrace that's existing on that roof is also we think an
22 | unusual aspect of this project.

23 | And as Allison mentioned, we think that the practical
24 | difficulty that this would impose would be that the inability to
25 | use this space for anything other than mechanical would make it so

1 that we would be left with vacant space that the owner would have
2 to maintain. And not having the ability to use that space but
3 have to maintain it, we we think results in a practical difficulty
4 for the owner.

5 In terms of the detriment to the public good, obviously,
6 this would result in practically zero change to the building's
7 bulk and mass. So we think that it has no effect on sight lines
8 or visibility from other buildings. And in fact, we think this
9 project would make the building more attractive; the affordable
10 housing payment is a significant public good. And then, as
11 Allison mentioned, access to the outdoors is going to be an
12 important aspect of our lives moving forward we think post
13 pandemic.

14 As far as the canopy height special exception that we're
15 asking for, you know, we wanted to make sure that the canopy was
16 low enough to provide the significant shading and protection of
17 the occupants, so we decided that it was better to lower the
18 canopy below the height of the penthouse for that reason. And
19 also, for the reason that it would be less visible from
20 neighboring properties if it is lower, so that's why we're asking
21 for that special exception.

22 With that, I will open it up for questions.

23 MS. PRINCE: And I just have one additional question for
24 Mr. Jacobs. Mr. Jacobs, is it a practical difficulty and undue
25 hardship for the owner to be precluded from the ability to have

1 any use of this space?

2 MR. JACOBS: I would say that that's a true statement,
3 yes.

4 MS. PRINCE: I have no more questions.

5 CHAIRPERSON HILL: Okay. Does the Board have any
6 questions for the applicant?

7 Sure. Commissioner Shapiro.

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.
9 What is the contribution to the Housing Production Trust
10 Fund?

11 MS. PRINCE: It's \$300,000.

12 COMMISSIONER SHAPIRO: Thank you. That's all, Mr.
13 Chair.

14 CHAIRPERSON HILL: Okay.

15 Anyone else have questions? Take your time and just --

16 VICE CHAIR JOHN: So I had a question, and I'm not sure
17 what the answer is, but could that space be used for storage?

18 MS. PRINCE: That -- I believe so. I don't -- I can't
19 say I've ever seen that, but mechanical equipment is usually
20 included in that category as storage.

21 VICE CHAIR JOHN: Okay.

22 MS. PRINCE: -- but what a gross under-utilization of
23 the space.

24 VICE CHAIR JOHN: Thank you.

25 MS. PRINCE: And Mr. Phillips has joined us.

1 CHAIRPERSON HILL: Okay.

2 Did you want some testimony from Mr. Phillips, Ms.
3 Prince?

4 MS. PRINCE: I do.

5 CHAIRPERSON HILL: Okay.

6 Mr. Phillips, can you hear me? Mr. Phillips, can you
7 hear me?

8 MR. PHILLIPS: Can you hear me?

9 CHAIRPERSON HILL: Yes.

10 MR. PHILLIPS: Sorry about that. This is my first time
11 using Webex, which is a travesty given the pandemic, so I
12 apologize.

13 CHAIRPERSON HILL: Sure. That's right.

14 Mr. Phillips have you take -- Mr. Moy, does he need the
15 oath administered?

16 MR. PHILLIPS: I'm sorry, what was that?

17 CHAIRPERSON HILL: One moment, Mr. Phillips.

18 MR. PHILLIPS: Okay.

19 CHAIRPERSON HILL: Mr. Moy.

20 MR. MOY: Mr. Phillips, if you haven't signed up for
21 access into Webex then that means that I would need to administer
22 the oath to you now.

23 MS. PRINCE: He did sign up. That's how he's
24 participating in the hearing.

25 MR. PHILLIPS: I did. Yep, I did sign up.

1 MR. MOY: Very good. Very good.

2 CHAIRPERSON HILL: All right. Okay. All right.

3 Mr. Phillips, you can go ahead and provide your
4 testimony.

5 MR. PHILLIPS: Sure. So my name is Eric Phillips. I'm
6 with the applicant.

7 COMMISSIONER SHAPIRO: Mr. Chair.

8 CHAIRPERSON HILL: One moment Mr. Phillips. Mr.
9 Shapiro.

10 COMMISSIONER SHAPIRO: I just wanted to check to see if
11 Mr. Phillips is audio only on purpose or is he aware that we can't
12 see him?

13 CHAIRPERSON HILL: Mr. Phillips, are you choosing not to
14 use your camera, which is fine.

15 MR. PHILLIPS: I'm choose -- yeah. I'll just use my
16 computer the way it's set up, but I can turn it on if that's
17 preferred.

18 CHAIRPERSON HILL: That's okay. Go ahead. Thank you.

19 MR. PHILLIPS: So I'm with the applicant, 1730
20 Pennsylvania Avenue, LP, and I appreciate you taking the time to
21 hear our application today.

22 So as you all know, 1730 Pennsylvania Avenue is a 12-
23 story office building located on a prominent site in Pennsylvania
24 Avenue just east of the intersection with 17th Street. So the
25 building was constructed approximately 50 years ago and

1 | accordingly, has a mechanical penthouse that is outdated and
2 | unnecessarily large. So the building currently operates on two
3 | separate mechanical systems, which are inefficient by today's
4 | standards. So these older systems take up more penthouse
5 | mechanical space than a modern system. So we plan to upgrade the
6 | systems to a new air handling system which will involve more
7 | efficient units located on each floor of the building. And so by
8 | August of 2021, we will have completed that upgrade.

9 | We are proposing to convert this portion of the existing
10 | mechanical penthouse to either a shared tenant amenity space or
11 | dedicated space for an office tenant. We are seeking your
12 | approval today to allow this penthouse habitable space.

13 | We are also proposing to improve the existing temporary
14 | canopy by installing a permanent canopy in its place. This
15 | permanent canopy is shorter than the existing penthouse structure,
16 | so we are also seeking relief to allow a non-uniform penthouse
17 | height.

18 | We've also engaged with the Secret Service as part of
19 | this proposal and representatives from the Secret Service did a
20 | walkthrough of the penthouse and roof on February 5th of 2021.
21 | The Secret Service expressed no concerns to the proposed plans and
22 | stated that this project will have no impact to White House
23 | operations. A letter of support from the Secret Service is in the
24 | record of this case as Exhibit 33.

25 | We're also happy to report that we have the support of

1 ANC 2A. We presented the project to the ANC's March 17th, 2021
2 meeting and the ANC unanimously approved the application with no
3 exceptions.

4 One thing I'd like to add is that the existing outdated
5 mechanical system will need to be removed regardless of the
6 Board's approval. So in order to make the building more
7 efficient, if the Board denies a request for penthouse habitable
8 space, a significant portion of an already existing penthouse
9 structure will be rendered unusable and will simply be idle space.
10 Thank you.

11 COMMISSIONER SHAPIRO: You're on mute, Mr. Chair.

12 CHAIRPERSON HILL: Thanks, Mr. Shapiro.

13 So does the Board have any questions for the Applicant
14 or anyone at this point, and, if so, please raise your hand?
15 Okay. I'm going to turn to the Office of Planning.

16 MR. KIRSCHENBAUM: Good afternoon, Mr. Chairman, and
17 members of the Board of Zoning Adjustment. I'm Jonathan
18 Kirschenbaum with the Office of Planning and recommend approval of
19 the use variance and also for a special exception for the canopy.
20 And we agree with the arguments that the applicant has made. And
21 I can stop there, or I can further elaborate on anything that you
22 need me to elaborate on, please let me know. Thank you.

23 CHAIRPERSON HILL: Okay. Does the Board have any
24 questions for the Office of Planning and, if so, raise your hand?

25 Mr. Shapiro?

1 COMMISSIONER SHAPIRO: Sure. I just want to make sure
2 Mr. Kirschenbaum that your approval is based upon the now changed
3 variance that we're looking at.

4 MR. KIRSCHENBAUM: This is based on the use variance.

5 COMMISSIONER SHAPIRO: Okay. Thank you.

6 CHAIRPERSON HILL: Let's see. Ms. John.

7 VICE CHAIR JOHN: So can you comment on the undue
8 hardship aspect of the burden of proof, and also comment on
9 whether storage would be an acceptable use?

10 MR. KIRSCHENBAUM: Sure. So the undue hardship would be
11 that the large majority of this penthouse be used as mechanical
12 space anymore. So they have to -- and the only thing that's
13 allowed as matter of right is mechanical penthouse space. Because
14 of that, I do not believe that the storage use would be allowed in
15 the penthouse (audio interference). Only mechanical space is
16 allowed, so I think it's reasonable enough to say that storage
17 should not be allowed. As a result of all this, the penthouse
18 cannot be used for any other use other than mechanical, and the
19 applicant has argued, we believe successfully, that they would
20 like to upgrade the mechanical space and consolidate the existing
21 systems that they have which results in this unused, you know,
22 obsolete space that they would like to use for higher and better
23 use.

24 CHAIRPERSON HILL: Okay. Anyone else have any questions
25 for the Office of Planning? Mr. Smith.

1 BOARD MEMBER SMITH: Could you comment on the first
2 problem, the unique physical aspect of the particular property.
3 What we've heard from the applicant is that because of, you know,
4 advances in technology, they don't need that size of penthouse.
5 To me, that seems like that is a fairly common issue that would
6 arise for any building that was constructed prior to probably 1980
7 or 1990. Could you comment on that unique physical aspect? And
8 I'm starting with that.

9 MR. KIRSCHENBAUM: So to reiterate (audio interference).
10 The (audio interference) is unusually large. I am, the (audio
11 interference) for the many applications in our downtown and what
12 applicant was seeking, I did review some other applications and
13 mechanical penthouses do not seem to be this large anymore. For
14 cases that the Board has recently reviewed, mechanical penthouses
15 have been reduced in size. In size, they're either being used as
16 (audio interference) penthouse space or to be used as a -- of a
17 building. But what is unique about this case is that this is
18 located in the White House security zone. And all the other
19 penthouse scenarios that the Board has recently reviewed they have
20 been outside of penthouse security -- the White House security
21 zone and, you know, this issue has not risen, you know, and -- I
22 believe it's about that.

23 BOARD MEMBER SMITH: Okay. Since this is also a case
24 that can't be decided until -- looks like next week. Can you
25 provide the information to us or to the final decision about your

1 research in prior of the cases downtown?

2 MR. KIRSCHENBAUM: Yeah. I mean this is a very, very
3 (audio interference) research just to get a sense of the size of
4 the other penthouses. But again, the unique situation for us that
5 this is an unusually a large penthouse that cannot be used for any
6 other use other than mechanical penthouse use and it's off (audio
7 interference) meet space at the moment. And, you know, I think
8 it's also important also just -- also reiterate that there will be
9 no (audio interference) in the purpose and integrity if there's
10 only regulations. The intent of this prohibition against
11 penthouse habitable space is to provide security in the area
12 around the White House. The whole intent of this prohibition is
13 to ensure that the Secret Service can review these penthouses.
14 They did not get -- that did not get translated -- that's very
15 (audio interference). It was not to just totally wipe out any
16 habitable space in this area. It was really supposed to be a way
17 for the Secret Service to review these penthouses. Unfortunately,
18 it kind of got translated this way and that's why we're here and
19 that's why a variance is needed. The intent is to have the Secret
20 Service review these penthouses. And this penthouse is legally
21 conforming. The enclosure itself is legally conforming to the
22 dimensional standards, and it has been reviewed by the Secret
23 Service and they have given their sign off for the space to be
24 used as habitable penthouse space.

25 BOARD MEMBER SMITH: Okay

1 CHAIRPERSON HILL: Okay. Thank you. Let's see.

2 Ms. Prince, again, what was it -- how much is going to
3 Trust Fund again?

4 MS. RPINCE: 300,000 based on the usable area of the
5 penthouse and the land value. That's the formula.

6 CHAIRPERSON HILL: Yep. Okay. All right. Does anybody
7 have anything else?

8 Ms. Prince, do you have any questions for the Office of
9 Planning?

10 MS. PRINCE: I do not.

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

13 MR. YOUNG: We do not.

14 CHAIRPERSON HILL: Okay.

15 Ms. Prince, I guess, I don't know if -- so we -- because
16 of the notice issues, I don't know if you -- I don't know if this
17 has been explained to you, but I can't -- we can't decide this
18 today. Okay, great. So April 14th is when we can come back on
19 this, okay. And so that is -- oh, that's in a week. And so -- I
20 don't know whether you want to supplement the record in any way?
21 I mean I'm looking at your -- the Exhibit 8, which is your
22 argument for the area variance, and you would have probably
23 changed that argument very much, correct?

24 MS. PRINCE: I mean I feel like we need both burdens.
25 It's a tougher burden for use variance but I believe we've

1 demonstrated the uniqueness --

2 CHAIRPERSON HILL: I understand. You don't need -- you
3 don't want to -- you don't need to -- you don't want to change
4 anything or add anything to the record is what I'm asking. The
5 reason I'm asking that is because I'm going to again, go back to
6 all of the exhibits that are in the record in order to come to my
7 decision, so you're fine with everything' that's why I'm asking.

8 MS. PRINCE: We're happy to provide additional
9 information if the Board would find it helpful. It seems like one
10 of your Board members has requested additional information. We
11 have measured penthouse sizes of nearby penthouses if that would
12 be possible to show uniqueness because this isn't just any kind
13 penthouse from that era. It's a truly unusually large penthouse.

14 CHAIRPERSON HILL: Got you.

15 Mr. Smith, is that what you were asking for?

16 BOARD MEMBER SMITH: Yes.

17 CHAIRPERSON HILL: Okay.

18 All right. Ms. Prince, if you can provide something
19 like that. Do you think you can do it by well, by Monday?

20 MS. PRINCE: Sure. Absolutely.

21 CHAIRPERSON HILL: Mr. Moy, do I then need to leave the
22 record open for some reason? I can't remember if they submit
23 something.

24 MR. MOY: Well, the record will be open, of course, in
25 order for the applicant to make their filing. And the deadline is

1 Monday -- that would be Monday, the 12th for their filing.

2 CHAIRPERSON HILL: Actually, can you --

3 Ms. Prince, can you do it by Friday?

4 MS. PRINCE: Sure. Absolutely.

5 CHAIRPERSON HILL: Okay. Let's do it by Friday.

6 MR. MOY: Yeah, that would be better.

7 CHAIRPERSON HILL: Okay. Let's see. Then -- okay, I
8 guess that's it. Mr. Smith.

9 BOARD MEMBER SMITH: I have one question for Mr. Lawson
10 very quickly.

11 CHAIRPERSON HILL: Sure. Go ahead.

12 BOARD MEMBER SMITH: In the -- with the penthouse
13 changes that are proposed before the Zoning Commission, this
14 question I will -- this contribution that they are required to
15 make, does that go away if this changes to a special exception?

16 MR. LAWSON: It does not. The contribution is required
17 for any habitable penthouse whether it goes through the BZA or
18 Zoning Commission process or not. The calculation will change a
19 little bit, but it definitely does not go away. The exact amount
20 of the contribution would be calculated at the time of actual
21 building permit application. I suspect it'll be very close to
22 what Ms. Prince has said it would be.

23 BOARD MEMBER SMITH: Okay. Thank you.

24 CHAIRPERSON HILL: Okay. Does anybody need anything?
25 Yeah. Sure, go ahead, Mr. Shapiro first, and then I think I saw

1 Ms. John's hand.

2 COMMISSIONER SHAPIRO: All right. Thank you, Mr. Chair.
3 I mean this is a bit of a complicated process question, but I'm
4 not available on April 14th. So, you know, I'm trying to -- we
5 are not to deliberate and I'm trying to get a sense of the body.

6 CHAIRPERSON HILL: I understand. So then we'll come
7 back then on the 21st, Ms. Prince. And it still has -- the 21st
8 is bad, Mr. Moy?

9 MR. MOY: Well, everything is relative, I mean we do
10 have an appeal of that case, but --

11 CHAIRPERSON HILL: You have -- is that the day with two
12 appeals?

13 MR. MOY: That's -- no. No. That day I have one, one
14 appeal, multiple cases. I'm still moving things around so I can
15 make this available if you want to come back to this on April 21st
16 while it's fresh in your mind.

17 CHAIRPERSON HILL: Mr. Shapiro, are you available on the
18 21st?

19 COMMISSIONER SHAPIRO: If it were the first case, I can
20 make it work.

21 CHAIRPERSON HILL: Okay. Well, we're going to be
22 deciding, so it is going to be the first case. I mean meeting --
23 it's a meeting, not a hearing.

24 COMMISSIONER SHAPIRO: Thank you.

25 CHAIRPERSON HILL: Okay. So there you go, I guess.

1 Okay.

2 MS. PRINCE: I have some comments in closing.

3 CHAIRPERSON HILL: Sure, of course, Ms. Prince.

4 MS. PRINCE: So thank you for your time today. I
5 greatly appreciate it. Just to reiterate. Our hesitancy in
6 waiting for the final rulemaking on the change to the penthouse
7 regulations is purely timing related, we don't want to jeopardize
8 the project, we don't want to jeopardize the payment to the city.
9 For the building to maintain its competitive advantage it needs to
10 be able to have the space and time is an issue. Otherwise, you
11 know, clearly, (audio interference) put this off. But then (audio
12 interference) and saw how unusually large our penthouse was and
13 realized that it was a direct result, as a direct result of this
14 unique condition, we do have space that we no longer need because
15 of technological advances. And to deny this application would
16 deny us any reasonable use of this property.

17 And in answer to Ms. John's question, because I've had a
18 chance to look it up, storage is not permitted. Storage is only
19 permitted -- storage is considered habitable space, so even
20 storage would require the approval of this Board. So were you to
21 deny this application, it would be denied any use of the property
22 except for mechanical equipment use, which we don't need because
23 we are modernizing the building. You don't often see use
24 variances and I wouldn't argue this if I didn't feel strongly that
25 we meet the burden of proof, but this property is unique. And as

1 a result of its uniqueness, there is clearly undue hardship in a
2 failure to grant the application. The space is already there. It
3 is existing space that would literally lay fallow if you don't
4 accord permission to use it for the purpose of the rest of the
5 building, the same purpose as the rest of the building, so I
6 strongly urge that you approve the application. And that you
7 don't subject us to the delay of waiting for the final rulemaking
8 on the special exception case, but that you let that enter into
9 your consciousness as you think about the Office of Planning's
10 attitude toward this use. It's one that they want to encourage,
11 it's one they want to incentivize, and it's certainly very
12 consistent with the mayor's goal of working hard to solve the
13 affordable housing problem in the city. And if delay -- if
14 there's delay and we lose our competitive advantage as a result of
15 the delay, the penthouse doesn't get built and the payment doesn't
16 get made. So I really ask you to seriously consider all these
17 arguments. We'll produce more evidence in the record to show the
18 penthouse is unusually large and that the enclosed space of the
19 penthouse literally will lay fallow if you don't decide the
20 application in our favor. Having said all of this, I don't want a
21 denial from this Board, so I will certainly be withdrawing the
22 application if during the decisional meeting if it appears that
23 you are leaning toward denial, but I certainly hope that it
24 doesn't go in that direction because I think we do meet the burden
25 of proof.

1 CHAIRPERSON HILL: Okay. This is what I'm going to do.
2 All right. So, Mr. Shapiro, you're going to join us on the 21st,
3 correct? And you are going -- we're going to do this first,
4 right? So if we do this first, how much time do we actually get
5 with you?

6 COMMISSIONER SHAPIRO: About a half hour.

7 CHAIRPERSON HILL: Half an hour? Okay. So that's 9:30
8 to 10. All right. So Mr. Moy, I want to put this on as a
9 continued hearing. So we're going to do a continued hearing at
10 9:30, okay. So we'll do a continued hearing 9:30 on the 21st and
11 if we got any questions, we can ask them at that time of the
12 applicant, okay? All right. Okay. So then let's see. I asked
13 for the people around, everyone is around. Okay. So then that's
14 it. I guess I will close the record except for the information
15 that we've asked for from the applicant and then we'll come back
16 on the 21st first thing for a continued hearing, okay. Thank you.

17 Well, Ms. John, before you leave. Ms. John, you had a
18 question?

19 VICE CHAIR JOHN: Mr. Chairman, did you mean to say that
20 you would close the record because, as I recall, the record has to
21 remain open?

22 CHAIRPERSON HILL: No. Yeah, I'm sorry. Well, I
23 thought (audio interference). I was going to close the record
24 except for the filings that I asked for. But what you're
25 clarifying is the fact that it's a continued hearing and the

1 record is not closed. Is that's what you're trying to say?

2 VICE CHAIR JOHN: Yes, yes.

3 CHAIRPERSON HILL: Okay. Perfect. Fine. So there you
4 go. So appreciate that. And I will see you guys on the 21st.

5 VICE CHAIR JOHN: Thank you.

6 CHAIRPERSON HILL: Bye-bye. Give me one second. Okay.
7 All right. So let's take a five-minute break, okay; a 10-minute
8 break. Just a really quick break and then come on back, okay?

9 (Whereupon, the above-entitled matter went off the
10 record and then resumed.)

11 CHAIRPERSON HILL: Mr. Moy, if you could call us to our
12 last case and then, Mr. Young, if you could bring the participants
13 in.

14 MR. MOY: All right. Thank you, Mr. Chairman. So the
15 Board is back in session once again and the time is at or about
16 2:40 p.m., and the last application before the Board on today's
17 docket is Case Application No. 20377 of 16th Street Residential,
18 LLC. This is captioned and advertised for a special exception
19 under the use provisions of Subtitle U, Section 420.1(g); and area
20 variance from the distance requirements of Subtitle U, Section
21 420.1(g) (5). This would allow a ground floor café to be
22 accessible to the public as an accessory use to an existing
23 apartment house in the RA-4 Zone, and this is at premises 1630
24 Columbia Road, Northwest, Square 2578, Block 834, and that's it.

25 CHAIRPERSON HILL: Ms. Moldenhauer, could you please

1 introduce yourself for the record?

2 MS. MOLDENHAUER: Good afternoon, Meridith Moldenhauer
3 from the law firm of Cozen O'Connor here today on behalf of the
4 applicant.

5 CHAIRPERSON HILL: Okay, great. Who do you have with
6 you?

7 MS. MOLDENHAUER: I believe, Ms. Richardson. Hope
8 Richardson should be admitted as a witness and is not. Yep, now
9 she is. And also, Anthony Lanier.

10 CHAIRPERSON HILL: Okay: Okay. Ms. Moldenhauer, if you
11 want to go ahead and provide your argument as to why you believe
12 you're meeting the criteria for us to grant the requested relief.
13 I'm going to put 15 minutes on the clock just so I know where we
14 are, and you can begin whenever you like.

15 MS. MOLDENHAUER: Sure. We had uploaded a PowerPoint
16 this afternoon and we're going to ask the Board to admit that into
17 the record. I apologize for failing to file it within the 24-hour
18 time period. It is being sent --

19 CHAIRPERSON HILL: I understand. Let me go ahead. I
20 want to waive the time requirement because I want to see the
21 PowerPoint presentation. So unless the Board has an issue and, if
22 so, raise your hand? No one is raising their hand. If the staff
23 could please upload the PowerPoint into the record.

24 And then I guess, Mr. Young, do you have it?

25 MR. YOUNG: I do.

1 CHAIRPERSON HILL: Okay. I guess if you can bring that
2 up for Ms. Moldenhauer. And then you can begin whenever you'd
3 like.

4 MS. MOLDENHAUER: Okay, great. So the first is the
5 image of the project and what I'm going to do is, you can turn to
6 the next slide. The (audio interference) is where the property is
7 located in an RA-4 Zone. And the property is the section that you
8 see highlighted as well as the other portion that would then
9 connect the property to 16th Street.

10 At this point, if we can turn to the next slide, I'm
11 going to turn it over to Ms. Richardson on behalf of the applicant
12 and developer to walk through the project and answer some initial
13 questions for the Board before I walk through the specific zoning
14 relief sections.

15 MS. RICHARDSON: Good afternoon, Mr. Chair. Good
16 afternoon, members of the Board. My name is Hope Richardson and I
17 work for EastBanc, a developer here in Georgetown. I'm just
18 introducing the project today, 1630 Columbia Road, now known as
19 The Silva. It's at the intersection of Columbia and Mozart, right
20 off 16th Street, as Meridith mentioned.

21 The building is almost complete. So what we're showing
22 on this slide is the building permit that is actually the renewed
23 one; the initial one was issued in September 2019 that has a by
24 right community dining room on the ground floor listed as part of
25 the description of work. So that is for use solely by tenants and

1 their guests. I also wanted to mention and reiterate that this
2 project was entitled as an addition to the Scottish Rite Temple
3 located at 2800 16th Street and Lot 835.

4 Next slide, please. So for today's proposal we're
5 looking at allowing the use of our newly completed building
6 scheduled to open in July, a cafe space for use by the general
7 public in Subtitle U 420.1(g) to be permitted as a non-residential
8 adjunct use by special exception.

9 Next slide please. We included here a ground floor plan
10 of the building as it's under construction. In green, we have the
11 cafe. It's tucked away facing the central courtyard we have
12 between the Scottish Rite building fronting on 16th Street and our
13 apartment building 172 units at the corner of Columbia and Mozart.
14 So the cafe faces the interior courtyard and opens into the
15 interior courtyard and is also right adjacent to our meaningful
16 connection to the Scottish Rite Temple, which is visible in gray
17 at the north edge of that interior courtyard.

18 Next slide, please. And what would be important to talk
19 about the concept for this café, so foremost, for us, it's
20 providing an amenity to our residents. We've been increasingly
21 looking to compete with our apartment offerings, especially on
22 service, so we really like to think of our apartment buildings
23 offering a hotel-like experience to our tenants. So this cafe is
24 to provide all day, seven day a week service including alcohol
25 service for sort of a casual either eat in experience or grab and

1 go experience. It is a mix of sort of tables and chairs and
2 lounge seating, and plenty of outdoor seating in that interior
3 courtyard and is designed to be sort of part of the lobby
4 experience. It is right off the residential lobby; you would walk
5 by it coming out of the building as a tenant and it's right sort
6 of where the Scottish Rite Temple connects to this addition. So
7 while we have originally conceived of this as an amenity to our
8 residents, we would like to have this be an asset, this new
9 building be an asset to the broader community.

10 Next slide, please. And we did want to outline our
11 community outreach. We've been working on this project since
12 2015, when we started the public space process. This also was
13 reviewed extensively as part of the Meridian Hill Historic
14 District by HPRB and the community as part of that phase of
15 entitlement. More recently, we presented about this special
16 exception application and received unanimous support from the ANC.
17 We also received support from the Office of Planning, DDOT, HPRB,
18 so we're excited to bring it in front of the Board today.

19 Next slide. I think at this point, I'll stop for
20 questions. And then Meridith can get into more details on the
21 legal side of the zoning relief.

22 CHAIRPERSON HILL: I guess Ms. Richardson, why don't we
23 just go ahead and go through the slide presentation and then we'll
24 come back with any questions from the Board.

25 MS. RICHARDSON: Okay.

1 MS. MOLDENHAUER: Sure. So thank you, Mr. Hill. I'd
2 also just like to mention as well as what Ms. Richardson stated
3 about community outreach. We also have two letters in the record,
4 Exhibit 34 and 35, letters from abutting property owners including
5 the Washington Family Church and the Modera Sedici.

6 So the relief here that we're asking for is a special
7 exception. As indicated by Ms. Richardson, the property already
8 is being built for an adjunct community dining within an
9 apartment. And so an adjunct community dining facility is
10 permitted by right and it is permitted and being constructed.
11 Under Section U 410.1(g), that by right use is only allowed for
12 tenants and their guests. Here, we seek special exception relief
13 under for 420.1(g) to expand that to any non-residential adjunct
14 use. So changing it from the current permitted by right use of
15 tenants and guests to opening that to a more broader population
16 under special exception for non-residential adjunct, meaning
17 anybody who is not a resident of the building.

18 Under this section, special exception relief there are
19 six different conditions, and we meet five of those six
20 conditions. We are asking for an area variance from one of those
21 six conditions, which is the proximity of the principal entrance
22 to the MU Zone.

23 Next slide. This is a list of the required conditions.
24 And as I indicated, we meet all of these and most of this was
25 actually kind of also walk through by Ms. Richardson in regard to

1 kind of how the building is laid out in regards to the main level,
2 floor of the main level, no entrance from the outside of the
3 building, not visible from the sidewalk. As you could see from
4 the initial image of the project, no signage, advertising the
5 adjunct use. As we indicate, number five is the section in which
6 we are asking for a variance, so I'll get into that in a moment.
7 And then there are additional factors in regards to the interior
8 patio, which we also meet.

9 Next slide. Interestingly, enough, here, the Board of
10 Zoning Adjustment, in addition to the six conditions that they
11 have to consider, the regulations outline factors that can be and
12 should be considered by the Board. This includes the proximity to
13 the MU and NC Zone. As shown here in this image, that zone and,
14 you know, is typically obviously, there's some portions of the
15 property that are close to the MU and NC Zone, but the hubs, the
16 hub at Columbia Heights near the USA project, the corner of
17 Columbia downtown -- kind of Columbia area near The LINE Theater,
18 and The LINE DC Hotel are further away than the closer proximity
19 of a one quarter mile for the site.

20 Then, in addition to that, the Board can consider the
21 adequacy and convenience of parking spaces existing in or for the
22 MU, NC Zone. I would note that the Office of the Department of
23 Transportation at Exhibit 32 filed their report prior to the
24 Office of Planning's report, and they did acknowledge that this
25 potential use, even if opened without the condition of OP but

1 rather to anybody in the general public, would have no objection.
2 They acknowledge that the potential use would potentially increase
3 some level of pedestrian and minor vehicular use, but they did not
4 find any objection. And given the fact that the Board should give
5 great weight and rely upon their agencies, we believe that, you
6 know, that was also a factor for the Board to consider in regards
7 to looking at Section 7B as to adequacy of parking.

8 Section 7C asks the Board to consider the adequacy and
9 scope of commodities and services provided within the MU and NC
10 Zone. Here, we have outlined in our pre-hearing statement, a
11 whole host of additional analysis in regards to the fact that
12 there is insufficient or inadequate scope of commodities,
13 specifically limiting that analysis to other food and eating and
14 drinking establishments, differentiating this proposed use from
15 that. I would also note for the Board that typically when the
16 Board analyzes special exception or variances cases, they're
17 typically told that they can't look at the benefit of a project;
18 they can only look at the adverse impact or a detrimental impact.
19 Here, however, this section for the special exception actually
20 specifically gives you the ability to look at the adequacy and the
21 scope of amenities and services. So I would say to you that it
22 actually gives you the ability to evaluate that this would be a
23 benefit to the public good and a benefit to provide additional
24 amenities and scopes of services that are not currently there.
25 And I think that that is strongly stated by the ANC, by the

1 community outreach that EastBanc has been endeavoring since 2015
2 on this project, as well as the record.

3 Finally, it requires the Board to look at the size and
4 character of the apartment house since the tenants of the
5 apartment house would be expected to furnish all and substantial
6 amounts of the financial support. Here, as you've heard from the
7 applicant stated that this is an amenity that they are looking to
8 provide, that this would be a hotel like service both for the
9 tenants, and so we believe that that is satisfied and that would
10 be something that would be an amenity to both the tenants and
11 would be sufficient to satisfy that condition.

12 Next slide. Now, looking at the single section for the
13 variance that we're asking for under the special exception, we
14 look at the three-prong test. Under the exceptional condition,
15 the apartment building is an existing -- is an addition to the
16 existing Scottish Rite Temple and Scottish Rite Temple site
17 connected as part of a single record lot here at this property.
18 The meaningful connection operates as one building. There were
19 comments in the record questioning the meaningful connection.
20 This meaningful connection has been permitted and approved. And
21 just because the physical condition exists for access, the
22 distinction that we are making here is that under the permitted by
23 right use, just because you have physical access from the Scottish
24 Rite Temple, it would not allow without this relief to be granted
25 the use by the Scottish Rite Temple members. And that directly

1 relates to and is a proximate cause for practical difficulty. By
2 having non-residents who can physically access it, non-residents,
3 including Scottish Rite individuals, as well as members from the
4 public who attend Scottish Rite events, can physically access the
5 cafe but could not use it, would create an undue and unnecessary
6 burden on the property, creating an obligation to police and
7 create challenges with identifying who is permitted or not
8 permitted to use the property.

9 Given this -- next slide. We believe that the first and
10 second prong have been satisfied and that there is no detriment to
11 the public good or zone plan here. The special exception relief
12 specifically allows for non-residents, so anybody other than a
13 resident, a.k.a. the general public, to use a accessory cafe or
14 service use in an apartment building by special exception. We
15 here are asking for one variance from those special exception
16 conditions, that the cafe conceptually offers a unique
17 establishment that is differentiated from the existing hub of
18 services that are nearby, that the current community and number of
19 residents in this area can utilize and can have the benefit of
20 more commercial uses or more establishment in this area, and that
21 the unanimous support of the ANC clearly demonstrates that there
22 is no adverse impact to the public good or to the zone plan, and
23 that there is specifically a demand or need for this potential
24 cafe concept.

25 Next slide. As is noted in our pre-hearing statement

1 and in the Office of Planning report, the Applicant has, as in
2 many cases, engaged in an extensive dialogue with the Office of
3 Planning throughout the process, and did indicate that, you know,
4 if the Board deems it necessary, that the applicant would agree to
5 the condition as identified here on this slide and as is
6 identified in the OP report. At that point, we will be able to
7 answer any questions and also obviously reserve an opportunity to
8 rebut any comments provided for during rest of the hearing.

9 MR. MOY: Mr. Chairman.

10 CHAIRPERSON HILL: Okay. Yeah, sure. Mr. Moy.

11 MR. MOY: Yeah. While there's a quick pause. Staff
12 informs me that both Ms. Richardson and Mr. Lanier have not signed
13 the oath, so I can administer that?

14 CHAIRPERSON HILL: Yep. That's great.

15 Whereupon,

16 HOPE RICHARDSON AND ANTHONY LANIER,
17 witnesses, first duly sworn, and was examined and testified as
18 follows:

19 MS. RICHARDSON: I do.

20 MR. MOY: Thank you.

21 CHAIRPERSON HILL: All right. For the record, Mr.
22 Lanier mouthed "I do." And Ms. Richardson, the testimony that you
23 previously gave was all true and accurate, correct?

24 MS. RICHARDSON: That's correct.

25 CHAIRPERSON HILL: Okay. All right.

1 I haven't gotten to make my joke in a long time about
2 that oath thing. Okay. I'll wait until we're live again.

3 All right. Ms. Moldenhauer, did you have anything from
4 anybody else? For now, we're just going to do questions. You --
5 Mr. Lanier didn't say anything. Were you -- did you have him
6 testify for something?

7 MS. MODLENHAUER: No. He's here if there's any comments
8 that he needs to make or answers that need to be provided by him.

9 CHAIRPERSON HILL: Got it. I'm just going to go around
10 the table here with any questions. I'm going to start with you,
11 Commissioner Shapiro.

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

13 One question for Ms. Moldenhauer. So OP's condition
14 says non-resident use of cafe shall be permitted by members. It
15 does not say that non-resident use shall be limited to members and
16 others that have a programmatic connection. So essentially, as
17 I'm reading the condition, says that would allow that was
18 associated with Scottish Rite Temple -- Scottish Rite Center, and
19 everybody else; is that your intention?

20 MS. MOLDENHAUER: Our intention -- I guess this is
21 drafted in connection with the Office of Planning. And we would
22 like to be as broad as possible. How about that? I can answer it
23 in that way.

24 COMMISSIONER SHAPIRO: That's fine. That'll --

25 MS. MOLDENHAUER: And I think Mr. Cochran will

1 definitely be able to respond to that from OP's perspective.

2 COMMISSIONER SHAPIRO: Okay. That's all I have -- I'm
3 sure I'll have questions later. That's all I have for now, Mr.
4 Chair.

5 CHAIRPERSON HILL: Okay.

6 Mr. Smith, do you have any questions?

7 BOARD MEMBER SMITH: I don't have any right now.

8 CHAIRPERSON HILL: Ms. John, do you have any questions?
9 You're on mute, Ms. John.

10 VICE CHAIR JOHN: Just a clarification.

11 So the applicant made the decision to build this
12 apartment building as part of a meaningful connection to the
13 Scottish Temple, so we have two separate uses in this one
14 building. Can you respond to the question that this hardship is
15 self-created, that the applicant didn't have to create a building
16 with a meaningful connection between these two parts and that was
17 the applicant's choice to take advantage of the zoning benefit.
18 So if you could address that issue as to whether or not this is a
19 self-created hardship.

20 MS. MOLDENHAUER: So I would say that there really was
21 no choice in needing to connect the buildings. There are numerous
22 factors that required the buildings to be connected, such as
23 parking. The overall the fact that this was one record lot that
24 this was a connection between the two -- the Scottish Rite is
25 obviously still maintaining their portion of the property and this

1 | was originally a portion of their parking lot. And so the
2 | meaningful connection, I would respectfully disagree that this was
3 | not a choice, but rather a requirement of creating a development
4 | here. Furthermore, under the Associated Press of 1700 block of N
5 | Street that was established by the Court of Appeals in 1978, self-
6 | created hardship is not a barrier for an area variance, but only
7 | to be considered by the Board for a use variance. As this is an
8 | area variance, I would say that whether or not this -- even if the
9 | Board disagrees with me -- as to whether this is a self-created
10 | hardship or not, it is not something that the Board can consider
11 | as a bar for this relief pursuant to the 1700 block of N Street
12 | case.

13 | VICE CHAIR JOHN: But it is a fact?

14 | MS. MOLDENHAUER: Again, the fact is, I believe that --
15 | there's no other way to develop this site given the need for
16 | parking, given the need to provide the parking to the Scottish
17 | Rite Temple, and this used to be their parking lot. And so in
18 | order for the Scottish Rite Temple to be able to access the
19 | parking that is now under the apartment building, the meaningful
20 | connection was required. And for that to also be part of the
21 | requirement for that use because they had a pre-existing parking
22 | requirement associated with it, this still needed to be one
23 | development and one project.

24 | VICE CHAIR JOHN: Okay.

25 | MS. MOLDENHAUER: So there are many factors as to why

1 this was required for a development here.

2 VICE CHAIR JOHN: Okay. Thank you.

3 CHAIRPERSON HILL: Mr. Blake? No questions.

4 BOARD MEMBER BLAKE: No questions.

5 CHAIRPERSON HILL: All right.

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

7 MR. COCHRAN: Okay. Thanks, Mr. Chair.

8 Again, I'm Steve Cochran, representing the Office of
9 Planning in Case 20377. I had planned to just stand on the
10 record. But it sounds like there are a couple of things that need
11 to be cleared up with respect to the condition that OP has
12 recommended, which is also a condition to which the applicant has
13 agreed.

14 The intention of our condition was not to allow
15 attendance or patronage of the cafe by the general public coming
16 in from Columbia road, the main entrance to the apartment
17 building.

18 What we are trying to do with the condition is
19 accommodate the people who constitute the exceptional condition
20 that leads to the practical difficulty. Those people are the
21 people who use the Scottish Rite Temple or Center, as you will,
22 and who then have the ability to walk into the lobby of the
23 apartment building, and who would then have to be rather awkwardly
24 denied the ability to then sit in the cafe after they've already
25 come into the apartment building. The general public -- you know,

1 | if the Scottish Rite Center wanted to allow the general public to
2 | come into the center, take a look around and go into then the
3 | lobby and the café, yeah, that would be permitted by OP's
4 | condition, the condition to which the Applicant had also agreed.
5 | But no, not if they're just coming in from Columbia Road and they
6 | go through the security check or the security door to get into the
7 | apartment building. Then it would just be the residency, the
8 | apartment building, and their guests. After all, U 420.1(g)
9 | permits certain adjunct uses in the RA-4 Zone as accessory uses.
10 | And it explicitly says that those uses are to be designed to serve
11 | the tenants' daily living needs, not the general public's needs.
12 | So we're just trying to get -- or help the Applicant get around
13 | the awkwardness of not being able to seat people in the cafe that
14 | are technically part of the same building as the restaurant. And
15 | can go into this a little bit more. The public shouldn't be
16 | considered part of the practical difficulty that leads to the
17 | exceptional condition that would need to be alleviated with a
18 | variance. OP does think that writing the variance relief and then
19 | the special exception relief wouldn't pose a detriment to the
20 | public good of the zone plan as long as there's that condition in
21 | there that we've recommended. But without that recommended
22 | condition, the cafe would be open to the public as I've said, and
23 | it wouldn't be adjunct accessory use anymore. It would be the
24 | type of cafe that would typically be found in an MU Zone. And
25 | that's -- an MU Zone like the one that's just across Mozart Place

1 from the applicant's site, and an MU Zone where there are already
2 many cafes that could be patronized by the general public. It's
3 not like Adams Morgan doesn't have food service, cafes, et cetera,
4 but without the OP condition, granting a variance would be
5 contrary to the zoning plan, OP thinks. So that concludes our
6 testimony, but, of course, we're happy to answer any questions.

7 CHAIRPERSON HILL: Okay.

8 Does the Board have any questions for the Office of
9 Planning?

10 Ms. John? Ms. John, you're mute.

11 VICE CHAIR JOHN: Sorry.

12 So, Mr. Cochran, as I read the regulation, I might be a
13 little confused, so I'll grant you that up front. I thought that
14 a regular dining room is allowed as a matter of right. But the
15 cafe style, which is what is referenced in 401(g), needs a special
16 exception if it meets all these criteria.

17 MR. COCHRAN: I believe that you're -- you have a
18 misapprehension on this. Let me see if I can go back to the
19 record.

20 MS. MOLDENHAUER: Mr. Cochran, I don't believe she does.
21 I think she's correct.

22 MR. COCHRAN: Okay. Please explain why. I'm sorry. I
23 didn't understand that.

24 MS. MOLDENHAUER: Well, if you want to look at 410.1(g).

25 MR. COCHRAN: Okay. I see it.

1 CHAIRPERSON HILL: Mr. Cochran, what -- and Ms.
2 Moldenhauer, I just -- I'll come back and circle around.

3 Mr. Cochran, what were you going to say? You think that
4 Ms. -- and this is basically where it's coming back to you also
5 because I'm a little confused like -- they are allowed -- not
6 allowed. Yeah. They're allowed to have a dining area. It's a
7 common dining area, right?

8 MR. COCHRAN: That's correct.

9 CHAIRPERSON HILL: And then when -- in the regulations
10 they then went into 420.1(g), right? They can -- you're allowed
11 to do this under special exception. You know, "food, drugs,
12 sundries, personal services designed to serve the tenants' daily
13 living needs subject to the following conditions," -- subject to
14 the following conditions. And one of those conditions is five,
15 right --

16 MR. COCHRAN: That's correct.

17 CHAIRPERSON HILL: -- and that's the one that I'm kind
18 of stuck on. Like, I don't see how they get to do it because
19 they're not more than a quarter mile away from an MU Zone.

20 MR. COCHRAN: No question. That's why they're asking
21 for a variance from that. It's one of those weird situations
22 where you're asking for a variance from conditions in a special
23 exception. But there's a precedent for doing that and so that's
24 what they're doing.

25 CHAIRPERSON HILL: Okay. Where's the precedent?

1 MR. COCHRAN: Sorry. I'm -- I don't have that readily
2 at hand, but I do remember other cases where there have been
3 conditions where it hasn't said, as long as you meet all but one
4 of these conditions or two of these conditions, then this special
5 exception is permitted. This is one of those ones where you have
6 to meet every single one and I've -- I do recall when there have
7 been variances requested from special exception conditions.

8 CHAIRPERSON HILL: Okay.

9 Ms. John, did you get your question answered?

10 Ms. John, you're on mute.

11 MR. COCHRAN: Actually, I'm not sure I did respond to
12 Ms. John's question.

13 VICE CHAIR JOHN: I think it's clear. I looked at 410.
14 And 410 says, "As a matter of right, the applicant can have a
15 dining room." But if the applicant wants to have this adjunct
16 facility, which is like a cafe or what it describes as a hotel
17 like atmosphere, then it has to come to the Board for a special
18 exception to have persons other than tenants served by the
19 building, and the language is very particular for both the 410 and
20 the 420. And then once that's -- well not granted -- so that use
21 cannot be granted -- cannot be granted if the Applicant is within
22 a quarter mile of an MU Zone, which is the case here. So that's
23 why we're seeking relief from two provisions, right? One is the
24 one -- one would require the -- would allow the applicant to have
25 guests of the facility that are not tenants, and one that would

1 allow the location within the quarter mile radius.

2 MR. COCHRAN: Right.

3 VICE CHAIR JOHN: That's how I'm trying to understand
4 this.

5 MR. COCHRAN: The recommended OP condition is not
6 related to the variance. It's related to the overall special
7 exception if you grant the variance. And the accessory community
8 dining rooms are supposed to be solely for the use of tenants and
9 their guests, not the general public, according to G.

10 VICE CHAIR JOHN: That's correct. But 420 reads to me
11 to mean that tenants -- persons other than tenants could use that
12 facility by special exception provided they don't -- provided the
13 facility is not within that quarter mile. I think we might be --

14 MR. COCHRAN: Correct.

15 VICE CHAIR JOHN: -- in violation of the (audio
16 interference). Thank you.

17 CHAIRPERSON HILL: Okay.

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

20 BOARD MEMBER SMITH: (Negative head shake.)

21 CHAIRPERSON HILL: No.

22 Mr. Blake, do you have any questions for the Office of
23 Planning?

24 BOARD MEMBER BLAKE: (Negative head shake.)

25 CHAIRPERSON HILL: No.

1 Ms. Moldenhauer, do you have any questions for the
2 Office of Planning?

3 MS. MOLDENHAUER: Mr. Cochran, you just said that your
4 condition was connected to the special exception in general, but
5 in your report, you specifically tie it to the third prong,
6 practical difficulty of the variance test.

7 MR. COCHRAN: Sorry. I'm just looking at the report.
8 What page?

9 MS. MOLDENHAUER: Page 8.

10 MR. COCHRAN: You're absolutely correct. It's very
11 clear there that we did tie it to the granting of the variance.
12 With the recommended condition granting the variance should not
13 cause substantial detriment to the public good or zone plan.

14 MS. MOLDENHAUER: Thank you. No other questions for the
15 Office of Planning.

16 CHAIRPERSON HILL: Okay, great. All right.

17 Sure. Mr. Shapiro.

18 COMMISSIONER SHAPIRO: Thank you. Just a question for
19 Mr. Cochran.

20 Mr. Cochran, I know this is fairly (audio interference),
21 but I want to go back to my previous question and comment. Your
22 intention, if I'm understanding it, in supporting this and
23 conditioning this is that it would be restricted to those who are
24 associated programmatically, however, with the Scottish Rite
25 Center and -- or the apartment. That is your intention, right?

1 MR. COCHRAN: Sure. If they were able to meet all of
2 the special exception criteria without a variance, it would be
3 open through the -- yes, that my -- the intention was to address
4 the exceptional condition and the practical difficulty that they
5 have because the apartment building is connected to the Scottish
6 Rite Center. And the difficulty and awkwardness that there might
7 be if they have to say to people coming in from what's technically
8 part of their same building, "No, I'm sorry. You're not an
9 apartment building resident or guests, and therefore, you,
10 Scottish Rite Temple user can't sit down in this café."

11 COMMISSIONER SHAPIRO: I'm with you. So I just want to
12 make sure that you're -- because my read on your language does not
13 meet your intention. That's the only concern I'm expressing.

14 MR. COCHRAN: Honestly, this may be a byproduct of the
15 protracted discussions that I had with the applicant; we must have
16 gone back and forth four or five times on the language.

17 COMMISSIONER SHAPIRO: Okay. So --

18 MR. COCHRAN: The early language was very simple and
19 straightforward.

20 COMMISSIONER SHAPIRO: Yeah. Because my read on this
21 expan -- this is expansive, but not limiting. So and, you know, I
22 think on this condition, setting aside, there may or may not be
23 other issues, but on this condition, I would want this condition
24 to be expressly limiting to either residents or folks with a
25 programmatic connection. All right.

1 MR. COCHRAN: OP would have no objection to that.

2 COMMISSIONER SHAPIRO: Say again.

3 MR. COCHRAN: OP would certainly not have an objection
4 to that.

5 COMMISSIONER SHAPIRO: Yeah. So to do that, it just
6 needs to say that. It needs to say it is limited to those two
7 groups of people and this doesn't, right? You know, in the scheme
8 of things. It opens it up (audio interference).

9 MS. MOLDENHAUER: And so in other words, permitted
10 members and others.

11 (Crosstalk.)

12 MR. COCHRAN: That would (audio interference) something
13 like use of the cafe by non-residents or those -- or residents'
14 guests shall be limited to members, et cetera, et cetera.

15 COMMISSIONER SHAPIRO: Right. All it should do is limit
16 the use to -- right. That's right. So there's a little bit of a
17 language tweak that I'd be looking for for that, but there may be
18 other issues. But that's all I have for now, Mr. Chair. Thank
19 you.

20 MR. COCHRAN: If this is one of the cases where you
21 can't make a decision today, we'd be happy to submit that
22 language. Otherwise, if you can give me just a couple of minutes,
23 I can submit it.

24 CHAIRPERSON HILL: No, Mr. Cochran. We can't decide it
25 today.

1 MR. COCHRAN: Okay.

2 CHAIRPERSON HILL: So we can get some different language
3 to think about, you know, before we get there, but that does make
4 me think of something else that --

5 Mr. Moy if we wanted to start at 9 o'clock on a
6 particular day rather than 9:30, and if I wanted to start this
7 case on a particular day at 9 o'clock rather than 9:30, is there
8 anything with notice or anything like that?

9 The reason why I'm asking is we were going to be able to
10 come back on this for a continued hearing on the 21st, which is
11 when Mr. Shapiro's going to be back with us again, but he's
12 already told me he only has half an hour, and so I need to start
13 these guys at 9:00 a.m. on the 21st. And I guess Mr. Rice, you --
14 I just want to make sure I don't do anything wrong. And you all
15 can just think about that. Okay. I don't need an answer from you
16 just yet. Just think about it, right? Because if I let everybody
17 know that we're going to do this case at 9:00 a.m. on the 21st,
18 then if I'd given the public enough notice, that's all I'm trying
19 to figure out, okay. So we can come back to that.

20 Mr. Cochran, what picture is behind you?

21 MR. COCHRAN: The foyer of my apartment.

22 CHAIRPERSON HILL: Really?

23 MR. COCHRAN: Really.

24 CHAIRPERSON HILL: All right. I mean I won't ask
25 anymore. I can't do that --

1 MR. COCHRAN: I carried that (audio interference) back
2 from Morocco in my own backpack.

3 CHAIRPERSON HILL: Okay. There you go. And I've --
4 because you had some interesting stuff behind you before, so I had
5 to continue going with the line of questioning. All right. Okay.
6 So that's that one.

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

8 MR. YOUNG: No, but I do believe the ANC is here.

9 CHAIRPERSON HILL: Oh, great. Can you put them on?

10 MR. YOUNG: I believe they are. It's Mr. Benjamin Butz.

11 CHAIRPERSON HILL: Oh. Mr. Butz, can you hear me or
12 Commissioner Butz?

13 MR. BUTZ: Yes. Butz. But yes, I'm here.

14 CHAIRPERSON HILL: Butz. Commissioner Butz.

15 MR. BUTZ: Yes.

16 CHAIRPERSON HILL: Okay, great. You want to go ahead
17 and give your testimony Commissioner?

18 MR. BUTZ: Yes, definitely. So the record already has a
19 letter from the ANC, as well as Commissioner Gold submitted
20 testimony as well that I'm not going to repeat what they were
21 saying, but I did want to just stress that there was unanimous
22 support from the ANC in the November 4th meeting, that we did
23 think this was definitely a benefit. That was before my tenure.
24 And that's why I wanted to come and give public testimony to this
25 as well, and that the Single Member District Commissioner for this

1 area still supports this.

2 You know, we think that the (audio interference) off
3 concerns that I have been presented and in looking at the reports,
4 it doesn't seem to justify not letting the public access to this.
5 I'll say that my tenure, since January, that I've talked to a
6 number of residents. There's never been any issue or any concern
7 that has been raised to me about having any detriment to the
8 community. And then actually, opposite, there's a lot of
9 excitement to have this cafe as a new addition to our community.
10 So I just wanted to reiterate support of the relief requested with
11 no conditions.

12 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

13 Does anybody have any questions for the Commissioner?
14 Okay.

15 Commissioner, do you have any questions for anybody that
16 have given testimony?

17 MR. BUTZ: No, not at this time.

18 CHAIRPERSON HILL: Okay. All right.

19 Ms. Moldenhauer, do you have any questions for the
20 Commissioner.

21 MS. MOLDENHAUER: Commissioner, I think you already said
22 it, but I'll just ask it again. You don't think that this would
23 have any adverse impact on any abutting commercial uses in the
24 neighborhood?

25 MR. BUTZ: No. And actually, I think it'll be the

1 opposite of making it more attractive.

2 MS. MOLDENHAUER: Thank you. No other questions.

3 CHAIRPERSON HILL: Okay.

4 Mr. Cochran, can you hear me?

5 MR. COCHRAN: Yes, sir. I can.

6 CHAIRPERSON HILL: Okay. I mean, the question that I
7 have with you is really kind of going to this whole, you know, the
8 quarter mile, walking distance to an MU Zone. Like, your
9 condition, you're putting that in there to protect the MU Zone.
10 Is that why the condition is there?

11 MR. COCHRAN: Yes. It seems contrary to the intent of
12 the -- no -- excuse me. First off, it seems inconsistent with the
13 intent of the RA-4 Zone to allow use by the general public. And
14 it's -- it did seem to OP that given -- especially given the
15 number of vacancies in Adams Morgan, that there may be a detriment
16 to the Adams Morgan commercial district by being able -- by having
17 it go yet another block over towards 16th Street and be within the
18 Meridian Hill Historic District. Yeah.

19 CHAIRPERSON HILL: Got it. Okay. All right. Let's
20 see. All right.

21 MS. MOLDENHAUER: Can I ask questions?

22 CHAIRPERSON HILL: Sure. Go ahead. Ms. Moldenhauer.

23 MS. MOLDENHAUER: Sorry. Mr. Cochran, is there anything
24 in the record that supports that concern?

25 MR. COCHRAN: There is something in the record that

1 goes to the intent of the RA Zone. There are statements, but no,
2 there is not a study of the Adams Morgan commercial district that
3 can demonstrate that our concern is justified.

4 MS. MOLDENHAUER: And is there any evidence that there's
5 opposition or concern from any commercial operators that had
6 notice of this meeting?

7 MR. COCHRAN: I'm not sure that that's relevant.

8 MS. MOLDENHAUER: I'm asking the question, is there any
9 evidence in the record that there are concerns by commercial
10 operators?

11 MR. COCHRAN: No, there's not.

12 MS. MOLDENHAUER: That's all. No more questions.

13 CHAIRPERSON HILL: Okay. All right. Let's see. I do
14 have one question for Ms. Moldenhauer that I'm just trying to kind
15 of figure out how to ask. I mean -- well, first of all, I mean I
16 like to say -- I mean I love it, like Mr. Lanier, you know, you
17 guys do great work. EastBanc is great. You guys have been around
18 a long time. And I, you know, think that there -- I mean it's --
19 I'd love to see the cafe. I think it's a wonderful idea. I'm
20 just letting you know; I'm stuck with this regulation that I'm
21 still trying to struggle with. And I'm going to ask Ms.
22 Moldenhauer to again explain to me how in G, right, the whole
23 thing is -- I just don't see how you get around five, right. And
24 can you make your argument again how are you getting me to say
25 yes, when I don't see how you get around five, the whole quarter

1 mile walking distance to the nearest MU?

2 MS. MOLDENHAUER: Absolutely. I can address that Mr.
3 Hill.

4 So under Subtitle X, 1001.3, the zoning regulations
5 outline examples of area variances. Section 1001.3(f)
6 specifically says that "Preconditions to establish a special
7 exception use provided that a variance would not cause the
8 proposed use to meet the definition of more intense use." So that
9 section specifically allows for an area variance to be requested
10 from a condition required by a special exception. Here, we have a
11 special exception that has six conditions. We are asking for a
12 variance from this one, which the zoning regulations specifically
13 allow for.

14 In addition to that, there are other cases, BZA case
15 19600, which was a special exception use that asked for a variance
16 from one of the sub conditions was also evaluated and granted by
17 the Board as an example of asking for variance relief from one of
18 those conditions.

19 So I think the Board needs to first accept the fact that
20 this is a special exception use that the use of having a cafe in
21 an RA Zone is deemed to be an accepted use. We then have to meet
22 these conditions. We are asking to meet the variance test, to
23 your point, Chairman Hill, from the one quarter mile.

24 The reason why we're asking for the variance is because
25 obviously we're less than a quarter mile, but we do meet the

1 variance standard. So one, the property is unique. The property
2 is unique because we have a connected building with residential
3 units as well as non-residential uses that have access to each
4 other. So we have a unique condition where we have the Scottish
5 Rite members and people from the public who go to, as we said in
6 our filing, an organ program or public event that they host there,
7 obviously, once COVID is done and we're all back to normal.

8 You have individuals, both members of the Scottish Rite and
9 members of the public that are going to the Scottish Rite, that
10 would have the ability to peruse into this area and would have to
11 be told by the property owner, "We can't serve you." That creates
12 a practical difficulty. So the unique condition directly relates
13 the practical difficulty here, which would allow you to find a
14 variance from this quarter mile requirement. If you grant the
15 quarter mile relief, which OP agrees with and the ANC agrees with,
16 then you go back, you're -- you kind of revert back to the special
17 exception. And the special exception says, you can allow this use
18 for any non-resident by special exception, and we meet all the
19 other conditions. And we have the ANC here. We have three
20 letters from the ANC testimony supporting it, and we have
21 testimony. I think Mr. Shapiro is jumping in with a question.

22 CHAIRPERSON HILL: I'm sorry. Okay.

23 Go ahead, Mr. Shapiro.

24 COMMISSIONER SHAPIRO: I just want to keep it (audio
25 interference). And I'm not disagreeing with anything you're

1 saying, Ms. Moldenhauer. I'm just trying to stick with where --
2 with Chair -- where Chair Hill's question was because that's
3 really what I'm trying to get my head wrapped around. You're
4 saying that this is asking for a variance from one specific
5 requirement of a special exception. And if there's -- for me, if
6 I see that, okay, there's precedent for that, you know, on the
7 merits of this, I get it, you know. I get why this is -- it seems
8 like it's not an (audio interference), so it would bring value to
9 the community. I'm just looking at the regs before us. And I'm
10 trying to get a handle on examples of, and is it common enough
11 practice for -- I just can't connect it to my own experience.

12 CHAIRPERSON HILL: (Audio interference), Mr. Shapiro.

13 COMMISSIONER SHAPIRO: So that's really the piece that
14 I'm trying to get my head around, you know, when --

15 (Crosstalk.)

16 MS. MOLDENAUER: And I -- yeah. And I think that if --

17 COMMISSIONER SHAPIRO: -- variance to a condition of a
18 special exception.

19 MS. MOLDENHAUER: And I don't know if I can share my
20 screen, but the regs specifically say that you can do this. As I
21 said, it's Subsection X 1001.3(f), that that is a variance where
22 you have a variance from a condition to a special exception.
23 Also, (audio interference) a case example, 19600, which was a case
24 in which the Board found and approved a variance from a sub
25 condition for a special exception relief. You know, it's -- we

1 | can pull other cases, but yeah, that's one specific case, which,
2 | you know, is a case that got granted this exact type of approval,
3 | and the regs specifically say you can grant a variance from a
4 | special exception condition.

5 | COMMISSIONER SHAPIRO: (Audio interference) if I were
6 | sitting on that case.

7 | MS. MOLDENHAUER: I'll pull it and see who's on it.

8 | COMMISSIONER SHAPIRO: Please (audio interference).

9 | VICE CHAIR JOHN: Can I just jump in?

10 | CHAIRPERSON HILL: Yes, yes. Go ahead, Vice Chair.

11 | VICE CHAIR JOHN: I don't think that we can evaluate the
12 | variance for the sub condition. I don't think that that's the
13 | issue. I think the issue is how does the applicant meet that
14 | criteria for granting the variance to the quarter mile? That, for
15 | me, is the issue and that's what I heard from Chairman Hood, who
16 | was holding -- Chairman Hill, who is holding his head. But I just
17 | didn't want us to go down on the rabbit hole because I think
18 | that's the question Chairman Hill was asking, and that's my
19 | question that still remains on the table. And I want to just add
20 | to what Chairman Hill says, I am having a hard time understanding
21 | how the connected building will cause, you know, this hardship,
22 | practical difficulty in order to meet that quarter mile radius.
23 | That's the connection I can't make. How was --

24 | CHAIRPERSON HILL: Okay. Give me a second --

25 | VICE CHAIR JOHN: -- the quarter mile radius connected

1 to the combined building. I don't know.

2 CHAIRPERSON HILL: I guess I'm losing control. Okay.

3 Mr. Cochran, you've had your hand up for a while. What
4 did you want to say?

5 MR. COCHRAN: Yes. If this building were not connected
6 to the Scottish Rite temple, there probably would not be a
7 practical difficulty for the variance. It would simply be within
8 a quarter mile of a -- of an MU Zone. And there wouldn't be an
9 exceptional condition that so far would have been demonstrated as
10 requiring or necessitating the variance. But there is an
11 exceptional condition with the connection, because you got a bunch
12 of people milling around in the lobby, who are part of the same
13 building who have just come in from the other use in the building,
14 the Scottish Rite Center, and now can't sit down in what zoning
15 says is their own building, so that's a bit awkward.

16 But the problem we have is that if you don't have the
17 condition, then it seems like you're going against the intent of
18 G. If you look at it, it -- first off, it says it's designed to
19 serve the tenants' daily living needs. It then says there will be
20 no direct entrance to the adjunct from outside the building. If
21 this were intended to look at the general public go into the use,
22 do you think that the regulations would say that there shouldn't
23 be a direct entrance to the adjunct? No sign or display --
24 everything in there is just sort of speaking against this being
25 something intended for the general public.

1 It's intended for typically a large apartment building
2 that's not within easy walking distance, i.e., quarter of a mile
3 of an MU Zone. And the tenants need to be able to buy milk or
4 sugar or even, some instances I know, beer within an RA-4
5 apartment building. But not the general public, that's where --
6 that's why OP wants to be accommodating in terms of recommending
7 for this, for the people who constitute the exceptional condition,
8 but not for people who aren't part of the exceptional condition
9 i.e., the general public. I promise I won't raise my hand again.

10 CHAIRPERSON HILL: That's right. You can raise your
11 hand all you like. Okay.

12 Ms. Moldenhauer, you were trying to say something next?

13 MS. MOLDENHAUER: I was going to, but I'll defer to any
14 of the Board questions first.

15 CHAIRPERSON HILL: Okay. All right.

16 So Mr. Rice, can you hear me? Mr. Rice? I can't hear
17 you, but I can now see you.

18 MR. RICE: Can you hear me now?

19 CHAIRPERSON HILL: Yeah, I can hear you. So later --
20 we're not going to be able to decide this, as I said, until April
21 21st, so what I'm kind of going to talk to you about just, you
22 know, I mean, you know, I can talk to you separately offline.
23 This 1000.13(f), right, if that's, you know, preconditions to the
24 establishment on a special exception, so that's the whole thing.
25 I just want to walk through the argument that the applicant is

1 giving us as to how they can get this variance relief from one of
2 the conditions, okay. So that's just something I wanted to talk
3 about. And then also, Ms. Moldenhauer, you're saying that there's
4 precedent somewhere that we've done this, right, okay. And so
5 that might be something that you can submit to the record, okay;
6 that might be helpful before we get back here on the 21st. And
7 then the last thing, I guess I'll try to let you do, Ms.
8 Moldenhauer again, and then, I guess -- well, first let me see if
9 anybody else has any other questions or if they want anything
10 before, I ask this last item of Ms. Moldenhauer.

11 Mr. Shapiro?

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

13 You know, I don't want to beat this horse forever, but
14 I'm confused. I'm really confused that I want -- before we go
15 farther, I just want some clarification and make sure I am
16 understanding this correctly. The relief being sought is a
17 special exception under the use division, an area variance from
18 the distance requirements that are a part of the special
19 exception. So what's being asked is a variance from one of the
20 special exception conditions. So there isn't a separate variance
21 being asked separate from a special exception conditions. There's
22 a variance that's being asked for a variance from one of the sub
23 conditions of the special exception.

24 CHAIRPERSON HILL: I believe that's correct.

25 MS. MOLDENHAUER: Yes, that is correct.

1 COMMISSIONER SHAPIRO: Okay. Because in our
2 conversations, in our dialogue, I'm hearing different versions of
3 that. Because it matters if we're aligned with that, you know,
4 then we are -- because I felt like -- and maybe (audio
5 interference), maybe I misunderstood where you were coming from,
6 but I thought your interpretation of where I was coming from was
7 missing that there was a separate variance relief request.

8 VICE CHAIR JOHN: Okay.

9 COMMISSIONER SHAPIRO: I don't want to put you on the
10 spot. I just --

11 VICE CHAIR JOHN: No, no. That's --

12 COMMISSIONER SHAPIRO: I'm always so attentive to where
13 you're coming from and I want to make sure I wasn't missing
14 anything.

15 VICE CHAIR JOHN: So that's fine. I don't understand
16 because a variance request is to be within a quarter mile. That's
17 what the variance request is. And so, we apply the three-prong
18 analysis to that request, so there has to be an exceptional
19 condition and unnecessarily burdensome and then the public good,
20 et cetera. I can't get by the first prong because I don't know
21 how the building that has two separate uses creates a practical to
22 -- which is allegedly exceptional -- I don't know what the
23 relationship is between that building and the 25-mile (sic)
24 requirement. The applicant chose to put the apartment in that
25 location and chose to, you know, create this café, so how is that

1 hardship not self-created? And I know it can't be the only
2 factor, but I cannot get around the quarter mile. I don't know
3 how to get around it.

4 MS. MOLDENAUER: So can I address that?

5 CHAIRPERSON HILL: Wait, give me one second, Ms.
6 Moldenhauer and then -- I mean, we're almost having like
7 deliberations and discussions with everybody. We're all just one
8 big happy family here today.

9 The -- to Mr. Shapiro real quick. And this is again,
10 where -- when we start talking to OAG, it's a little -- and we
11 might have a conversation with OAG or not -- again, the area
12 variance is from G, 5, which is the quarter mile and I guess I
13 will ask for clarification from Ms. Moldenhauer. That's one thing
14 that you guys are asking for.

15 The other one that you're asking for is that it's
16 supposed to serve the tenants of the building, right? That's what
17 it says in G, right? And I understand the whole argument about
18 telling people that they can't use the cafe because they're from
19 the Scottish Rite Temple or what have you, right. I understand
20 that. But that's saying that we already think that you're going
21 to get the cafe, right. So there's a bunch of hoops that are kind
22 of getting -- I don't know if there's a question here or not.
23 There's a bunch of hoops that are kind of getting jumped through,
24 right?

25 And the first one -- and I guess Ms. Moldenhauer, this

1 is where you're still stuck or we're still stuck with your
2 argument is that -- I mean I'm looking right here at the reg,
3 right? And so, G says what you're allowed to do for tenants'
4 daily living needs if you meet these, you know, conditions and one
5 of them is 5, which is the quarter mile. So anyway, what am I
6 trying to say? Go ahead and argue the quarter mile thing again
7 and then I guess we're just done.

8 MS. MOLDENHAUER: Mr. Chair, with your last comment, I'd
9 like to just step back and just walk through three things here.
10 So first -- three things. So first, the ability to have the café,
11 whether you term it a cafe, or a dining area is permitted by
12 right, the hotel concept that Ms. Richardson identified.

13 CHAIRPERSON HILL: Give me a second. Stop one second.
14 Let's just go this one at a time then.

15 COMMISSIONER SHAPIRO: Right.

16 CHAIRPERSON HILL: Because I need somebody to straighten
17 that out for me, right?

18 COMMISSIONER SHAPIRO: Because those are two different
19 things.

20 CHAIRPERSON HILL: Pardon me?

21 COMMISSIONER SHAPIRO: Those are two different things.

22 CHAIRPERSON HILL: No, no. Give me one second. What I
23 said is that it's not by -- the cafe is not the by right thing,
24 right?

25 VICE CHAIR JOHN: No.

1 CHAIRPERSON HILL: What's by right is to have a dining
2 area, right. That's what by right.

3 VICE CHAIR JOHN: Yeah.

4 CHAIRPERSON HILL: Is that correct, Mr. Rice?

5 MS. MOLDENHAEUR: It's a -- let me just say. It's a
6 question of terminology. Whether it's a cafe or a dining room,
7 what is currently designed, it's a question of who uses it. The
8 concept of having an all-hour establishment with alcohol and
9 having breakfast lunch and dinner is currently permitted as long
10 as it's only used by tenants and their guests; whether you call it
11 a dining room or a cafe, it doesn't matter.

12 COMMISSIONER SHAPIRO: Can we sit on --

13 CHAIRPERSON HILL: (Audio interference.)

14 COMMISSIONER SHAPIRO: Can we sit on that point for a
15 minute and make sure that we have clarity right now because that's
16 not where -- that wasn't my understanding.

17 CHAIRPERSON HILL: What if --

18 MS. MOLDENHAEUR: The building permit that we have says
19 cafe use for residents and their guests. The plan that was shown
20 on our PowerPoint and as part of this record is the plan that has
21 already been approved by the Zoning Administrator, DCRA, and it's
22 under construction to date. The only question before this Board
23 is who can use it.

24 COMMISSIONER SHAPIRO: Can we have Mr. Rice to weigh in
25 on that. I mean I hate to put him in an adversarial position but

1 that's not, you know -- I don't know what to do, Mr. Chair because
2 that's not the information that we have.

3 CHAIRPERSON HILL: I'm trying to -- I'm -- let's all --
4 I'm having difficulty with my monitor and everything, so if I kind
5 of freeze on you, let me, you know.

6 But Mr. Rice, what I understood from the regulations was
7 that -- and this is now bringing up even something completely
8 different, which is that if DCRA approved something to be
9 constructed and now they have something they're not supposed to
10 have, that's a whole another thing, right. I thought from what we
11 did -- when reviewing the record -- was that the cafe that's not
12 matter of right, what's matter of right is having a dining
13 facility; is that correct, Mr. Rice? Then I'll get -- and then
14 Ms. Moldenhauer, you can send me to the regs where it shows it.
15 But Mr. Rice, is that correct?

16 MR. RICE: My understanding is that the building's
17 existing dining room is permitted as an accessory community dining
18 room, under U 410.1(g).

19 CHAIRPERSON HILL: Hold on. Slow down.

20 MR. RICE: The Applicant is --

21 CHAIRPERSON HILL: U 4, whoa, whoa. U what?

22 MR. RICE: 410.1(g).

23 CHAIRPERSON HILL: All right. Give me one second.

24 MR. RICE: But I don't have that building permit on me.
25 I just know the guides of the regs that grants it.

1 CHAIRPERSON HILL: U -- tell me again. 410 --

2 MR. RICE: .1(g).

3 CHAIRPERSON HILL: Okay. Give me a second.

4 MS. MOLDENHAUER: Can I ask a question?

5 CHAIRPERSON HILL: Give me one second. Okay. Right.

6 An accessory community dining room within an apartment house
7 solely for the use of tenants and their guests. Okay, I just read
8 the reg.

9 So, Miss Moldenhauer, what was your question?

10 MS. MOLDENHAUER: And I'm sorry, if I'm now making
11 things more confusing. But the regulation, as you just read, says
12 that you can have a amenity dining room. As we understand it and
13 as it's been permitted -- and I apologize if we're using different
14 terms, but we use the term dining room and café, it is a place to
15 eat. It is a place that you can eat breakfast, a place that you
16 can eat lunch, it is a place that you can eat dinner. It is a
17 dining room. It does not limit which meal you can eat there. It
18 just simply limits who eats there. So when we reference a cafe,
19 we are referencing the same space.

20 CHAIRPERSON HILL: I got it. And this is where maybe
21 we'll have to figure this out. I love that Mr. Lanier is
22 thrashing back and forth back there. He doesn't want, you know.
23 Mr. Lanier, don't you have other things to do? I mean -- and this
24 is where we might have some clarity from the Zoning Administrator,
25 I don't know.

1 I understand. I know the difference between the dining
2 room and when you transact -- when there's money, when there's a
3 transaction, right. That's why we're having difficulty for the --
4 and we're just going to -- I guess we're going to talk about this
5 forever. The first step -- and what I'm trying to understand Ms.
6 Moldenhauer is I don't know what you have now. Now, I'm going to
7 look at the plans, right. I don't know if they approved something
8 that -- an accessory community dining room, it's a dining room,
9 right? It's people from the apartment building can come have
10 breakfast, lunch, dinner, whatever they want, it's a dining room.
11 I don't see it there. It's a -- I don't see a retail component.
12 And that's when you go to the other reg, right, that says -- that
13 you're trying to get a variance from.

14 MS. MOLDENHAUER: So -- and I -- the way that business
15 is transacted is not a questionnaire. It's a question of the
16 user. It's a question of a tenant can go and have a place to eat
17 and dine.

18 CHAIRPERSON HILL: Okay. Give me one second. Give me
19 one second.

20 So Mr. Rice, this is something that I need to know
21 before we move on also, right? Is that dining room, you know --
22 because that is a by right thing, right, so what do you think that
23 means and who do we get an answer from as to what that, you know --
24 - what does community dining room mean?

25 VICE CHAIR JOHN: So Mr. Chairman, if I could jump in.

1 I'm sorry. But we've been asking for breaks to discuss legal
2 issues because in asking OAG to give us an on-the-spot
3 determination, we could be making an incorrect analysis. And if
4 that's something you really need to have an answer for, we can
5 probably do it. But I just wanted to get back to what Ms.
6 Moldenhauer said and what you said.

7 On the U 420.1(g), there is the discussion of "the sale
8 of foods, drugs, and sundries and personal services designed to
9 serve the tenants' daily living needs subject to the following
10 conditions." 420.1(g) is a more intense use compared to 410. So
11 I'm not sure how the Zoning Administrator could have approved a
12 cafe on the 420.1(g) because that's allowed only through special
13 exception if all this other criterion is met.

14 MS. MOLDENHAUER: Board Member John, I disagree with
15 you.

16 VICE CHAIR JOHN: Okay.

17 MS. MOLDENHAUER: Section G that we're asking for relief
18 here has to do with non-resident use. And we had extensive -- I
19 mean as indicated in our presentation, this project was reviewed
20 and approved by the Zoning Administrator based on conversations
21 going back to 2015 and '16. And so the -- our understanding and
22 we're happy to supplement the record here because obviously this
23 is -- some questions here, but is that G, special exception relief
24 allows non-resident use. We have -- I understand that when it
25 says for -- as designed for a resident's daily life, it is because

1 the intent is that this is not a use, it is not needed for daily
2 life. But having breakfast, lunch and dinner is part of a
3 tenant's daily life, but the issue for the special exception is
4 who is allowed to use it. The special exception is permitted if
5 non-residents can come in and use the space.

6 VICE CHAIR JOHN: No. Ms. -- with all due respect, if
7 you interpret it that way then the section makes no sense; non-
8 residential is what I think. Non-residential, in this case, means
9 uses that are not residential and that are accessory uses doesn't
10 mean non-residents. If we could (audio interference).

11 MS. MOLDENHAUER: We have cases that have approved this
12 relief that are similar to what we are asserting here. And we are
13 happy to pull those cases and provide those examples because if
14 the Board has questions for their OAG, you know, we need to look
15 at case precedent as well on how the Board has looked at this
16 section in the past to ensure that it's consistent.

17 VICE CHAIR JOHN: And hopefully, they are not summary
18 reorders.

19 MS. MOLDENHAUER: Well, they are summary orders when we
20 look at the OP reports and look at what's filed. Because at the
21 end of the day, you know, it still is something that we can look
22 to and we can look at OP reports and see how the OP report
23 evaluated it and how it was argued.

24 VICE CHAIR JOHN: The Board isn't bound by those.

25 CHAIRPERSON HILL: Okay. Hey, give me one second. So -

1 - I'm -- I had asked for public testimony but I think there is
2 public testimony that I need to take, or somebody is I know is
3 trying to speak. Then -- so that's one thing. Then another thing
4 is, I mean I have a hard stop at 5 o'clock today for sure. But we
5 could -- and I haven't done an emergency closed meeting twice.
6 I've only done it once the whole pandemic. We can do it twice in
7 one day and try to even kind of talk through this a little bit
8 more. Oh, great. I get a thumbs up from Mr. Shapiro. So we're
9 going to do another emergency closed meeting. First, I'm going to
10 take public testimony.

11 Mr. Young, is there someone wishing to testify?

12 MR. YOUNG: Yes. Mr. Alan Gambrell and he is on.

13 CHAIRPERSON HILL: Great. Can you bring in Mr.
14 Gambrell?

15 MR. GAMBRELL: I think I'm on.

16 CHAIRPERSON HILL: Yep. I can hear you, but I can't see
17 you and that's up to you, Mr. Gambrell.

18 MR. GAMBRELL: Yeah. I have to read my statement, so
19 you're going to have to pretend what you remember I look like.

20 CHAIRPERSON HILL: Okay. I was going to say Mr.
21 Gambrell. I haven't seen you yet the whole pandemic. So, you
22 know, it's just -- I mean I still won't get to see you, but I
23 recognize your voice.

24 MR. GAMBRELL: Thank you.

25 MS. MOLDENHAUE: Mr. Hill, before Mr. Gambrell starts,

1 I'm just going to object if he's testifying or identifying
2 anything that has to do with a meaningful connection, it's not
3 part of this case in regards to whether it was approved by right
4 or not. I'll just say that.

5 CHAIRPERSON HILL: Okay. Okay. I don't know whether
6 you can object to testimony, but that's okay.

7 Mr. Gambrell, you got three minutes, and you can go
8 ahead and start whenever you like.

9 MR. GAMBRELL: Okay. Yeah, and I think that's a foolish
10 objection as you'll hear my statement. I'm going to read this
11 with drama.

12 My original statement conveyed neutrality on the
13 proposed cafe restaurant, but I have come to the conclusion that
14 the Board should support the establishment without restricting
15 access. Various community members have expressed their support
16 for full community access; I think their positions are persuasive.
17 However, I do want to comment on two somewhat, you know, technical
18 matters on this case. One is OP's proposed restrictive language;
19 and two, the problem with "meaningful connection" interpretation
20 in this and other cases.

21 On the first point, the Office of Planning has proposed
22 language to allow patronage that there is some connection to using
23 the Scottish Rite Center. This is really an artifice and an
24 obstacle that serves no practical purpose. Why? Because the
25 alleged meaningful connection that exist between the two buildings

1 | does not, in fact, exist from the standpoint of the required quote
2 | "free and unrestricted" access requirement and regulation.
3 | Several years ago, the Zoning Administrator approved this project
4 | in a zoning determination letter that misinterprets this
5 | regulation by changing the quote "free and unrestricted" access
6 | requirement with the addition of new language that reads, quote,
7 | "Although access is not required to be provided for occupants of
8 | the separate portions of the building." That interpretation is
9 | completely contrary to this regulatory requirement and freeing up
10 | unrestricted access. It is frankly illogical. As such, there's
11 | no logic to the Office of Planning adding restrictive language
12 | that is based on this fantasy of a connection. And I might add, I
13 | only live a few 100-feet from this building, and I probably have
14 | seen somebody come and go from the Scottish Rite Temple, two or
15 | three, four times. The huge brass door is always closed. I can't
16 | imagine there's going to be much traffic flowing from that
17 | building. That's just the reality of this case.

18 | My second and final point is about misinterpretation of
19 | the meaningful connection rule. The Board is certainly aware of
20 | various meaningful connection cases. One recent example is the
21 | Zoning Administrator's misinterpretation in case 20183, the Word
22 | One Shelter (ph) connecting the Rita Bright Children's Center.
23 | Mr. LeGrant said there was a meaningful connection even though it
24 | was not fully above grade, and they also did not have free and
25 | unrestricted passage.

1 As for the real-life consequences of this particular
2 project, I presented in my written testimony, Exhibit 29, a
3 photograph. You can see the consequences.

4 One building now has apartment windows with light and
5 air essentially blocked off with the new building being no more
6 than five feet away. That is a violation of the most fundamental
7 of purposes of the zoning regulations, which is quality of life.

8 In closing -- and my screen is restricting me from
9 seeing this -- so such cases will likely increasingly burden the
10 BZA and are likely to increase paths (audio interference) to build
11 structures on long row house lots.

12 I would urge the Board, but more specifically the Zoning
13 Commission, to take a closer look at how the meaningful connection
14 rule is being changed and misinterpreted. Perhaps the rule needs
15 updating, although the easiest solution might be just simply
16 disallow further interpretations by the Zoning Administration --
17 Administrator. In conclusion, I suggest the Board approve this
18 cafe for full community use. Thanks.

19 CHAIRPERSON HILL: Okay. Thank you, Mr. Gambrell for
20 your testimony.

21 Does the Board have any questions for Mr. Gambrell and
22 if so, please raise your hand?

23 Mr. Shapiro.

24 COMMISSIONER SHAPIRO: I just wanted to acknowledge the
25 requests for the Zoning Commission. I will make sure to bring

1 that back to my colleagues.

2 MR. GAMBRELL: Thank you.

3 CHAIRPERSON HILL: Okay. Thank you, Commissioner.

4 Ms. Moldenhauer, do you have any questions for Mr.
5 Gambrell? I can't hear you. I'm sorry.

6 MS. MOLDENHAUER: Sorry. I muted myself earlier. No
7 comments, maybe -- no questions, maybe a comment later. Thank
8 you.

9 CHAIRPERSON HILL: Okay.

10 All right. Mr. Gambrell, you take care of yourself,
11 okay.

12 MR. GAMBRELL: Thank you. Bye-bye.

13 CHAIRPERSON HILL: Bye-bye. All right.

14 So I'm going to say a couple of things. I'm going to
15 try to do this emergency closed session thing quickly.

16 Ms. Moldenhauer, we are stopping at 5 o'clock and so --
17 just to let you know, right. So I'm going to make a motion that
18 we adjourn this public session and enter into an emergency closed
19 meeting to seek legal counsel from OAG on Application 20377, and
20 ask for a second, Ms. John.

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: The motion --

23 One second, Ms. Moldenhauer.

24 The motion has been made and seconded.

25 Mr. Moy, could you take a roll call?

1 MR. MOY: Yes. When I call your name, if you would
2 please respond with a yes or no to the motion made by Chairman
3 Hill to open a -- to adjourn this session and to open an emergency
4 closed meeting. The motion is seconded by Vice Chair John.

5 Zoning Commissioner Peter Shapiro.

6 COMMISSIONER SHAPIRO: I vote yes.

7 Mr. MOY: Mr. Blake.

8 BOARD MEMBER BLAKE: Yes.

9 MR. MOY: Mr. Smith.

10 BOARD MEMBER SMITH: Yes.

11 MR. MOY: Vice Chair John.

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill.

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: The motion carries on the vote of 5-0-0.

16 CHAIRPERSON HILL: Ms. Moldenhauer, what was your
17 question?

18 MS. MOLDENHAEUR: I was -- I have two points. One, that
19 if you are obtaining legal counsel on an issue that we also
20 potentially would have an opportunity to respond to any legal
21 opinions that are provided, obviously if we disagree with those,
22 to provide a response in writing. In addition to that, we would
23 just note for your OAG that there are cases that do comply with
24 the position that we are stating; BZA Case Number 19270. This is
25 an application, unfortunately to Ms. John's point, it is a summary

1 order, but it does -- you can look into the record and read the
2 record and see that it is an application where the applicant
3 intended commercial gym use for -- to offer memberships to people
4 other than they are tenants but rather to the general public. And
5 they identify that if this relief was not granted, that they would
6 not be able to invite non-residents to be able to use their gym
7 facilities. And so, it's an example of obviously (audio
8 interference) --

9 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, I'm trying to
10 just wrap -- hurry. What else you got?

11 MS. MOLDENHAUER: Those are the two things.

12 CHAIRPERSON HILL: Okay.

13 MS. MOLDENHAUER: That I'd like the opportunity to
14 respond and hear the case.

15 CHAIRPERSON HILL: We're stopping at 5 o'clock. There
16 is no opportunity to respond, I'll tell you that because we're
17 just talking with counsel. And I'm not going to tell you what we
18 talk about with counsel because that's our counsel. And so then,
19 you know -- we'll have questions for you afterwards, I'm sure.

20 So, Mr. Lanier, did you have your hand up? No.

21 MR. LANIER: I just want to dispel some confusion
22 between cafe and restaurants. We name food establishments various
23 ways. And we have cafes just because it is -- we use the word
24 "cafe" because it is a European way of operating 18 hours a day
25 where you never come and somebody tells you the dining room is

1 closed, you know, we stop at 5. And I just want everybody to
2 remember that history in this city and other cities have shown
3 abundant cases where dining rooms and food establishments were
4 built for residential buildings. Take Connecticut Avenue, the
5 Westchester and so on.

6 And they have had their time where they worked and then
7 they fell victim to the fact that they were isolated for the
8 residents only. And so, the -- there is no, you know,
9 limitations, you know, intended in the definition of a cafe or
10 restaurant. It is intended to produce an environment that is not
11 dissimilar to a hotel. So if we were to build a hotel and we call
12 it, the West End, it's the Ritz and it's the West End cafe. And
13 it's obviously entitled, you know, intended for the uses of the
14 hotel and opens up to the public.

15 And here, this debate is really about to what extent can
16 the -- can other people than just the residents use it. And we
17 look at this kind of holistic standpoint that we're delivering 180
18 homes into the neighborhood. We're delivering a much bigger
19 demand than we are providing for the supply. We're trying to make
20 it an asset of the neighborhood rather than close the doors to the
21 neighborhood. So we have a garden, we want people of the
22 neighborhood to be able to sit in the garden. That has nothing to
23 do with the legal aspects of trying to find a way to describe this
24 variance or exception, but I'm just trying to simplify. It is
25 really a technical argument that we're trying to resolve not a

1 fundamental use issue. Thank you very much.

2 CHAIRPERSON HILL: Okay. Okay. Thanks, Mr. Lanier.
3 And Mr. Lanier, again for the record, I think it's great, like
4 cafe, restaurant, whatever, I think it's great. It's not -- we're
5 not -- we don't get to decide whether it's good or bad. We have
6 these regulations that we have to work through because -- I mean,
7 I like cafes, so --

8 MR. LANIER: No, no. I really appreciate that
9 everybody's trying to thread the needle to make this possible
10 without, you know, so to speak, reinventing the rules.

11 CHAIRPERSON HILL: Okay. All right. All right. So
12 let's go into this closed session. So like the last time, I'm
13 going to turn this off and I'm going to log in again, and we'll
14 come back after we're done with the closed session, okay? Bye-
15 bye.

16 (Whereupon, the above-entitled matter went off the
17 record and then resumed.)

18 CHAIRPERSON HILL: Blake, are you there?

19 BOARD MEMBER BLAKE: Yes. Yes.

20 CHAIRPERSON HILL: Okay, great. All right.

21 Mr. Moy, you want to call us back in?

22 MR. MOY: The Board is back in session after its
23 emergency closed meeting and the time is now at or about 4:44 p.m.

24 CHAIRPERSON HILL: Okay. I think we're -- so for the
25 record, we're going to have a continued hearing regardless because

1 we have to -- there's some notice requirements that we've had to
2 deal with. So we're going to come back on April 21st at 9:00 a.m.
3 and so that's going to be different, Mr. Moy. So make sure we
4 notice that properly because Mr. Shapiro has to be gone by 10 and
5 we got another thing that we already put on -- him on. So we're
6 going to do this first at 9:00 a.m., so just to let you guys know.
7 And then now, I'm going to go around with my colleagues and see if
8 they need anything from you, Ms. Moldenhauer, in terms of
9 additional information either in the form of a question now and/or
10 if there's additional documentation.

11 Mr. Shapiro, may I go ahead and begin with you?

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

13 Yeah, just one question, Ms. Moldenhauer. In response
14 to our questions about U 420.1(g) number 5, you had a explanation
15 for how you felt that you met that or how we could reasonably vary
16 from that and I just don't remember it. So if you could briefly
17 say it now or perhaps, we just need that is something in writing
18 that clarifies that a bit.

19 CHAIRPERSON HILL: I think Ms. Moldenhauer -- unless you
20 do want to respond, it might be more helpful to the Board if you
21 answer that question on -- I mean in a document.

22 MS. MOLDENHAUER: Okay. You're asking about 420.1(g) 5,
23 which is what we're asking for a variance from?

24 COMMISSIONER SHAPIRO: Yeah. But you had -- right. I
25 just -- I literally do not remember the rationale you had for why.

1 It came up in conversation, but I don't remember seeing it in
2 writing.

3 MS. MOLDENHAUER: Why we don't meet the requirements or
4 why -- how we --

5 COMMISSIONER SHAPIRO: Well, I'm imagining you're going
6 to come up with a reason why you think you did or why it's
7 appropriate for us to break the variance from that.

8 MS. MOLDENHAUER: Okay.

9 COMMISSIONER SHAPIRO: You may say well, that's your
10 entire case, but I'm just -- there's a very specific thing that
11 you said about an hour ago that resonated with me and I just
12 forgot it. So I can go back and review the tape or if you have
13 sort of a clear argument around that. That's what I'm looking
14 for.

15 MS. MOLDENHAUER: We'll definitely submit the record on
16 that but that specifically had to do with subsection X 101(f),
17 which identifies that a variance can be obtained from a sub
18 condition of a special exception.

19 VICE CHAIR JOHN: Mr. Chairman, may I follow up?

20 CHAIRPERSON HILL: Sure. Go ahead, Ms. John.

21 VICE CHAIR JOHN: I have the same question. So I'm not
22 sure why you're referring to that particular section of the
23 regulation. What I'm looking for is, are we applying the same
24 three-prong variance test to 420.1(g)5? Is that your
25 understanding, Ms. Moldenhauer?

1 MS. MOLDENHAUER: Yes, that is my understanding.

2 VICE CHAIR JOHN: I think that's what I'm asking for.
3 How would you apply the three-prong test to this, you know, (audio
4 interference)?

5 MS. MOLDENHAUER: So I will briefly walk through this
6 now, but then obviously ask the Board the opportunity to
7 supplement it as indicated, but the variance test requires that we
8 show an exceptional condition, which makes it practically
9 difficult to comply with the section because of the fact that we
10 have people who aren't tenants, but rather our Scottish Rite
11 members and their guests that have access to the building because
12 the building is one building, and they have to access the parking
13 that is located under the building and they can thus utilize the
14 outdoor patio space that is in the center that is going to be a
15 lovely garden. Because of that unique condition, it is
16 practically difficult for this building to comply with the fact
17 that it is located closer than one quarter of a mile distance from
18 the MU Zone. And but for the fact that we would have on tenants
19 accessing or having access to this -- the ability to walk past,
20 see it, potentially even walk up and try to use it, but a operator
21 of that dining room cafe that is allowed by right would have to
22 say no, who are you, you can't use this, that would create a
23 practical difficulty on the owner in order to comply with Section
24 5 because it can't comply with the fact that it's one -- less than
25 one quarter of a mile distance from the building.

1 VICE CHAIR JOHN: Okay. Ms. Moldenhauer, could you
2 submit something in writing because I'm -- so I'm just looking at
3 the language. It says from the entrance -- the principal entrance
4 of the apartment house, and I'm a little tired and we all have to
5 leave at 5. So if you would not mind, it would be helpful.
6 Something short.

7 MS. MOLDENHAUER: Yes, we will supplement the record.

8 Are there any other questions from Board members?

9 CHAIRPERSON HILL: I'm still going around. And I guess
10 just to add on to this and I know that -- and this is the problem,
11 Ms. Moldenhauer that I think we're kind of struggling with, we're
12 asking about the proximity with the quarter mile thing, right?
13 And you guys are immediately bringing up the whole fact about, you
14 know, who gets to use the cafe, right. And I don't think that has
15 anything to do with the distance about the quarter mile from the
16 MU Zone. That's the problem that I think we're having difficulty
17 making the connection with. It's like it says that it can't be a
18 quarter mile within the MU Zone. And so it's the quarter mile
19 that we're having trouble -- at least I'm having trouble getting
20 my head around. And so, it's not who's using it, it's not how
21 it's being used, it's like it's a quarter mile from the MU -- it's
22 across the street.

23 And so, Mr. Smith, do you have anything else you want or
24 questions?

25 BOARD MEMBER SMITH: No. No questions.

1 CHAIRPERSON HILL: Mr. Blake?

2 BOARD MEMBER BLAKE: No.

3 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, you're going
4 to go ahead and do a conclusion; is that correct?

5 MS. MOLDENHAUER: I'll address this one question then
6 I'll say my conclusion. But I want to just note that whether it's
7 a quarter mile or whether it was saying that we had to provide a
8 rear yard of 20-feet, or whether we had to provide any other
9 requirement, this is a zoning requirement. And so this zoning
10 requirement has to do with the land around us and the zoning
11 around us, and we cannot change that. Just as though as OP would
12 tell us and the Board would tell us all the time, the reg itself
13 can't be the practical difficulty. We're not saying that the reg
14 is the practical difficulty. But what we're saying is, but for
15 the unique circumstances on this property and the unique
16 configuration of who is able to utilize this property, it creates
17 a practical difficulty of complying with this one-quarter mile
18 because we can't pick up the building and move the building to
19 someplace else that would be within a quarter mile of the zone.
20 There's no ability for us to comply with the zoning regulation and
21 complying with it creates a practical difficulty under the
22 variance test. And that is why the Office of Planning found that
23 we satisfied the condition for a variance and that is why we
24 believe we satisfied the condition for a variance.

25 CHAIRPERSON HILL: Okay, I get it. Okay. So do you

1 have a conclusion?

2 MS. MOLDENHAUER: So in conclusion, this building is
3 being constructed in a place that used to be a parking lot. It
4 was an open-air parking lot for Scottish Rite members. Now, you
5 have a brand new 172-unit apartment building with a beautiful
6 interior garden, that that garden and the accessibility of that is
7 able to be utilized by both the Scottish Rite members, the
8 Scottish Rite guests, the Scottish Rite whoever -- whenever they
9 want to invite the public to go to one of their organ programs or
10 have a nonprofit event for them.

11 Those individuals will be parking in a garage located
12 potentially at the lower level of the residential building and
13 accessing both buildings. Without this relief, there would be a
14 practical difficulty for having those varied uses and being able
15 to continue to use this residential dining, commercial dining or
16 cafe for this use. And we believe that the zoning regulations do
17 allow for in the RA Zone, commercial adjuncts. We have one, two,
18 three, four, five, six, seven, eight cases in which the Board has
19 approved these types of uses over a period of time, some of them
20 go back to language from the 1958 regs, which we will supplement
21 in our filing that will be very brief, but this is permitted by
22 special exception. We satisfied five of the special exception
23 conditions and ask for variance from one of them. We have DDOT
24 who finds that there'd be no objection; we have OP, who's
25 supportive based on a condition; we have the ANC, who has had, I

1 think an abundance of support which you typically don't see, where
2 we had three members of the ANC come and provide testimony and one
3 individual come -- one individual from the community, who
4 surprisingly, was supportive of the application and of the change
5 and not needing a condition.

6 And so we think that it is clear that there'd be no
7 adverse impact on the public good in the zone plan. The variance
8 is a permitted under the three-prong test finding that the unique
9 condition, which we did not believe to be a self-created hardship
10 but a unique benefit to the city, rather than having a parking
11 space, having 172 units here and having the need to connect it to
12 comply with parking requirements both for the apartment building
13 and the Scottish Rite create a challenge for operating this to any
14 property owner who would have to tell the Scottish Rite or a
15 member of the public that they could not dine here. Or if it was
16 a place to get a -- as we said earlier maybe as, you know -- a
17 thing of Advil or a beer -- or a thing of beer. Oh, no, this cafe
18 -- this, you know, commercial establishment is only for the
19 tenants, you know, you can't get anything here. That creates a
20 practical difficulty, and it creates a difficulty in complying
21 with the one-quarter mile requirement because we can't pick up the
22 Scottish Rite and pick up the old parking lot and put it someplace
23 else, but we have an exceptional condition. And we believe that
24 we are as was indicated, supportive of the condition if necessary
25 and would be willing to modify it so that it reads non-residential

1 use so the cafe shall be limited to tenants, tenants' guests,
2 members of the Scottish Rite and others that have a programmatic
3 connection to the D.C. Scottish Rite Center headquarters at 2800
4 16th Street through attendance at events, presentations,
5 activities, programs, education, volunteering, touring and
6 membership activities or general visitation. We believe that if
7 that condition is supported, that it would mitigate or -- you
8 know, address concerns that OP brought up if the Board finds it to
9 be necessary.

10 CHAIRPERSON HILL: Okay. All right. Thanks, Ms.
11 Moldenhauer. I guess if you could supplement the record with the
12 information that we -- the Board had asked for. That'd be great.
13 And I guess if you can get that -- we're going to come back here
14 on the 21st, so if we can get --

15 MS. MOLDENHAUER: Mr. Moy told me that the case had to
16 get continued to May 12th; is that not the case?

17 CHAIRPERSON HILL: I got the 21st.

18 MS. MOLDENHAUER: Mr. Moy, I wrote down when you had
19 called me that it was May 12th that it had to get continued to.

20 MR. MOY: I made a change. Do you want May 12th?

21 MS. MOLDENHAUER: It may have changed?

22 MR. MOY: I made a change unless you want a later date.

23 MS. MOLDENHAUER: I'm just trying to understand what the
24 requirements are.

25 MR. MOY: Yeah, we're --

1 MS. MOLDENHAUER: For when I have to file and put
2 something in the record.

3 MR. MOY: Yeah, I understand. We're going through some
4 major changes and some of the case rescheduling. But I think for
5 your application, I think it's still good for April 21st. And if
6 I'm going with that timeline, I think the Chairman may be going
7 towards when your deadline should be submitted. I would think Mr.
8 Chairman, at least by Thursday, April 15th unless you want it
9 sooner or later.

10 CHAIRPERSON HILL: Does that work for you, Ms.
11 Moldenhauer?

12 MS. MOLDENHAUER: I mean if Mr. Shapiro is back on the
13 12th, I prefer the 12th. It's just -- it would give me more time
14 rather than just getting this file by the 13th, which is, you
15 know, three business days.

16 CHAIRPERSON HILL: No, no, no. He is back here on the
17 21st and Mr. Moy is saying the 15th which is a week from -- a week
18 and day from today.

19 MS. MOLDENHAUER: Mr. -- I mean is there a -- if we
20 don't take the 21st, is there another date that Mr. Shapiro is
21 here that's not that long from now?

22 CHAIRPERSON HILL: Mr. Shapiro, when are you back?
23 Mr. Moy?

24 COMMISSIONER SHAPIRO: Yeah.

25 MR. MOY: I have Mr. Shapiro back on May the 5th.

1 COMMISSIONER SHAPIRO: May the 5th, yeah.

2 MR. MOY: May 5th.

3 CHAIRPERSON HILL: Okay. Do you want to do May 5th, Ms.
4 Moldenhauer?

5 MS. MOLDENHAUER: I would greatly appreciate that.
6 Sorry. Next week is D.C. Public School spring break?

7 CHAIRPERSON HILL: That's all right. So let's go ahead
8 and say then you'll get your filing in by the 29th?

9 MS. MOLDENHAUER: Yes.

10 CHAIRPERSON HILL: Is that okay, Mr. Moy, or do you need
11 more time? Actually, can you do it the 22nd -- no wait or the
12 27th, the 27th?

13 MS. MOLDENHAUER: I can get it in by the 27th.

14 CHAIRPERSON HILL: Okay. Let's do the 27th. Because
15 that gives me a week before OP has anything they wanted to add or
16 whatever. Okay. All right. Okay. Then we're going to be back
17 here for this on May 5th and for a continued hearing. Okay, guys.
18 Thank you so much. It's been a little bit of a long day, but you
19 all have a nice day.

20 MS. MOLDENHAUER: Thank you, everybody for your time.
21 Thank you, Board members.

22 CHAIRPERSON HILL: Thank you. Bye-bye.

23 MS. MOLDENHAUER: Thank you.

24 CHAIRPERSON HILL: Bye-bye.

25 Okay. Mr. Moy, do you need anything from us? It is now

1 5 o'clock.

2 MR. MOY: No, I think that's it. I'll make sure in our
3 hard stats that the Office of Planning can submit whatever
4 supplemental they wish to submit into the record, so long as it
5 gives you time to review it.

6 CHAIRPERSON HILL: Okay. I understand. (Audio
7 interference) to my Board members anyway, okay. All right. We
8 stand adjourned. Bye-bye.

9 (Whereupon, the above-entitled matter went off the
10 record at 5:01 p.m.)

11

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Regular Public Hearing

Before: DCBZA

Date: 04-07-21

Place: Teleconference

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direction; further, that said transcript is a true and
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