

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 28, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Webex, pursuant to notice at 9:43 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman
MICHAEL TURNBULL, Member
ROB MILLER, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
SARA A. BARDIN, Director

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OFFICE OF PLANNING STAFF PRESENT:

JONATHAN KIRSCHENBAUM
ALEXANDRA CAIN
MATHEW JESICK
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, Esquire
JACK RICE, Esquire

The transcript constitutes the minutes from the
Regular Public Hearing held on April 28, 2021.

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Case Number 20333, Application of Mathew Pickner
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P-R-O-C-E-E-D-I-N-G-S

(9:43 a.m.)

CHAIRPERSON HILL: -- public hearing by videoconference is the April 28, 2021 public hearing of the Board of Zoning Adjustment in District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair, and Board members Carl Blake and Chrishaun Smith. And representing the Zoning Commission will be Michael Turnbull, Rob Miller, and Anthony Hood.

Today's hearing agenda is available to you on the Office of Zoning website. Please be advised this proceeding is being recorded by court reporter, and it's also (indiscernible) Webex and YouTube live. The webcast video will be available to you on the Office of Zonings website after today's hearing. Accordingly, everyone who's listening on Webex or their 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 testimony/oral presentation should be limited just (audio malfunction). most important points.

When you're finished speaking, please mute your audio so that your microphone does no longer pick up sound or background noise. If you're experiencing difficulty accessing Webex or with

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1 your telephone call-in, or if have forgotten to sign up 24 hours
2 prior to the hearing, then please call out OZ Hotline number at
3 202-727-5471, once again, 202-727-5471, to sign up to testify or
4 receive Webex log-in or call-in instructions.

5 All persons planning to testify either in favor or
6 opposition should have signed up in advance. They'll be called
7 by name to testify. If this is an appeal, only parties are
8 allowed to testify. By signing up to testify, all participants
9 (indiscernible) the oath or affirmation as required by Subtitle
10 Y407 -- 48.7.

11 Request to enter evidence and the time up on online
12 virtual hearing (indiscernible) testimony or additional
13 supporting documents of the (indiscernible) which may not be
14 presented as part of the testimony, may be allowed pursuant to
15 Subtitle Y103.13, providing the person making the request to
16 enter an exhibit, (indiscernible) A, our proposed exhibit is
17 relevant; B, the good cause that justifies allowing the record
18 -- or the exhibit into the record, including explanation why the
19 requestor did not file the exhibit prior to the hearing, pursuant
20 to Subtitle 10206, and how the proposed exhibit would not
21 unreasonably prejudice any parties.

22 The order procedures for special exceptions and
23 variances are pursuant to Y409. The order of appeals is pursuant
24 to subtitle Y507. At the conclusion of each case, an individual
25 who is unable to testify because of technical issues may request

1 -- may file a request for leave to file a written version of the
2 planned testimony to the record within 24 hours following the
3 conclusion of public testimony in the hearing.

4 If additional written testimony is accepted, then
5 parties will be allowed a reasonable time to respond, as the
6 chairman or the Board, one will then make its decision at its
7 next meeting, but no earlier than 48 hours after the hearing.
8 Moreover, the Board may request additional specific information
9 to complete the record.

10 The Board and the staff will specify at the end of the
11 hearing exactly what is expected and the date when persons must
12 submit the evidence to the Office of Zoning. No other information
13 shall be accepted by the Board.

14 The Board's agenda may include previous cases set for
15 decision. After the Board (indiscernible) the hearing, the
16 officers, and in consultation with myself, will determine whether
17 full or summary order may be issued. A full order's required
18 when the decision it contains is adverse to a party, including
19 the fact that ANC (indiscernible) may also (indiscernible) if the
20 Board's decision to present the Office of Planning's
21 recommendation.

22 Although (indiscernible) a summary or is it a possible
23 Applicant may not request the Board to issue such an order? The
24 District of Columbia Administrative Procedures Act requires a
25 public hearing on each case be held in the open before the public.

1 However, pursuant to 405(B) and 406 of Act, the Board may,
2 consistent with its rules of procedure and the Act
3 (indiscernible) meeting on a case purposes this evening with
4 counsel on a case pursuant to D.C. official Code Section 2-
5 575(b)(4) and are deliberating on a case pursuant to DC official
6 Code Section 2-575(b)(13), but only after complying the necessary
7 public notice in the case of emergency closed meeting after taking
8 a roll call vote. Preliminary matters and those which relate to
9 whether a case will or should be heard today.

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

11 MR. MOY: Good morning, Mr. Chairman, members of the
12 Board, we do have preliminary matters, but as always, I would
13 suggest that I announce that all of those when I call the case.

14 Other than that, Mr. Chairman, I'd like to take a moment
15 to give the status of nine cases that were previously scheduled
16 for today's docket.

17 We have two case applications that have been withdrawn
18 by the Applicant. Those two cases are Application No. 20404 of
19 Deanwood (phonetic) 711, LLC, and 20405, application of Deanwood
20 719, LLC.

21 We have two cases that have been rescheduled to May the
22 19th, 2021. Those two cases are 20333 Matthew Pickner (phonetic),
23 and 20339 of Lee Street Development, LLC.

24 We also have two cases rescheduled to June 9th, 2021.
25 Those two cases are 20443 of Georgetown 29 K Acquisitions, LLC,

1 and 20449 of PD 237 Properties, LLC. Both of these, again, are
2 rescheduled to June 9th, 2021.

3 We have Case No. 20442 of Paul DeYoung (phonetic)
4 rescheduled to June 16th, 2021. And finally -- now finally, Case
5 No. 20449, application of PD 236 Properties, LLC rescheduled to
6 July 28th, 2021. And now finally, Case Application No. 20455 of
7 Air Dome (phonetic), LLC rescheduled to May 26, 2021.

8 And that's it on the -- my preliminary matters for the
9 record, Mr. Chairman.

10 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

11 All right. Okay. Let's see. Just looking through
12 this.

13 (Pause.)

14 CHAIRPERSON HILL: Okay. All right. Mr. Moy, if you
15 want to go ahead and call our first case.

16 MR. MOY: All right. This would be. Okay. I neglected
17 one other case, okay, we're not hearing today and that's the Case
18 Application No. 20447 of Derek Harris, and that has been deferred
19 to May 26, 2021. Sorry about that, Mr. Chairman.

20 Okay There we go. So Case Application No. 20444 of
21 Nicole Dillard. And this application was captioned, advertised
22 for special exception from the rear yard requirements of Subtitle
23 D, Section 306.1, which would construct a rare second story
24 addition to an existing two-story with basement detached
25 principal dwelling unit in the R-1B Zone. And this is property

1 located at 4124 19th Street -- 19th Street N.E., Square 4193, Lot
2 803.

3 Let's see, so this was last heard by the Board on April
4 the 14th at its meeting session, and since April 14th, there have
5 been no new filings. The Board did not request any supplemental
6 information, no testimony, and it appears that no one had signed
7 up other than the -- other than perhaps the Applicant.

8 But for all the cases going forward, Mr. Chairman, let
9 me speak to whether or not there's any witnesses in the record.
10 I would ask that Mr. Young -- Mr. Young chime in since he's the
11 gatekeeper.

12 MR. YOUNG: Thank you, sir.

13 CHAIRPERSON HILL: Okay. I mean, this is, Mr. Moy,
14 this is expedited review, right? We're not -- this isn't a
15 continued case, correct?

16 MR. MOY: It's expedited and continued. But it's a
17 meeting, it's a meeting status.

18 CHAIRPERSON HILL: Okay. Mr. Young, is there anybody
19 here wishing to speak?

20 MR. YOUNG: Not on this case, we don't.

21 CHAIRPERSON HILL: Okay. All right. So I am then --
22 and this is where I'm just trying to see that a little
23 (indiscernible).

24 (Pause.)

25 CHAIRPERSON HILL: Okay. So it appears that there's

1 no new filings in the record, no one signed up to speak, so the
2 record is now closed. Okay. So I'm closing the record for this
3 hearing and so we can now deliberate and vote. So I can begin.
4 I actually didn't have any issues with this. There was, I guess,
5 a little bit of clarity that we had been mulling over with the
6 ANC report, but I think that has been cleared up.

7 The ANC was also, you know, fine with this long as the
8 11th rear yard stayed after construction. It appears to me that
9 that is the case. The other issues that the ANC had raised,
10 however, are really kind of beyond our control, our purview in
11 terms of like the pervious pavement and some of the other things.
12 But it seems as though the ANC and the Applicant have come to an
13 agreement.

14 And then also with their with their efforts, that is,
15 and then also the Office of Planning has provided their report,
16 and I would agree with their analysis in terms of how the
17 Applicant has met the criteria for us to grant the application
18 and also (indiscernible) didn't have any objection.

19 So I'm going to go ahead and vote in favor of this.
20 I'm going to go around the table and see if anybody has anything
21 to add.

22 Commissioner Turnbull, do you have anything to add?

23 COMMISSIONER TURNBULL: Not really, Mr. Chair. I would
24 agree with your comments and your reference to the
25 (indiscernible) report. You're right, the only thing that was

1 in question was the ANC report was a little bit strangely worded.
2 There was a question about what they meant by 25 feet. And that's
3 the existing and the OP report clearly shows that it's like 25.3
4 feet existing. And I think that was the ANC's main gist that
5 they had that to begin with and that the deck then intrudes into
6 that space. So after looking at it, I'm satisfied with
7 everything. I'm ready to also vote in favor of it.

8 CHAIRPERSON HILL: Okay. Thank you.

9 Mr. Smith.

10 MR. SMITH: I have nothing else to add that. I am in
11 favor at this time (indiscernible.)

12 CHAIRPERSON HILL: And Vice Chair John.

13 VICE CHAIR JOHN: I have nothing else to add, Mr.
14 Chairman. I think it's straight forward, especially with the
15 clarification of the graveyard release.

16 CHAIRPERSON HILL: Okay. Great. Thank you.

17 Mr. Blake.

18 MR. BLAKE: Yes, I would echo the comments made and be
19 prepared to support this relief.

20 CHAIRPERSON HILL: Okay. Great. Thank you.

21 I'm going to go ahead and make a motion then to approve
22 Application No. 20444 as caption read by the Secretary and ask
23 for a second, Ms. John.

24 VICE CHAIR JOHN: Second.

25 CHAIRPERSON HILL: The motion made and seconded.

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

2 MR. MOY: When I call your name, if you would please
3 respond with a yes, no, or abstain to the motion made by Chairman
4 Hill to approve the application for the relief requested. The
5 motion was seconded by Vice Chair John.

6 Zoning Commissioner Michael Turnbull.

7 MR. TURNBULL: Yes.

8 MR. MOY: Mr. Smith.

9 MR. SMITH: Yes.

10 MR. MOY: Mr. Blake.

11 MR. BLAKE: Yes.

12 MR. MOY: Vice Chair John.

13 VICE CHAIR JOHN: Yes.

14 MR. MOY: Chairman Hill.

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: Staff would record the vote as 5-0-0, and
17 this is on the motion of Chairman Hill to approve. The motion
18 was seconded by Vice Chair John in the affirmative. Also in
19 support of the motion is Mr. Smith, and Mr. Blake, and Zoning
20 Commissioner Michael Turnbull's. Staff would record the vote
21 again as 5-0-0. The motion carries.

22 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
23 Let's see. Well, it's so funny -- the only one -- I took off
24 my jacket. Nobody's wearing a jacket and then Ms. John's the
25 only person with a jacket. And then Mr. Blake, just so you know,

1 after Memorial Day, we get to wear golf shirts -- during the
2 summer, during the summer. During COVID, I don't know, all rules
3 are off during COVID, but I think, you know.

4 So, all right, Mr. Moy, you may please call our next
5 one.

6 MR. MOY: Thank you, Mr. Chairman. So this will be
7 Case Application Number 20412 of 1515 Wisconsin Avenue, LLC,
8 captioned and advertised for special exception from the lot
9 occupancy requirements of Subtitle J, Section 404.1, which would
10 construct a two-story addition on the top of the first floor at
11 the rear portion of the existing building, and to construct a
12 three-story (indiscernible) addition to construct six residential
13 units in the existing three-story building in the MU-4 Zone.
14 This property is located at 1515 Wisconsin Avenue, N.W., Square
15 1271, Lot 44.

16 As the Board will recall, this was last heard on April
17 the 14th. At that time, the Board didn't -- at that time, the
18 Board requested supplemental information from the Applicant and
19 from the opposing parties, and I believe those were filed in the
20 record.

21 The Applicant also filed a motion to waive his filing
22 deadline as well as (indiscernible) that. And I believe the
23 Applicant filed the -- with respect to what was requested to
24 constructed -- constructed -- construction management agreement.
25 There are letters, opposition letters and responses to the

1 filing, as well as a letter that was filed yesterday in the 24-
2 hour period from a Jule Bennell (phonetic) under Exhibit 56.
3 Other than that, it appears no one has signed up to testify other
4 than the Applicants and the party's.

5 Thank you.

6 CHAIRPERSON HILL: Okay. Yeah, Mr. -- yeah, and if you
7 can let everybody in, please.

8 (Pause.)

9 CHAIRPERSON HILL: Okay. See you, Mr. Sullivan. Mr.
10 Sullivan, could you introduce yourself for the record, please?

11 MR. SULLIVAN: Thank you. Mr. Chairman and members of
12 the Board, Marty Sullivan with Sullivan and Barros.

13 CHAIRPERSON HILL: Okay. Great. Mr. Gronning
14 (phonetic), can you hear me?

15 MR. GRONNING: Yes, I can, Mr. Chairman.

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

18 MR. GRONNING: Yes, my name is Eric Gronning. I'm the
19 architect for the project.

20 CHAIRPERSON HILL: Okay. Great. Is it Mr. Lechliter?
21 Can you hear me?

22 MR. LECHLITER: Yes, I can hear you, sir.

23 CHAIRPERSON HILL: Could you introduce yourself for the
24 record, please?

25 MR. LINTNER: I'm Stephen Lintner. I live in 3201 P

1 Street. I'm one of the concerned neighbors.

2 CHAIRPERSON HILL: Got that. And you'll forgive me,
3 I thought -- I can't see your face. You were here at the last
4 hearing, correct?

5 MR. LINTNER: Yes, I was here at the last hearing. And
6 we also have people that have party status that should be
7 connected to this.

8 CHAIRPERSON HILL: Yeah, I don't see them in the room
9 yet. There was a problem with the link. Mr. Reid very kindly
10 sent me a link that works and I sent it on to my colleagues.

11 CHAIRPERSON HILL: Let's wait a minute, then.

12 (Pause.)

13 CHAIRPERSON HILL: I'm sorry, Mr. Lintner, my
14 understanding is that Michael Lechliter is going to make a
15 statement on behalf of the (indiscernible) parties with status.

16 (Pause.)

17 CHAIRPERSON HILL: Okay. Did you not get party status,
18 previously?

19 MR. LINTNER: I did not ask for party status. There
20 are four groups that have -- there are four groups that have
21 party status, and then I am another party who is in a property
22 that's near but not immediately behind this property.

23 CHAIRPERSON HILL: Right, but I'm just sitting --
24 you're here as a member of the public.

25 MR. LINTNER: Yes, I am. I'm not a member of the party

1 group. And I'm connected now because Mr. Reid gave me this
2 (indiscernible) -- apparently, it hadn't been updated, so it was
3 April 21st and you had to go to April 20th. Mr. Reid gave me an
4 update that connected with April 28. That was the problem.

5 CHAIRPERSON HILL: I got you. Okay. We're going to
6 wait.

7 Mr. Rice, are you there?

8 MR. RICE: Yes, sir, I am.

9 CHAIRPERSON HILL: Yeah, the four. It's Mr. Lechliter,
10 Mr. Bottleson (phonetic), Ms. Vikan (phonetic), and I think it
11 was Watkins and Diamond, correct.

12 MR. RICE: That's correct, sir.

13 CHAIRPERSON HILL: Got you. Okay. Thank you.

14 Ms. Vikan, can you hear me? Ms. Viking.

15 MS. VIKAN: Yeah, can you hear me?

16 CHAIRPERSON HILL: Yes.

17 MS. VIKAN: Yep, I'm here.

18 CHAIRPERSON HILL: Okay. Ms. Vikan, you're saying --
19 is it Mr. Lechliter that's going to be speaking for you guys?

20 MS. VIKAN: Yep. He's a practicing lawyer. He's more
21 adept at it than I am, but he might have gotten the wrong link
22 because I couldn't get on. And then Steven Lintner sent me the
23 corrected link, and that's how I got on. So I'm not sure if
24 you've seen it. Yeah, I don't know.

25 CHAIRPERSON HILL: No problem.

1 Well, I'm sure he's watching. And so if he can't get
2 on, Mr. Lechliter, if you're listening, you can call the Hotline
3 number at 202-727-5471 and they can help you get on. But we're
4 going to wait for you.

5 MR. RICE: Mr. (sic) Hill, you might want to note that
6 I had forwarded to him just a few minutes ago the message I got
7 from Mr. Reid, with the proper link.

8 CHAIRPERSON HILL: Okay. Okay. No problem. Thank
9 you.

10 I'll tell you what, hey, Mr. Young, can you hear me?

11 MR. YOUNG: Yes, I can.

12 CHAIRPERSON HILL: So when -- they're coming in through
13 you like you'll figure it out, correct?

14 MR. YOUNG: Yes.

15 CHAIRPERSON HILL: Okay. Then why don't we do this.
16 Mr. Moy, let's go ahead and solve it. (Audio malfunction) -- I
17 can't do this until everybody's here.

18 So you guys, if you can hear me, Ms. Vikan, Mr. Lintner,
19 they're going to go ahead and put you back in the waiting room
20 and we're going to go ahead and move to the next case. Okay?

21 MS. VIKAN: It sounds like Mr. Lightner (sic), whatever
22 Mike's last name is, he said he's restarting on now, so he should
23 be on in a second, but whatever. You can see I'm triaging, so
24 I'm going to defer to him.

25 CHAIRPERSON HILL: That's okay. I mean, if he just

1 -- Ms. Vikan, is it just Mr. Lechliter that's coming on for your
2 group, not the other two people?

3 MS. VIKAN: I don't know.

4 CHAIRPERSON HILL: Okay. You don't know.

5 MS. VIKAN: -- tell me that he's the speaker, so.

6 CHAIRPERSON HILL: Okay. Well, Mr. Young, if you could
7 keep an eye out there for Mr. Lechliter and then also the other
8 two people, Bottleson, and Watkins, and Diamond, and so but we'll
9 move on to the next one, Mr. Moy.

10 So Mr. Young, if you could please excuse everybody for
11 now and we'll bring them back in when we got everybody, okay?

12 (Pause.)

13 MR. YOUNG: Okay.

14 CHAIRPERSON HILL: All right. Mr. Moy, when you can,
15 you can call the next one and then we'll come back.

16 MR. MOY: All right then. So this would be. Case
17 Application Number 20395 of 3200 13th Street, LLC. As captioned
18 and advertised, and this has been amended for special exceptions
19 from the residential conversion requirement, Subtitle U, Section
20 320.2, and for the rear yard requirements of Subtitle E, Section
21 306.1, the Applicant amended to remove their relief from minimum
22 parking requirements.

23 This application would convert an existing semi-
24 detached three-story residential building into a three-unit
25 apartment house with front, side, rear additions in the RF-1

1 Zone. Property is located 3200 13th Street, N.W., Square 2843,
2 Lot 800.

3 As the Board will recall, this was last heard at the
4 Board's hearing on April the 14th. Since that date, there have
5 been no other filings in the case record other than, because of
6 the amendment, other than revised plans on Exhibit 38, and revised
7 prehearing statement on their Exhibit 39, and (indiscernible)
8 certification on the Exhibit 44.

9 All these will require a waiver of the filing deadline.
10 Other than that, no one has signed up to testify other than the
11 signing by the Applicant, I believe.

12 CHAIRPERSON HILL: Okay. Mr. Moy, this is 20395,
13 correct?

14 MR. MOY: 20395, yes.

15 CHAIRPERSON HILL: I don't know why I can't pull it up.
16 Are you all able to access it through ISIS?

17 (Pause.)

18 MR. TURNBULL: And it's me.

19 (Pause.)

20 CHAIRPERSON HILL: So, okay, Ms. Ferreira, could you
21 please introduce yourself for the record?

22 (Audio malfunction.)

23 MS. FERREIRA: -- Ferreira --

24 CHAIRPERSON HILL: I -- that I can hear you. You were
25 on mute. Can you introduce yourself again, Ms. Ferreira?

1 MS. FERREIRA: Catarina Ferreira, Architectural PLC.

2 CHAIRPERSON HILL: Okay. You're really low, Ms.
3 Ferreira? I don't know if you want to see if --

4 MS. FERREIRA: I can adjust this.

5 CHAIRPERSON HILL: Jack up your mic a little bit.
6 Okay. Let me see here.

7 MS. FERREIRA: Is this better?

8 CHAIRPERSON HILL: Yeah, that's perfect, thank you.
9 Okay. I see the waiver request and I also see your justification
10 for request of a waiver. Unless the Board has any issues, I'm
11 going to go ahead and grant the waiver.

12 I don't see any members with their hand that they had
13 an issue. Okay. I guess, Mr. Ferreira, why don't you go ahead
14 and tell us what has happened since the last time you were with
15 us.

16 MS. FERREIRA: Certainly. First of all, Mr. Chairman,
17 thank you for raising the question of the curb cut issue at the
18 last hearing. I think that precipitated a re-evaluation of
19 whether or not it made sense to actually go ahead and remove the
20 curb cut and eliminate the parking space in the garage versus
21 maintaining it.

22 And that's really the reason for the revision. We have
23 revised the proposed project to retain the existing garage, which
24 will allow us then to keep the curb cut and driveway per
25 (indiscernible) comments on our public (indiscernible)

1 application. So we have removed that section of the relief from
2 our Application Form 135 and also all related justifications from
3 the prehearing statement.

4 So those were the amended documents that were provided
5 into the record. And I apologize for having to make another
6 motion to reopen and to make a late filing. But in this case,
7 we did feel that it was crucial to get this in to the case before
8 a decision was made. And really it was based on the fact that
9 given the size of these condos, having no parking whatsoever
10 would make them much more difficult to market, especially given
11 that there's already an existing garage and a curb cut.

12 So turning --

13 CHAIRPERSON HILL: Okay. No, I see and I see Exhibit
14 38 has (indiscernible). Okay. Okay. (Indiscernible.) Let's
15 see. Does the Board have any questions for the Applicant, and,
16 if so, raise your hand.

17 (No response.)

18 Okay. Ms. Vitale, are there?

19 MS. VITALE: Good morning, Mr. Chairman, members of the
20 Board. My name is Elisa Vitale with the Office of Planning.

21 CHAIRPERSON HILL: Ms. Vitale, this change doesn't
22 change the Office of Planning's recommendation, correct?

23 MS. VITALE: That is correct. This is a
24 (indiscernible) of area of relief. So the Office of Planning
25 would continue to recommend approval of the remaining areas of

1 relief that the Applicant is requesting for the conversion.

2 CHAIRPERSON HILL: Okay. All right. Does anybody have
3 any questions for the Office of Planning, and, if so, raise your
4 hand.

5 (No response.)

6 Ms. Ferreira, do you have any questions for the Office
7 of Planning?

8 MS. FERREIRA: I do not.

9 CHAIRPERSON HILL: Okay. Let's see. Mr. Young, (audio
10 malfunction).

11 MR. YOUNG: We do not.

12 CHAIRPERSON HILL: Okay. All right. Ms. Ferreira,
13 (audio malfunction).

14 MS. FERREIRA: Pardon?

15 CHAIRPERSON HILL: There's nothing you would like to
16 add. Are you done speaking?

17 MS. FERREIRA: I am done. Thank you.

18 CHAIRPERSON HILL: Okay. All right. Okay. All right.
19 I'm going to go ahead close the hearing.

20 Mr. Young, if you could excuse everyone.

21 (Pause.)

22 CHAIRPERSON HILL: Okay. Let's see. I actually do not
23 have any issues with this application. I think it's interesting
24 they revised the plans to keep the garage and the driveway. I
25 looked back at the ANC report and they -- I don't think their

1 reports or their issues in terms of being approved of this project
2 is changing because they're going -- they're removing requested
3 relief and they're keeping the parking space.

4 In terms of the special exceptions, I, again, don't
5 have any issues. I think that the Applicant has met their burden
6 in terms of the relief being requested. The standard with which
7 we can grant this.

8 I also would agree with the analysis of the Office of
9 Planning in terms of how they believe they're meeting the relief
10 requested, and then also that of, again, I said the ANC data.

11 So I'm going to be voting in approval.

12 Mr. Turnbull, do you have anything you like to add?

13 MR. TURNBULL: No, Mr. Chairman, I think putting the
14 garage back in simplifies our review of it. I think the special
15 exceptions now are -- what they need is less and I would agree
16 with your pre-analysis and your comments. I would also be voting
17 in favor of this project.

18 CHAIRPERSON HILL: Thank you, Commissioner.

19 Mr. Smith.

20 MR. SMITH: I agree with the pre-analysis of
21 (indiscernible) and I (indiscernible) follow. So I am supporting
22 it (indiscernible).

23 CHAIRPERSON HILL: Thank you.

24 Vice Chair John.

25 VICE CHAIR JOHN: I'm in support of the application.

1 I'm going to give great weight to the Office of (indiscernible)
2 and I believe I agree with you that removing the need for parking
3 (indiscernible) review.

4 CHAIRPERSON HILL: Thank you.

5 Mr. (indiscernible) --

6 VICE CHAIR JOHN: So I'm in support, so.

7 MR. BLAKE: Yeah, I would, too, give substantial weight
8 to the analysis and recommendation of the Office of Planning. I
9 support this.

10 CHAIRPERSON HILL: Thank you.

11 Thank you all very much. I'm going to make a motion
12 to approve Application Number 20395 as captioned and read by the
13 Secretary and ask for a second, Ms. John.

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: The motion is made and seconded, Mr.
16 Moy. If you could please take a roll call.

17 MR. MOY: Thank you, Mr. Chairman. When I call your
18 name, if you would please respond with a yes, no, or abstain to
19 the motion made by Chairman Hill to approve the application for
20 the relief being requested. The motion was seconded by Vice
21 Chair John.

22 Zoning Commissioner Michael Turnbull.

23 MR. TURNBULL: Yes.

24 MR. MOY: Mr. Smith.

25 MR. SMIT: Yes.

1 MR. MOY: Mr. Blake.

2 MR. BLAKE: Yep, yep.

3 MR. MOY: Vice Chair John.

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill.

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: (Indiscernible) record the vote as 5-0-0, and
8 this is on the motion made by Chairman Hill to approve. The
9 motion was seconded by Vice Chair John. Also in support of the
10 motion is Zoning Commissioner Michael Turnbull, Mr. Smith, and
11 Mr. Blake. The motion carries on the vote of 5-0-0.

12 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

13 MR. MOY: (Indiscernible), Mr. Chairman, Mr. Young
14 tells me that Mr. Lechliter is in. Is in the waiting room. So
15 if you want to return to the previous case, you may do so.

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

18 Mr. Young -- oh, Mr. Moy, do you want to call the case
19 back up again or what do you do?

20 MR. MOY: I can do that with the transcript. So the
21 Board is returning to Case Application Number 20412 of 1515
22 Wisconsin Avenue, LLC. And I think that shows the
23 (indiscernible).

24 CHAIRPERSON HILL: Okay. Great.

25 (Pause.)

1 CHAIRPERSON HILL: All right. Mr. Sullivan, can you
2 hear me? Yes, can you introduce yourself again for the record?

3 MR. SULLIVAN: Yes, Marty Sullivan with Sullivan and
4 Barros on behalf of the Applicant.

5 CHAIRPERSON HILL: Okay. All right. Let me go through
6 this. Right. Okay.

7 Mr. Lechliter, can you hear me?

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

9 CHAIRPERSON HILL: Great. Could you just -- could you
10 introduce yourself for the record, please?

11 MR. LECHLITER: Yes. My name is Michael Lechliter, and
12 I'm one of the party opponents.

13 CHAIRMAN HILL: Okay. All right. Let's see. So I
14 can't remember. Mr. Sullivan, are there -- was there a waiver
15 of any kind that you're requesting yet to get things into the
16 record? Was that you or was that the opposition?

17 MR. SULLIVAN: Yeah, yeah, I believe that was us. That
18 was an administrative oversight. So we did file what was
19 requested on the CMA information. We filed that a day late.

20 CHAIRPERSON HILL: Got it. Okay. Unless the Board has
21 any issues, I'm going to grant the waiver because I want to see
22 the correct CMA.

23 I don't see anybody raising their hands, so we're going
24 to go ahead and grant that waiver, Mr. Sullivan.

25 All right. So what I'm going to do, I was just kind

1 of figure out what's happened since we were last here together.
2 First, I'm going to start with Mr. Sullivan.

3 If you could tell me what's happened since the last
4 time we were together.

5 MR. SULLIVAN: I don't have anything other to report
6 other than what's in the in the CMA. I believe that was all that
7 was requested by the Board. We haven't made any changes. We
8 were -- saw the submission by the party opponents, and that looks
9 great, and the Applicant intends for it to work on all those
10 items with the party opponent, should the Board approve this.

11 CHAIRPERSON HILL: All right. Mr. Lechliter, do you
12 want to go ahead and speak?

13 MR. LECHLITER: Sure. I don't think I have much to
14 say. I don't think we have a CMA yet. We have a letter explaining
15 what that would look like and we put in our response on Monday
16 stating that we wanted more details, but to the extent the
17 exception was approved, you know, we are willing and want to work
18 with the Applicant on those details. And I'm glad to hear Mr.
19 Sullivan say that.

20 We agree with the letter in providing such detail. So
21 that's kind of where we're at today. There's been nothing else
22 that's happened.

23 CHAIRPERSON HILL: Okay. Mr. Mottaghi, I'm sorry.
24 Could you could you please introduce yourself for the record?

25 MR. MOTTAGHI: Yes. Steve Mottaghi, 1515 Wisconsin

1 Avenue, LLC, owner.

2 CHAIRPERSON HILL: Okay. Mr. Mataji, I mean, you've
3 seen the things that, I mean, we, the Board, do not usually put
4 CMAs as conditions because it's not really within our purview.
5 We like to see them at times so that we can understand whether
6 the neighbors and whoever the Applicant is working together.

7 So you've seen what they have submitted in Exhibit 55, which
8 I guess is a response to what you submitted. So are you
9 understanding everything that they, the Applicant, would like
10 -- I'm sorry, they, the community, would like to have done and
11 you're agreeable to all of those items?

12 MR. MOTTAGHI: What Mr. Sullivan has said that he's
13 agreed with it. I'm fine with it. I haven't had an opportunity
14 to see it, but my attorney has seen, Mr. Sullivan has seen it,
15 I'm good with it.

16 CHAIRPERSON HILL: Okay. So Mr. Sullivan, I just want
17 to hear. Yes, right. So you guys are all on the same page and
18 you're going to adhere to everything that, you know, I mean, we
19 see you all the time, Mr. Sullivan. So I know that you don't
20 want to, like, you know, say something that's going to be a lie.
21 So you're agreeing to all these things, correct, Mr. Sullivan?

22 MR. SULLIVAN: (No audible response.)

23 CHAIRPERSON HILL: I can't hear you, Mr. Sullivan.
24 You're on mute.

25 MR. SULLIVAN: -- (indiscernible), and it's in the

1 Applicant's interest as well in dealing with CRA. So it's -- it
2 --

3 CHAIRPERSON HILL: I got you. I just missed the very
4 beginning. The answer --

5 MR. SULLIVAN: (Indiscernible.)

6 CHAIRPERSON HILL: The answer is yes.

7 MR. SULLIVAN: Yes.

8 CHAIRPERSON HILL: The answer is yes.

9 MR. SULLIVAN: The answer is yes.

10 CHAIRPERSON HILL: Okay. Great. Okay.

11 MR. SULLIVAN: And regarding the information, they
12 asked for information about phone numbers. I have that
13 information. I just didn't want to submit it in the public
14 record. But we have all the contacts and we're ready to submit
15 to them.

16 CHAIRPERSON HILL: Got it.

17 MR. SULLIVAN: And we'll do that.

18 CHAIRPERSON HILL: Okay. Mr. Lechlitter, you have
19 anything you want to add at the end?

20 MR. LECHLITER: No. I would just, you know, maybe the
21 best way to go forward, Mr. Sullivan, is you and I could start
22 kind of email dialog. You could send me that information and we
23 could move on from there.

24 CHAIRPERSON HILL: Okay. Great. Perfect. Mr. Sullivan
25 gave a thumbs up for the record. Okay. All right. Okay.

1 Then does the Board have any questions of anybody?

2 Mr. Turnbull.

3 MR. TURNBULL: I just had a -- just wanted to review
4 where we are on the backyard. It's my understanding there's no
5 parking in the backyard. It's a fenced yard with no tenant use.
6 And the only lighting back there would be like a safety light or
7 a minimal down lighting for exit purposes only. Do I understand
8 that right. And the trash will be taken out through the front.

9 MR. SULLIVAN: All correct, yes.

10 MR. TURNBULL: That's all correct? Okay.
11 (Indiscernible) whether some of that needs to be referenced in
12 the order, but I just wanted to make sure on the record that
13 that's what we're agreeing to.

14 CHAIRPERSON HILL: Thank you. Okay. Okay. Anyone
15 else?

16 (No response.)

17 CHAIRPERSON HILL: Okay. I guess I don't know, I guess
18 I need to talk about it. So, I mean, Mr. Sullivan, if we get to
19 deliberations and Mr. Turnbull wants to add some of that into the
20 record as conditions, your client is comfortable with that,
21 correct?

22 MR. SULLIVAN: Yes.

23 CHAIRPERSON HILL: Okay. Great. All right. Anyone
24 else?

25 (No response.)

1 CHAIRPERSON HILL: Okay. Mr. Young, is there anyone
2 else -- is there anyone from the public here?

3 MR. YOUNG: We just had Mr. Lintner.

4 CHAIRPERSON HILL: Right, but he's in the room now.
5 There's no one else.

6 MR. YOUNG: He's the only one.

7 CHAIRPERSON HILL: Okay. Great. Okay. Then I'm going
8 to go ahead and close the record and excuse everyone. Thank you
9 all.

10 MR. LECHLITER: Thank you.

11 (Pause.)

12 CHAIRPERSON HILL: Okay. And just also for the record,
13 even though I've closed the record, whatever, we're letting in
14 all of the letters, there was a couple of filings that came at
15 the very end.

16 There was a letter in opposition. And also, I would
17 like to reply, for the record, they're commenting on my comment
18 from the last time that it was a little street, a small little
19 street. I was implying they're very cute. They're very cute
20 homes. It's a very cute street. It's a very nice street. And
21 I don't think that anything that we do is small or petty.

22 I live in a condo. I don't even have a tiny little
23 yard. So I would love to have the tiny little yard. I think
24 they're very cute. All right. So that's my little comment on
25 that.

1 All right. Mr. Turnbull, would you like to start this
2 discussion at all? Would someone else like to talk, because I'm
3 just getting tired of talking.

4 MR. TURNBULL: Sure. I'd be delighted. Obviously, if
5 we get into a situation where it's kind of an awkward one with
6 the neighbors and, but I guess what, looking back on this case,
7 we have the old Georgetown Board, which reviewed the building
8 from an architectural standpoint and found that it met their
9 requirements. So that's a high bar for them to be able to say
10 about what they're doing.

11 I feel that with this, after seeing the shadow studies
12 and everything else, that I guess I would agree with the Office
13 of Planning report that they meet the requirements for the special
14 exception. So I'm not a -- I would be voting in favor of it. I
15 worry about the applicants. I'm always worried that the next
16 door neighbors are going to be satisfied. That's why I made those
17 comments at the end of the conclusion of the hearing and whether
18 those need to be put in the order.

19 If the Board wants to agree, maybe we could have Mr.
20 Rice, if that's even possible, I don't know if that's like --
21 it's sort of like built-in suspenders and maybe it's not needed,
22 but Mr. Rice could weigh in and see if that's for (indiscernible).
23 I'm being cautious about it.

24 CHAIRPERSON HILL: No, that's great. I mean, Mr. Rice
25 and I don't even know how we would necessarily word that. I

1 mean, the things that Mr. Turnbull is speaking to is the minimal
2 lighting in the back just for -- I don't know what the words are,
3 emergency, the trash going out through the front and that -- I
4 forget what the other one was, Mr. Turnbull.

5 MR. TURNBULL: No parking, was an enclosed yard, fenced
6 yard with no tenant use. He definitely said there was no tenant
7 use and I said trash would be taken out through the front.

8 CHAIRPERSON HILL: Right. So Mr. Reiss, is that
9 something that we would somehow be able to (indiscernible)?

10 MR. RICE: So under (indiscernible) 1.4, you guys have
11 expressed authority to impose conditions related to lighting with
12 regard to the use of the rear yard and the trash out front. Since
13 the Applicant has consented, you know, to those stipulations, we
14 can memorialize that in the order.

15 CHAIRPERSON HILL: Okay. I'm fine with that. Mr.
16 Turnbull, if you'd like to add that into the order.

17 MR. TURNBULL: Yeah, I'm just looking something extra
18 reassuring for neighbors in this case, that's all. I'm not --
19 maybe it's belts and suspenders, but I just thought it might be
20 a nice gesture that the Applicant's going to work with them and
21 provide that. So those are my only comments.

22 CHAIRPERSON HILL: Okay. Mr. Smith.

23 MR. SMITH: I also agree with Mr. Turnbull; add all his
24 comments into the record. So I really don't have too much more.
25 I believe that (indiscernible) the burden of proof is

1 demonstrating that they meet the requirements on request for a
2 special exception for occupancy. And I agree with Mr. Turnbull's
3 analysis, meet the sound studies that the proposed construction
4 would not have a substantial adverse impact on shadowing
5 apartments to the east while they (indiscernible) to the
6 properties that are already shadowed.

7 So I don't believe that shadowing would be a major
8 concern here. So other than that, I rest on (indiscernible) or
9 I give it great weight. I'd like to thank the ANC and the
10 neighbors for opportunity to have dialogue with the Applicant,
11 and I continue to look towards a construction management
12 agreement.

13 So other than that, (indiscernible).

14 CHAIRPERSON HILL: Okay. Vice Chair John.

15 VICE CHAIR JOHN: Just a few additional thoughts and
16 I'll try to be quick. So this is (indiscernible) request for
17 that occupancy relief that would increase the amount of occupancy
18 from 75 percent to 81 percent. The building meets all other
19 development standards, and that's a rear yard with 25 feet, which
20 is 10 feet more than 15 feet required by the (indiscernible).

21 There's no alley separating the property from the rear
22 yards on 32nd Street. In response to the ANC concern that
23 occupants (indiscernible) report (indiscernible) for the existing
24 (indiscernible) building, and the matter of right option, the
25 (indiscernible) viewed and considered the (indiscernible) study

1 at the hearing as well as concerns of the parties in opposition
2 and their response to the (indiscernible) study.

3 I agree with OPIS (phonetic) analysis that although
4 there are some shadowing, there would be no adverse impact on the
5 (indiscernible). The Applicant also the project to accommodate
6 concerns about (indiscernible), including reducing the height of
7 the second-story edition and the rear addition, which extends the
8 building footprint by only 5 feet.

9 And the addition that's not visible from Wisconsin
10 Avenue. That Exhibit 46, and then we'll test whether parties in
11 opposition continue to express concerns about loss of actual
12 light, privacy, noise, and traffic impacts on the residential
13 32nd Street.

14 And those are very valid concerns. However, I do not
15 believe there's an adverse impact, particularly because of the
16 reduced height of the building and the 25-foot rear yard. I also
17 give great weight to OPIS analysis of how the application meets
18 the criteria (indiscernible) or support.

19 ANC supported the application -- the ANC supported the
20 application, but I (indiscernible) and the Board must give great
21 weight to the legal and relevant concerns of the ANC, which the
22 Board has done in requesting the additional (indiscernible)
23 study.

24 The Applicant has also proposed residential
25 (indiscernible), which have a lower density, and I believe that

1 was a suggestion of the ANC. And that has no objection. And I
2 take note also that the Old Georgetown Board has no objection to
3 the concept design.

4 Now, with respect to the construction agreement, I am
5 not sure if the Applicant did say that he would agree to not
6 (indiscernible) -- preventing tenants from using the rear yard.
7 I believe if the Board were to include that provision, we would
8 be intruding on the Applicant's operation of its business, and
9 so I'm not agreed to include that provision in the order.

10 We could perhaps mention that the parties are
11 continuing to negotiate in good faith to reach construction
12 agreement. I agree that the lighting provision is appropriate
13 in terms of security and that including something about trash
14 would also mitigate the impacts of pets and other things like
15 that. So I would agree to including those two conditions, and I
16 support that, which.

17 CHAIRPERSON HILL: Okay. So Ms. John, I thank you very
18 much for your thorough analysis. I mean, I got to say, Mr.
19 Turnbull, I was also -- I don't even know what to say about this
20 backyard thing. I mean, I was a little uncomfortable about it.
21 Like, it's kind of like, you know, I don't know. Well, 1st of
22 all, Ms. Johns has taken a principled approach, which is that
23 like you're interfering with someone's ability to operate their
24 business. And I just think it's kind of a waste of space. Like,
25 I don't know what, you know, people are or aren't -- so anyway,

1 so Ms. Johns' not interested -- I shouldn't say "not interested"
2 -- in saying that they will work together -- they will work
3 together with construction management plan and also then try to
4 work together to be good neighbors. But we could include the
5 condition about the lighting and the trash, Mr. Turnbull, if
6 that's okay with you.

7 MR. TURNBULL: Yeah, I was just I was just parroting
8 what Mr. Mottaghi had said in the original hearing. Not my idea.
9 I didn't come up with the idea. I just knew that there's parking,
10 it was a fenced yard, and we talked about people that I think
11 someone, one of the opposition may have talked to, and he said,
12 no, tenants will not be using that. It's just a planting area.

13 So I was just parroting that. If we don't want to put
14 it in, we don't want to put it in. That's fine. I'm just
15 parroting what he had said. Not my condition. It was just his,
16 so.

17 CHAIRPERSON HILL: Okay. Okay. So I'm fine then with
18 Ms. John.

19 Mr. Smith, you give me a thumbs up. You're good with
20 that. Okay.

21 All right. Mr. Blake, do you anything you'd like that?

22 MR. BLAKE: Not very much. I think that we've
23 adequately covered most everything that I was -- would say
24 something about. I certainly would say that I do empathize with
25 the residents along a 32nd Street. But the reality -- because

1 it does have an impact on their lives. They live in an R-20
2 (phonetic) Zone to the front, but they abut an MU-4 Zone, which
3 comes with the ability to do a broad range of commercial into
4 institutional/multi-use issues. So it's a very challenging
5 situation.

6 But what the convenience of being in an MU-4 Zone
7 abutting it, there are some costs involved. It also seems like
8 their focus is on the long term, the future potential developments
9 and the trend of developments, which really was not relevant to
10 this particular situation.

11 All that said, I feel very comfortable supporting the
12 special exception in this case, giving substantial weight to the
13 analysis and recommendation of the -- and the comments made by
14 other Board members.

15 CHAIRPERSON HILL: Okay. Great. Perfect. Thank you
16 all very much. I have nothing to add. You guys did such a great
17 job.

18 So I'm going to make a motion to approve Application
19 Number 20412 as captioned and ready by the Secretary, including
20 the two conditions that, Mr. Rice, maybe you can craft in some
21 fashion concerning the lighting and the trash removal from the
22 front and ask for a second, Ms. John.

23 VICE CHAIR JOHN: Second.

24 CHAIRPERSON HILL: The motion is made and seconded, Mr.
25 Moy, could you please take a roll call vote.

1 (Pause.)

2 CHAIRPERSON HILL: Mr. Moy, you're on mute if you're
3 trying to speak.

4 MR. MOY: All right. Thank you, Mr. Chairman. I was
5 trying to find the button. These buttons are way too small.

6 Okay. So when I call your name, if you would please
7 respond with a yes, no, or abstain to the motion made by Chairman
8 Hill to approve the application, along with the two conditions,
9 as he has cited, which I believe the Chairman said that the OAG
10 will craft, and they write the full order. Motion was seconded
11 by Vice Chair John.

12 Zoning Commissioner Michael Trumbull.

13 MR. TURNBULL: Yes.

14 MR. MOY: Mr. Smith.

15 MR. SMITH: Yes.

16 MR. MOY: Mr. Blake.

17 MR. BLAKE: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes. Yes.

20 MR. MOY: Chairman Hill.

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Staff will record the vote as 5-0-0, and this
23 is on the motion made by Chairman Hill to approve. It was
24 seconded by Vice Chair John. Also in support of the motion is
25 Zoning Commissioner Michael Turnbull, Mr. Smith, and Mr. Blake.

1 Motion carries on a vote of 5-0-0.

2 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy, you
3 can call our next one when you get a chance. Try to look it up.

4 MR. MOY: Okay. So the next continued hearing case and
5 decision is Application Number 20411 of Marcel and Stacy Clarke,
6 captioned and advertised for special exceptions from the
7 penthouse requirements, Subtitle C, Section 1500.4 and from the
8 penthouse setback requirements of Subtitle C, 1502.1, and the
9 area variance from the rear yard requirements, Subtitle E,
10 Section 306.1.

11 This would subdivide the lot and construct two three-
12 story flats in the RF-1 Zone. The property's located at 2600
13 4th Street, NE, Square 3551, Lot 1.

14 Again, as you will recall, this was last heard at its
15 hearing on March 17th where the Board continued the hearing to
16 schedule a decision -- or rather continue the hearing and
17 scheduled to April 28th. The Board did not request any
18 supplemental information.

19 Since that date, there have been no new filings in the
20 record and -- and it appears that other than the Applicant, there
21 are no other persons signed up to testify.

22 That's it, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

24 Mr. Blake, I guess you're not on this case, so if you
25 want to turn your video off, that's fine with us.

1 And then, yeah, let's see. Okay. I'm just pulling up
2 here the record. Just give me one moment, please.

3 (Pause.)

4 CHAIRPERSON HILL: Okay. Mr. Sullivan, can you hear
5 me?

6 MR. SULLIVAN: Yes.

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

9 MR. SULLIVAN: Yes, Mr. Chair, members of the Board,
10 Marty Sullivan with Sullivan and Barros on behalf of the
11 Applicant.

12 CHAIRPERSON HILL: Okay. All right. I don't know if
13 you have anything to add, Mr. Sullivan. You don't have anything
14 add, do you, or since the last time we were with you?

15 MR. SULLIVAN: Well, in fact, in this one, the Board
16 closed the record at the end of the last session, so --

17 CHAIRPERSON HILL: Okay. Well, I apologize --

18 MR. SULLIVAN: -- I would say no (indiscernible) --

19 CHAIRPERSON HILL: That's right. That's right. I
20 apologize if it sounded that way that I had, because they're all
21 continued cases technically, so --

22 MR. SULLIVAN: Right.

23 CHAIRPERSON HILL: -- but nonetheless, you don't have
24 anything to add to your argument, correct?

25 MR. SULLIVAN: Unless the Board is requesting or

1 interested in hearing a recap or hearing more information, then
2 no.

3 CHAIRPERSON HILL: Okay. I mean, maybe if you went to,
4 Mr. Sullivan, at the end, I'll let you go ahead and do a little
5 recap again, because I am going to turn to the Office of Planning
6 real quick.

7 Ms. Vitale, can you hear me?

8 MS. VITALE: Yes. Good morning, Mr. Chair.

9 CHAIRPERSON HILL: Could you introduce yourself for the
10 record, please?

11 MS. VITALE: Yes, Elisa Vitale with the Office of
12 Planning for Case 20411.

13 CHAIRPERSON HILL: Ms. Vitale, could you please do me
14 a favor and just review your report a little bit?

15 MS. VITALE: Certainly. I'd be happy to. The Office
16 of Planning was recommending denial for the Applicant's requested
17 area variance relief. This was from the rear yard requirement.
18 In the RF-1 Zone, a 20-foot minimum rear yard is required. The
19 Applicant was proposing to provide no rear yard in this case.

20 As we were unable to support the rear yard relief, we
21 also did not recommend approval of the additional special
22 exception relief that the Applicant had requested that was
23 related to penthouse setbacks and the ability to, you know, have
24 a penthouse on a flat in the RF-1 Zone.

25 I do believe the Applicant on the record at the prior

1 hearing indicated that they may withdraw that request, but, you
2 know, again, the Office of Planning was unable to support the
3 penthouse special exception and was recommending denial of the
4 area variance relief.

5 I'm happy to go into more detail in my report -- you
6 know, you know, of the OP analysis from my report, if you'd like
7 that at this time.

8 CHAIRPERSON HILL: I'm okay, Ms. Vitale. I'm just
9 going to see if anybody has any questions for you.

10 Does the Board have any questions for the Office of
11 Planning?

12 (No response.)

13 CHAIRPERSON HILL: No.

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

16 MR. SULLIVAN: No.

17 CHAIRPERSON HILL: Okay. Mr. Young, is there anyone
18 here wishing to speak?

19 MR. YOUNG: Yes, we have one witness that signed up
20 this morning.

21 CHAIRPERSON HILL: Okay. Can you bring that witness
22 in, please?

23 MR. YOUNG: -- the architect, Mr. Chair.

24 CHAIRPERSON HILL: Oh. Oh, okay. So they're not
25 actually testifying, correct, Mr. Sullivan?

1 MR. SULLIVAN: But unless you have questions for them.

2 CHAIRPERSON HILL: Thank you.

3 Mr. Young --

4 MR. SULLIVAN: (Indiscernible.)

5 CHAIRPERSON HILL: -- was there --

6 MR. YOUNG: No --

7 CHAIRPERSON HILL: -- is there anyone --

8 MR. YOUNG: -- that's the only person.

9 CHAIRPERSON HILL: Okay. Got you.

10 All right. Mr. Sullivan, is there anything you'd like
11 to add at the end?

12 MR. SULLIVAN: No, I would just like to sum up. I
13 think this is an excellent opportunity to provide standard
14 housing that's not squeezed in. It's an extremely large lot, an
15 extraordinarily large lot at 4,266 square feet. It has 147 feet
16 of possible street frontage, and of that, 107 feet is restricted
17 by the building restriction line.

18 There are cases, if the Board wanted to hear about it,
19 I do have cases where the BRL (phonetic), existence of a BRL was
20 used as an extraordinary condition that caused the practical
21 difficulty. And I think we have that here. And, in fact, the
22 next case you'll hear Office of Planning supporting a variance
23 from minimum lot area, in part, based on the existence of the
24 BRL as well.

25 So we have full support of the ANC. We have wide

1 support of the community when, if this was approved, these homes
2 would still be on large lots that are still 333 square feet larger
3 than the minimum required. It mirrors the configuration right
4 across the street and we believe for these reasons, it meets a
5 variance test and makes a lot of sense, so. That's all I have.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Sullivan.

7 All right. Does anyone have any questions for anybody
8 and, if so, raise your hand.

9 (No response.)

10 CHAIRPERSON HILL: Okay. All right. Then go ahead.
11 Excuse everyone from the office -- from the room and close the
12 record. Thank you all very much.

13 (Pause.)

14 CHAIRPERSON HILL: Since it was so successful last
15 night, Mr. Turnbull, can you go first. Would you mind starting
16 us off?

17 MR. TURNBULL: No, I can start it off. Notwithstanding
18 the housing that would be provided, which I think is -- the City
19 needs. I think that's very important to get the housing. My
20 concern, I would agree with the Office of Planning's report that
21 they don't meet the rear yard variance test.

22 I mean, my problem is, even though that they're going
23 to give -- the next door neighbors is in favor, is okay with this
24 because they're going to they were planning to provide him a unit
25 in the new buildings, the problem is for you've got no rear yard.

1 You've got a 30-foot -- 35-foot high blank wall that's 106 feet
2 long along the property line.

3 So you have this huge wall along the rear yard, which
4 means that whoever comes after the next property owner sets up a
5 domino effect. To set up all kinds of -- I mean, you'd have to
6 draw a lot of variance to develop the property next to it then.
7 It would -- I'm just concerned that they don't meet the rear yard
8 and that, two, it goes against the zoning regulations and to do
9 this would be setting a precedent for development, which I think
10 in one way may be worthwhile from the standpoint of housing, but
11 another way defeats the purpose of trying to develop property.
12 And I -- I can't agree with this. I will not be voting -- I will
13 be voting against this.

14 CHAIRPERSON HILL: Okay. Mr. Smith.

15 MR. SMITH: So I agree with Turnbull's analysis, but
16 I'll add a little bit more (indiscernible). So because the
17 special exceptions are tied to the variance request, to conduct
18 my analysis of (indiscernible) and I could support this, I first
19 looked at the three prongs of the variance test.

20 So if I'm looking at the first prong, the subdivided
21 property (indiscernible) sense, but where I don't believe it
22 would meet the variance test is at second and third prong.

23 So second prong. I'm not completely sold with the
24 request. I'm having (indiscernible) difficulty in developing
25 this particular property. I do not believe that the Applicant

1 had demonstrated that they have a practical difficulty in
2 developing (indiscernible). There may be other alternatives to
3 develop the lot.

4 Not only the current record, but also the
5 (indiscernible) lot that the Applicant proposing to do to get
6 (indiscernible) in order to get this variance.

7 The third prong, I do not believe the Applicant has
8 sufficiently demonstrated that their proposal would not be
9 detrimental to the public good. The purpose of agreeing to our
10 regulations is to allow space for light, air, and public space,
11 to protect and promote the health and safety of the residents.

12 And say that the proposal (indiscernible) is contrary
13 to the purpose of design plan, provide sufficient setbacks,
14 yards, and open space to accommodate a rowhome as (indiscernible)
15 to the RF-1 Zone. And then (indiscernible) could have been
16 contemplated, but would not reduce the rear yard to zero or
17 housing that has more setback from the rear or even single story
18 that would protect the light, air, and privacy to adjacent
19 properties.

20 I'm not completely sold that the existing structure can
21 be expanded or another unit could be placed in this existing
22 structure. So I don't believe the Applicant, to me, has
23 sufficiently demonstrated that they have met the third test.

24 So in closing, I am not supporting this variance for
25 the reasons I stated, but I do believe that other development

1 approaches on this slide where we're not -- that were contemplated
2 by the Applicant for renovation of the existing home. And I'm
3 not seeing sufficient information (indiscernible) with the
4 argument that the property cannot be renovated (indiscernible)
5 by the Applicant.

6 So because I can't support the variances, I also, I
7 can't support the special exceptions, so I would recommend --
8 where I'm at now is denial of the variance and the special
9 exception.

10 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith.

11 Ms. John.

12 VICE CHAIR JOHN: Thank you, Mr. Chairman. I -- I --
13 my thoughts are similar to what's been said so far. I mean, I
14 like the project. I like the idea that the owner will be able
15 to live in one of the units. I believe this is the case, if I
16 have my facts right.

17 But I can't get by what was the --Commissioner Turnbull
18 mentioned that 106-foot wall along the rear of the property with
19 zero rear yard. And I think that has to be detrimental to the
20 property next door in that neighbor is in support of the project.
21 But more importantly, I think that the need for the relief in
22 this case seems to be driven by the particular design chosen by
23 the Applicant.

24 And I agree that there is a practical difficulty that,
25 you know, that building restriction line is significant. So --

1 and the size of the lot. I agree with all of that. But the
2 practical difficulty has to be driven by those two conditions.
3 And I see that here. So I support OP's analysis and
4 recommendations. As much as I like the project, I can't support
5 the application.

6 CHAIRPERSON HILL: Okay. Thank you, Ms. John.

7 Well, I agree with my colleagues and also do
8 appreciate, Ms. John, the comments that you made. I mean, I
9 think it's a lovely project. I mean, I think that there's, you
10 know, what you even mentioned that one of the -- the current
11 owner would get to live in one of the units.

12 .But I think that that big wall that Mr. Turnbull also
13 is mentioning, it's just going to create kind of this domino
14 effect that he said, you know, of the -- down the block. So I
15 will agree with my colleagues and also that of the analysis of
16 the Office of Planning.

17 So I'm going to go ahead and make a motion to deny
18 Application Number 20411 as caption read the Secretary and ask
19 for a second, Ms. John.

20 VICE CHAIR JOHN: Second.

21 CHAIRPERSON HILL: The motion been made and seconded.

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

23 MR. MOY: Thank you, Mr. Chairman. When I call your
24 name, if you would please -- if you would please respond with a
25 yes, no, or abstain to the motion made by Chairman Hill to deny

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

3 Zoning Commissioner Michael Turnbull.

4 MR. TURNBULL: Yes, to deny.

5 MR. MOY: Mr. Smith.

6 MR. SMITH: Yes.

7 MR. MOY: Vice Chair John.

8 VICE CHAIR JOHN: Yes, to deny.

9 MR. MOY: Chairman Hill.

10 CHAIRPERSON HILL: Yes, to deny.

11 MR. MOY: Staff would record vote as 4-0-1. This is
12 on the motion made by Chairman Hill to deny the application, the
13 motion was seconded by Vice Chair John, also in support of the
14 motion to deny is Zoning Commissioner Michael Turnbull and Mr.
15 Smith. And we have one Board member not participating. The
16 motion carries on a vote of 4-0-1.

17 CHAIRPERSON HILL: All right. Thanks, Mr. Moy.

18 So, Ms. John, it's up -- oh, first of all, Mr. Turnbull,
19 is that it for you?

20 MR. TURNBULL: That's it for me. You folks have a good
21 day.

22 CHAIRPERSON HILL: You as well, sir.

23 MR. TURNBULL: Take care.

24 VICE CHAIR JOHN: Good day, Mr. Turnbull.

25 MR. TURNBULL: Thank you.

1 CHAIRPERSON HILL: So, Ms. John, it's up to you. If
2 you want to either do your two cases now and take a break or take
3 a break and then do your two cases.

4 VICE CHAIR JOHN: I would suggest that maybe a five-
5 minute break.

6 CHAIRPERSON HILL: Okay. All right. So then I'm not
7 coming back, so I'm going to -- I'm going to -- when Mr. -- so
8 anyway, Ms. John's the lead now. So you all got five minutes
9 and then you all come back and do your cases, then I'll see you
10 guys.

11 VICE CHAIR JOHN: Thank you, Mr. Chairman.

12 So let's take a five-minute break. Thank you.

13 (Off the record.)

14 (On the record.)

15 VICE CHAIR JOHN: Back in session, Mr. Moy. Could you
16 please call the next case.

17 MR. MOY: Yes. Thank you, Madam Vice Chair. The Board
18 is -- the hearing's back in session and the time is at or about
19 10:55.

20 The next case before the Board is Application Number
21 20430 of 1501 Erie Street Construction, LLC. This is captioned,
22 advertised for area variance from the minimum lot area
23 requirements, Subtitle D, Section 302.1. This would construct a
24 new three-story detached principal dwelling unit in the R-1-B
25 Zone. The property is located at 4269 Meade Street, NE, Square

1 5099, Lot 806.

2 As the Board will recall, this was last heard at its
3 hearing on March 24th. The Board did not request any supplemental
4 information. And since that date, there are no new filings in
5 the record. Other than the Applicant's team, no one else has
6 signed up to testify. And participating is Zoning Commissioner
7 Rob Miller, the Vice Chair, and Mr. Smith.

8 VICE CHAIR JOHN: Thank you, Mr. Moy. I see Mr.
9 Sullivan is here. And Mr. Young, we have no other parties signed
10 up; is that correct?

11 MR. YOUNG: That's correct.

12 VICE CHAIR JOHN: Mr. Sullivan, would you introduce
13 yourself, please.

14 MR. SULLIVAN: Thank you, Madam Chair, members of the
15 Board. Marty Sullivan with Sullivan and Barros on behalf of the
16 Applicant.

17 VICE CHAIR JOHN: Thank you. I believe you did your
18 closing at the last hearing, and so, as Mr. Moy said, the record
19 is closed. So and we did not ask for any more information, so I
20 believe this case is ready for decision. So I'll go ahead and
21 ask Commissioner Miller, if he's so inclined, to start the
22 discussion.

23 (Pause.)

24 VICE CHAIR JOHN: I didn't hear you. Can't hear you,
25 Mr. Miller.

1 MR. MILLER: Can you hear me now?

2 VICE CHAIR JOHN: Now I can, yes.

3 MR. MILLER: Okay. I heard you --

4 VICE CHAIR JOHN: Can you hear me --

5 MR. MILLER: -- I made a mistake in coming out here
6 today. There's John Eaton Elementary School modernization going
7 on and it seems particularly loud today, and the dogs barking
8 everywhere. I must have been the hour to do all the major
9 construction and dog walking.

10 So we're on Case 20430. I agree with the Applicant and
11 Office of Planning that the Applicant has satisfied the criteria
12 for area variance relief here to construct the new three-story
13 detached principal dwelling in the R-1-B Zone.

14 It doesn't quite meet the light/air requirements that
15 require a minimum of 5,000 square feet. It only has four hundred
16 -- forty-one forty, 4,140. But I agree with the Applicant and
17 OP that there's a practical difficulty in developing the two lots
18 individually due to the exceptional conditions of substandard lot
19 size, the building restriction line that exists on one of the
20 lots, the narrowness of the other lot, and that they cannot
21 increase the lot area to meet the minimum lot area requirement.

22 The Applicant could develop a new house on each
23 existing record lot, but that would be practically difficult by
24 right due to individual lot sizes and would likely require even
25 more or different, substantial relief -- more substantial relief

1 than what's being asked for in this case.

2 So I think that the combination of the substandard lots
3 would result in one lot that is more consistent with the intent
4 of the zoning regulations than the current substandard record
5 lots and allow for the development of the single-family detached
6 house, which on this vacant lot, which was, I think, created due
7 to the -- when Kenilworth Avenue was created in the '50s and this
8 vacant lot was kind of left over.

9 And it's always a little bit disconcerting in a
10 neighborhood when they see a vacant -- when a vacant lot that's
11 a long-standing vacant lot and they thought it was their open
12 space or their green space, and to suddenly see a development
13 on it, I think (audio malfunction). A house I'm sitting at here
14 in Cleveland Park fell into that category, and I, fortunately,
15 was not the owner -- previous owner who developed it and got the
16 wrath of the neighbors.

17 But so I realized the ANC has concerns about the --
18 about the relief being requested and that it -- and the design
19 of the house, because it's three stories where most of the most
20 of the houses in the neighborhood, I think, are two stories. But
21 design is really not an issue for the Board to consider in this
22 particular case.

23 So it's not really before us and I think that the
24 proposal makes usable and provides housing on a lot that otherwise
25 would remain vacant. So with all that, I understand the ANC's

1 concerns and I and -- and perhaps the Applicant can work with
2 the ANC going forward and try to mitigate whatever the design
3 effects, but I think the major design concern they have is three
4 stories, which is permitted under the H-1-B zone that we're in.
5 They meet all the development standards for this development,
6 other than -- other than the minimum lot size, which isn't really
7 all that much of a deviation.

8 So I'm prepared to support this application today,
9 Madam Chair.

10 VICE CHAIR JOHN: Thank you, Commissioner.

11 And they're calling you next. What about Mr. Smith?
12 Well, the only other person before me, so.

13 MR. SMITH: Oh.

14 VICE CHAIR JOHN: It's you.

15 MR. SMITH: (Indiscernible.) So I agree with Mr.
16 Miller, with his analysis of this particular case, and I'll go
17 by -- so the first prong. I do believe that request meets the
18 first prong. The property is currently to (indiscernible) lots,
19 essentially, like Mr. Miller said, two residual parcels due to
20 expansion of Kenilworth Avenue back in the '50s.

21 The setback requirements in one of the existing record
22 lots that have (indiscernible) to construct (indiscernible) on
23 smaller lots.

24 Based on the second prong, I do believe that this
25 application does have the (indiscernible) exceptional practical

1 difficulties in its ability to use this property. Over the
2 (indiscernible) lot size when combined with the front yard
3 setback requirements of each individual existing lot.

4 The BRL on Lot 68 issues and the narrowness of Lot 69,
5 it would be difficult to develop both of the properties in
6 accordance to the development standards of the R-1-B Zone.

7 On to the third prong. I do not believe that the
8 proposal would be detrimental to the public good or impair the
9 purpose and intent of the zoning regulations. The proposed size
10 of the lot is in keeping with the character of the neighborhood
11 and the reduced density that would ensue from merging both of
12 these lots is also in character with block (phonetic). And I
13 believe that would meet the intent and purpose of the zoning
14 regulation in that area.

15 And just as Mr. Miller stated, I understand completely
16 concerns of the ANC and the Civic Association regarding the design
17 of the building. Just as Mr. Miller stated, they can construct
18 a three-story building (indiscernible) with other properties
19 within the neighborhood that are also zoned R-1-B.

20 And because this property isn't within a historic
21 district, we have very limited -- well, we have limited as a
22 board the power to control design. But -- the District government
23 in general-- when it comes down to design, has very little control
24 over properties that are within some kind of locally designated
25 historic district.

1 So I do give great weight to OP staff (indiscernible)
2 analysis and the analysis provided by the Applicant. So I will
3 be supportive of the variance request.

4 VICE CHAIR JOHN: Thank you (indiscernible), Mr. Smith.

5 So I really don't have a lot to add to the discussion,
6 because I think you both covered everything I would have said.
7 I would add that the DDOT (indiscernible) objection and the
8 neighbors do have valid concerns because, as Commissioner Miller
9 said, you know, they've had this vacant property in the
10 neighborhood for a long time and there might have been some
11 expectation that it would remain so.

12 But the development that the project is about, and the
13 regulations, and apart from the area there, apart from the lot
14 size after combining the two lots, there is -- there's just
15 minimal relief that the Applicant is requesting, so I'm able to
16 support this application.

17 And so I will now make a motion to support Application
18 20430 as read and captioned by the Secretary and ask for a second,
19 Board Member Smith. Board Member Smith?

20 MR. SMITH: Yes.

21 VICE CHAIR JOHN: Thank you. Mr. Moy?

22 MR. MOY: Yes.

23 VICE CHAIR JOHN: (Indiscernible), motion has been
24 seconded by Board Member Smith. Can you take a roll call?

25 MR. MOY: Yes, with pleasure. When I call your name,

1 if you would please respond with a yes, no, or abstain to the
2 motion made by Vice Chair John to approve the application for the
3 relief requested. The motion was seconded by Mr. Smith.

4 Zoning Commissioner Rob Miller.

5 MR. MILLER: Yes.

6 MR. MOY: Mr. Smith.

7 MR. SMITH: Yes.

8 MR. MOY: Vice Chair John.

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Staff would record the vote as 3-0-2. This
11 is on the motion of Vice Chair John to approve. The motion was
12 seconded by Mr. Smith. Also in support of the motion is Zoning
13 Commissioner Rob Miller. We have two Board members not
14 participating, but the motion carries on a vote of 3-0-2.

15 VICE CHAIR JOHN: Thank you, Mr. Moy. And so on to
16 the next case.

17 MR. MOY: The next case application before the Board
18 is Application Number 20417 of Narayanswarup, Inc. captioned,
19 advertised for use variance from the use restrictions of Subtitle
20 U, Section 201. This would permit a commercial use of the first
21 floor and basement in an existing non-conforming two-story with
22 basement building in the R-3 Zone. This property is located at
23 4914 through a 4918 Central Avenue, NE, Square 5190, Lot 28. The
24 Board last heard this at its hearing on March 24th, 2021. The
25 Board did not request any supplemental information and since

1 March 24th there are no new filings in the record. Other than
2 the Applicant's team, there are no other persons signed up. There
3 appears to be no other person sign up to testify. Participating
4 is Zoning Commissioner Rob Miller, Mr. Smith, and Vice Chair
5 John.

6 VICE CHAIR JOHN: Thank you, Mr. Moy. Would the parties
7 introduce themselves for the record, please.

8 MR. SULLIVAN: Yes, thank you. Marty Sullivan with
9 Sullivan and Barros on behalf of the Applicant. Sheel, if you
10 want to hear this.

11 VICE CHAIR JOHN: Thank you. Who is with you today,
12 Mr. Sullivan?

13 MR. PATEL: Sheel Patel from Nine (indiscernible), Inc.
14 I am the Applicant.

15 VICE CHAIR JOHN: Thank you. Is there anyone else
16 you'd expect to testify? Well, we might not need testimony.

17 MR. SULLIVAN: Dr. Karishma Patel is here.

18 MS. PATEL: Yes, I'm Karishma Patel. I am pursuing
19 this to open up a pediatric dental office within one of the units.
20 And so I'm also one of the applicants.

21 VICE CHAIR JOHN: Thank you. And I see Commissioner
22 Holmes is also signed up.

23 Mr. Holmes, would you --

24 MR. HOLMES: Commissioner Antawan Holmes, Chair of ANC
25 7C.

1 VICE CHAIR JOHN: Thank you very much. So as Mr. Moy
2 stated earlier, the Board heard this case last time and closed
3 the record, and did not request any additional information. There
4 are no filings in the record, no new filings in the record, as
5 far as I'm aware. And unless one of my Board members has any
6 issues, I would think that this application is ripe for decision.

7 Okay. So I'll go ahead and excuse the parties at this
8 point.

9 (Pause.)

10 VICE CHAIR JOHN: Thank you, Mr. Young.

11 I would start with this question with a few thoughts
12 and I'll see where we go from here. This is a really very
13 difficult case for me personally because of the particular
14 situation with this building. So I'll start.

15 So the Applicant seeks a variance from U 201 to allow
16 commercial use on the first floor and the basement in the existing
17 non-conforming structure. And this is in the R-3 Zone.

18 And I believe that on balance, the application meets
19 the three prongs of the fairness test. And I agree that, with
20 the Applicant, that the first prong is met because of the history
21 of the use of the commercial building -- as a commercial building
22 since the 1950s. And this particular building has configuration
23 basically like a corner store, which -- like three-corner stores
24 with a second floor at the top.

25 And the Applicant testified that each unit is fairly

1 small and range in size from 500 to 1,000 square feet. And
2 because of this condition, it is very difficult to rent that
3 space and to get tenants for the space. Apparently, only two
4 units have (indiscernible). (Indiscernible), one's at the top
5 and the other is on -- on the second floor -- the other is on
6 first floor.

7 Under the regulations, if a (indiscernible) is -- a
8 (indiscernible) is abandoned, then the use cannot be continued
9 without BZ approval. And it appears that the use of two of the
10 units is not (indiscernible).

11 So each time they -- and because it's certainly not
12 conforming unit, because each time the Applicant needs to rent
13 to a new tenant, the Applicant has to come to the BCA (phonetic)
14 for approval. And in my view, that is a practical difficulty
15 when it's done. The other issue is that the location is next to
16 the liquor store. And that is also an issue in terms of getting
17 tenants for the properties.

18 So I think the Applicant's also showed through
19 extensive testimony why the Applicant is unable to convert these
20 three units to residential units. And I also don't think that
21 there would be any substantial detriment to the public put on,
22 impairment to the intent, purpose, and integrity of these other
23 regulations.

24 This particular building appears to be private
25 commercial strip, and it's separated from the surrounding single-

1 family homes by a large public street. So Central Avenue, Main
2 Street, and I forget the other one.

3 So it's not -- there does not appear to be the
4 possibility of expanding this commercial use into the residential
5 community, which would really (indiscernible) adverse impact on
6 that community. And I don't believe it would be consistent with
7 the regulations to allow that kind of expansion.

8 I think there was testimony at the hearing that the
9 dental office would support the need for pediatric dentistry in
10 the neighborhood, and so that community benefit, I believe, would
11 provide an offset to any potential impairment to the -- well,
12 potential adverse impact.

13 We heard testimony from -- oh, there is information in
14 the record from neighbors who complain about things like trash
15 and traffic. And the Applicant agreed to work with the ANC and
16 to the Capital Use Civic Association to help to mitigate some of
17 those adverse impacts.

18 And so the Board required to give great weight to OP's
19 analysis and recommendations of how the application satisfies the
20 variance test. And so I thought OP did a very good analysis.
21 This is not an easy case to evaluate and I don't expect that this
22 case will set a precedent because of its unique situation.

23 DDOT has no objection and so I know I had promised to
24 be short, but, you know, you give someone a mic and they just
25 keep talking.

1 So, Mr. Miller, would you like to continue,
2 Commissioner Miller?

3 MR. MILLER: I'll defer to Board Member Smith and if
4 you come back to me afterwards.

5 VICE CHAIR JOHN: Thank you.

6 MR. SMITH: Vice Chair John, you were very thorough.
7 You took the words right out of my mouth, so I think -- I
8 completely agree with you. I do believe, based on what the
9 Applicant presented and shout-out to Ms. Alice Wilson for her
10 presentation back when we heard this case.

11 I believe that based on the Applicant's presentation,
12 they have thoroughly presented their case and how they meet all
13 three prongs of the test. I agree with your entire analysis on
14 how they meet the prongs of the test. I do believe they have a
15 (indiscernible) on the sectional situation.

16 This building was built as a, you know, a strip shopping
17 center that was only built in single-family homes -- I mean, in
18 neighborhoods that were developed in the '40s and -- the '30s,
19 '40s and '50s. Very difficult to convert this particular
20 structure as it's designed into a residential use that is allowed
21 within the R-B Zone.

22 And I believe that the Applicant demonstrated, based
23 on the financial analysis, construction analysis, how they had
24 this extreme, very exceptional situation with this property
25 separating fact that it's zoned residential.

1 That also speaks to (indiscernible) on exceptional
2 practical difficulties on the owner to use this particular
3 property. I do -- I agree with you. I do not believe that the
4 relief will have a substantial detriment to the public good for
5 the same reasons that she stated. This is a commercial strip
6 that is completely separated from the residential properties that
7 surround it, by 49th Street, Central Avenue, Ames, and Sycamore
8 (indiscernible).

9 So it's a fairly self-contained property, so I don't
10 believe that allowing some form of commercial use here would be
11 a detriment. I would actually think it would be positive for
12 the neighborhood, the citizens within their community to have
13 more neighborhood-serving uses within -- embedded within the
14 community.

15 I also do not believe that -- there is intent, purpose,
16 and integrity of his own plan for the same reasons where I do
17 believe that serving retail uses would provide a benefit to the
18 neighborhood.

19 The ANC is in support, but they are in support with
20 certain conditions. What I had took note of Ms. (indiscernible)
21 speaking on it was how the Applicant will work -- working with
22 DDOT, request curb cuts and rumble strips just is frowned upon.
23 I don't know how practical it would be to put in rumble strips
24 along Central Avenue. The parking spaces are fairly short, but
25 I do believe that putting in curb cuts would be a benefit here,

1 if possible. So I don't know if we can do a condition that may
2 apply -- relocating apartment to a different portion of the
3 property, but I just wanted to make note of that and just put it
4 out there for discussion.

5 Security measures will be offered to individual tenants
6 to increase public safety. My recommendation is increasing
7 lighting in front of the building. Increase safety at night
8 along (indiscernible) along the building, and trash pickup will
9 occur twice a week on Monday and Thursday to alleviate excessive
10 trash.

11 So I just wanted to put it out there for discussion.
12 I think probably (indiscernible) conditions for, I would look to
13 Ms. Cain to see if she believes that's reasonable. But at least
14 the security measures and trash pickup.

15 On the question of the other spaces. So
16 (indiscernible) -- so I do understand that the Applicant is
17 looking for a new (indiscernible) for all of their tenant spaces
18 there. To me, it's an open question of whether two of the
19 (indiscernible) have expired out.

20 I didn't really get clarification on a definitive
21 answer that two of them have expired. So to me, I would recommend
22 narrowing the variance request to what we have before us and what
23 we know we're trying to put there, which is this medical office
24 pending 4914. The tenant space at 4914.

25 What we also are aware is that under our re-zone, you

1 are able to put in corner store units. So other retail
2 neighborhood-serving uses, there's barbershops, some other
3 general retail type establishment, may be covered under that
4 corner store (indiscernible). So I would recommend narrow
5 tailoring those use (indiscernible) request to that particular
6 thin space, and corner store provisions may -- I don't think they
7 be able to take advantage of the corner store use provisions for
8 the other two tenant spaces, especially given that it's a open
9 question whether the COs (phonetic) have expired.
10 (Indiscernible.)

11 VICE CHAIR JOHN: Thank you. Thank you for that
12 (indiscernible).

13 Commissioner Miller -- I guess we can discuss the scope
14 if we get to that point. Do you have some comments for us,
15 Commissioner?

16 MR. MILLER: Thank you, Madam Chair. No, I totally
17 concur with all of the comments of yourself and Board Member
18 Smith, and I knew that you all knew each would provide a very
19 thorough analysis, which I -- was one of the reasons why I wanted
20 to defer to you on this particular case.

21 So I'm in total concurrence, particularly with the
22 neighborhood serving the history of the property in terms of
23 meeting the -- the first and second prong of the variance test.
24 And the neighborhood-serving uses, neighborhood-serving non-
25 residential uses, they are, but particularly the pediatric dental

1 service that is intended to be accommodated by this, really. So
2 I'm prepared to support the application, Madam Chair.

3 VICE CHAIR JOHN: Thank you, Commissioner.

4 So I think the issue that Board Member Smith brought
5 up is worth considering in our typical (indiscernible) approach
6 based on, one, that the Applicant requested general retail/
7 office use. I have to look at the application again, but, so
8 I'm not in favor of splitting up the use in terms of the different
9 buildings, because those units are so small and the Applicant is
10 already having great hardship in trying to rent them
11 individually.

12 And so I think because the Applicant has satisfied the
13 various tests for all three, I don't see, you know, any
14 justification to split it up for relief. So that would be my
15 take on that.

16 And with respect to the conditions, if we all get there,
17 agree that -- I believe that the Applicant is in agreement with
18 the CBC concerns and; however, the Board, in my view, could not
19 impose, as you said, Board Member Smith, parking and traffic
20 remediation. We couldn't support that.

21 We could not support -- we tend to support the security
22 cameras because they relate to safety, security safety --
23 security of the public, and the trash, you know, that's generated
24 on the site. And the Applicant also agreed to work with DDOT to
25 request the curb cuts and offer security measures to individual

1 tenants. So I think those three last bullets we could include
2 in the order.

3 And I don't know if Ms. Cain wants to weigh in on the
4 conditions or requirements.

5 Ms. Cain, let me ask you, Board Member Smith, how firm
6 are you with respect to splitting up the relief, based on my
7 suggestion that we not do that since the Applicant has already
8 proven that he's entitled -- that they -- he's entitled to relief?

9 MR. SMITH: I'm not firm at all with that, but in it,
10 I do believe that we should tie it -- tie it down in some way.
11 So are we granting a use variance to particular uses that the
12 Applicant called out?

13 VICE CHAIR JOHN: Yes, the Applicant, and I'm trying
14 to put it up here so Ms. Cain can just get to it (indiscernible).
15 The Applicant, and I believe it's referring to a (indiscernible)
16 Office of Planning before it, as well.

17 The Applicant is requesting relief that there's not
18 (indiscernible). General office, we put it to the pediatric
19 dental office; retail and service uses with the exception of fast
20 food or restaurant. So I'm in support of granting the application
21 as stated in the caption.

22 I don't know if you want to weigh in, Ms. Cain? You
23 don't have to.

24 MS. CAIN: I mean to you (audio malfunction) the
25 conditions, I would say that the Board is (indiscernible) impose

1 ones about the security cameras and (audio malfunction). The one
2 relating to DDOT in terms of curb cuts (audio malfunction), I
3 think that's probably better left for DDOT (audio malfunction)
4 the Board scope and doesn't seem directly tied to the relief.

5 In terms of limiting the scope, think that's ultimately
6 the Board's call as to whether you want to limit it either by
7 use or tie it to one of the specific (audio malfunction) want to
8 do that and (audio malfunction).

9 VICE CHAIR JOHN: Thank you, Ms. Cain.

10 So back to you, Board Member Smith. Do you have -- or
11 Commissioner Miller. I'm in favor of approving the application
12 as it's written.

13 MR. BLAKE: I think I can go with this. Also, I agree
14 with you (audio malfunction) I would be in favor of approving as
15 it is. I think the list of uses sufficiently tied down or put
16 some guardrails on the types of residence that it -- I mean, the
17 types of uses that would be allowed within this particular
18 property that I believe would be able to serve them.

19 So I would be in support of approving it as is with the
20 conditions that you recommended as well, the two conditions
21 regarding security and (indiscernible).

22 VICE CHAIR JOHN: Thank you (indiscernible).

23 MR. SMITH: (Indiscernible.)

24 VICE CHAIR JOHN: I'm sorry, I didn't get that last
25 sentence.

1 MR. SMITH: Trash pickup.

2 VICE CHAIR JOHN: Oh, trash, yes.

3 VICE CHAIR JOHN: Commissioner Miller.

4 MR. SMITH: I concur. Thank you, Madam Chair.

5 VICE CHAIR JOHN: Okay. Thank you. So I believe we
6 are in support of the application, with the two conditions
7 relative to trash and security. Okay.

8 So I will make a motion then to approve Case Number
9 20417 and ask for a second.

10 MR. SMITH: Second.

11 VICE CHAIR JOHN: Thank you. Mr. Moy, can you please
12 take a roll call?

13 MR. MOY: Yes, thank you. When I call your name, if
14 you would please respond with a yes, no, or abstain made to the
15 motion made by Vice Chair John to approve the application for the
16 relief requested, along with the cited two conditions as to
17 security and trash pickup. The motion was seconded by Mr. Smith.

18 Zoning Commissioner Rob Miller.

19 MR. MILLER: Yes.

20 MR. MOY: Mr. Smith.

21 MR. SMITH: Yes.

22 MR. MOY: Vice Chair John.

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Staff would record the vote as 3-0-2, and
25 this is on the motion made by Vice Chair John to approve along

1 with two conditions as cited. Seconded the motion is Mr. Smith.
2 Also in support of the motion to approve is Zoning Commissioner
3 Rob Miller. We have two Board members not participating. The
4 motion carries 3-0-2.

5 VICE CHAIR JOHN: Thank you, Mr. Moy. And now it is
6 my great pleasure to return the Board to Chairman Hill.

7 Hi Commissioner Hill.

8 CHAIRPERSON HILL: Hi. Thank you, Madam Chair. Ms.
9 John, can you hear me? Can you all hear me?

10 VICE CHAIR JOHN: Yes, we can hear you,

11 CHAIRPERSON HILL: Ms. John, your comment, and I
12 remember like when you have the mic, you talk more. I'll remember
13 that.

14 VICE CHAIR JOHN: I know someone like that.

15 CHAIRPERSON HILL: It is unfortunately true. What are
16 you talking about?

17 All right. Let's see. All right. Mr. Moy, you can
18 call our next case.

19 MR. MOY: All right. Next case before the Board is
20 Application Number 20390 of Potomac Venture Group, LLC. This
21 application has caption/advertised for use variance from the non-
22 conforming structural requirements of Subtitle C, Section 204.1.
23 This would add an additional unit to an existing detached 19-
24 unit apartment building in the R-1-B Zone. This is at premises
25 11 Nicholson Street, NW, Square 3383, Lots 2, 23, and 24.

1 As the Board will recall, this was last heard at its
2 hearing on March 31st, 2021. The Board, at that time, did not
3 request any supplemental information. And also since that time,
4 there are no new filings in the record. Other than the Applicant
5 team, there appears to be no other person signed up to testify.

6 CHAIRPERSON HILL: Okay. You guys, I'm sorry, can you
7 all just hang on one second? There's somebody at the door and I
8 got to deal with it. Sorry.

9 (Pause.)

10 MR. RICE: Good morning, everybody.

11 VICE CHAIR JOHN: Good morning, Chairman Rice.

12 MR. RICE: Good morning, Vice Chair.

13 VICE CHAIR JOHN: -- and Commissioner Hood.

14 MR. HOOD: I just want to make sure everybody can hear
15 me because I have a big X down here where it says my -- when I'm
16 speaking. But you all can hear me, so I know I'm good. So thank
17 you.

18 VICE CHAIR JOHN: We can hear you.

19 MR. HOOD: (Indiscernible) hear me, but thank you.

20 CHAIRPERSON HILL: Well, hello, Commissioner -- I mean,
21 Chairman. We see you.

22 Ms. Moldenhauer, could you introduce yourself for the
23 record, please?

24 MS. MOLDENHAUER: Sure. Good morning, everybody.
25 Meredith Moldenhauer from the law firm of Cozen O'Connor on behalf

1 of the Applicant.

2 CHAIRPERSON HILL: Okay. Great. All right. There was
3 nothing new that we requested from the Applicant, as I can recall,
4 and I know that we had the notice issues, which is why we're
5 having that continued hearing right now.

6 Is there any questions that the Board has for the
7 Applicant, and if so, you want to raise your hand?

8 (No response.)

9 Yeah, right. Okay. Ms. Moldenhauer, is there anything
10 you'd like to add in conclusion?

11 MS. MOLDENHAUER: We feel confident that we have
12 satisfied the legal standard for a variance. The OP record is
13 in support and the Board gives great weight to OP, as well as
14 the ANC is in support here. We presented expert testimony from
15 architects regarding the ability to modify the structure, and as
16 well as unrefuted expert testimony from knowledgeable real estate
17 broker that, you know, alternatives would be practically
18 difficult and unduly challenging.

19 The owner's owned the property for ten years and has
20 not known it to be a reasonable or viable option to convert it
21 to anything else. And we believe the public policy is in our
22 favor to support adding a new unit to the community, especially
23 a smaller unit that would have a lower rental price in a cellar.
24 And we asked the Board to support the application.

25 CHAIRPERSON HILL: Okay. Thanks. Actually, Mr.

1 Jesick, can you hear me?

2 MR. JESICK:: Yes, Mr. Chairman, I'm here,

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

5 MR. JESICK: Yes, no, my name is Matt Jesick. I'm
6 representing the office of Planning on this application.

7 CHAIRPERSON HILL: Okay. Mr. Jessup, could you again
8 just go over your report and why you believe they meet the
9 criteria?

10 MR. JESICK: Certainly, for the first part of the test,
11 we felt the property exhibited an extraordinary or exceptional
12 situation in that there is an existing residential unit in the
13 basement. It's set up as a residential units exist. It was once
14 used as a residential unit. However, that unit is not reflected
15 on the CFO and the Applicant would experience an undue hardship
16 if not permitted to use that space for residential uses.

17 The space is not suitable for other matter of right
18 uses in the R-1 zone. The other uses in the R-1 Zone would either
19 not be compatible with an apartment building or would require
20 significant and costly construction and reconfiguration of the
21 building.

22 We also felt that the addition of one unit to the
23 building would not impair the residential character of the
24 neighborhood. It would be in the cellar. It would not have any
25 impacts on adjacent properties. So overall, we thought the

1 application met the variance test and we recommended approval.

2 CHAIRPERSON HILL: Thank you, Mr. Jesick. I was having
3 trouble with my mute button.

4 Does anybody have any questions for the Office of
5 Planning? Okay. All right. Oh sure, go ahead.

6 MR. BLAKE: Yes, I have a quick question. As you
7 examine the first prong of the test, would you please explain to
8 me why you didn't feel the space in its configuration was not
9 self-created?

10 MR. JESICK: I'm sorry, I had a hard time hearing you.
11 Can you repeat that, please?

12 MR. BLAKE: And to examine the first prong of the test,
13 I was trying to understand why you did not view the layout as
14 self-created and the issues as self-created.

15 MR. JESICK: Well, this is similar to other use variance
16 cases that we have seen where space is configured for a particular
17 use and the Office of Planning and the Board had found that
18 converting it to a different use would require significant
19 structural modifications. So we, you know, this use -- this
20 configuration has existed since the building was constructed, and
21 we didn't feel that this applicant had, you know, created their
22 own hardship, so to speak. We thought that that was an existing
23 condition of the property. I hope that answers your question.

24 MR. BLAKE: I think it does. Thank you.

25 MR. : Mr. Chairman?

1 CHAIRPERSON HILL: Sure. Question. Go ahead.

2 MR. HOOD: I, too, want to echo my comments with Board
3 Member Blake, about the self-creation, but I probably could ask
4 either Ms. Moldenhauer or Mr. Jesick. I'm still having a issue
5 with Subtitle C -- well, C 204.1. The non-conforming use of
6 land or structure shall not be extended in land or elsewhere, or
7 use intensity and shall be extended to portions of a structure
8 not devoted that non-conforming use at the time of enactment of
9 a title.

10 So I hear you, Mr. Jesick, but I think we are really
11 overreaching. I think that the zone plan is being --
12 (indiscernible) -- I just don't know, I just -- I'm just not
13 there now.

14 Also looked at the issue that Ms. Moldenhauer and I
15 spoke about, and I appreciate the view of PowerPoint presentation
16 where you acknowledge what I said and what Board Member John said
17 about reasonability, but I'm just not there.

18 It just -- it just -- it just, again, why can it not
19 be used as what it was previously? I understand the profit issue,
20 but that doesn't get me to resolving the issue. So I'm not there
21 unless I hear from others of persuasion, I can't get there.

22 CHAIRPERSON HILL: Okay. All right. Hold on, hold on,
23 hold on, hold on, hold on. Give me a second.

24 MR. HOOD: I have more to say, but I will let you go,
25 Mr. Chairman. It's your show.

1 CHAIRPERSON HILL: Well, that's all right, Mr. Hood.
2 You just opened the door, and I know exactly who's going to walk
3 through it. So let's see. My wife just told me to calm down.
4 So let's see.

5 Okay. Does anybody have any questions for the Office
6 of Planning? Okay.

7 So Ms. Moldenhauer, I know you want to have the last
8 word here to try to convince Chairman Hood, so I'll go ahead and
9 give you a minute or two. I mean, we've had a long thing -- I
10 don't know where we are, but go ahead and you can take a minute
11 to try to sum up and then we're going to go and get to where we
12 ever get. So please go ahead and give your conclusion.

13 MS. MOLDENHAUER: I was just going to respond to the
14 question I thought maybe Mr. Hood was asking me, but I -- it may
15 have also just been a comment.

16 The building was built with a superintendent unit, and
17 so, too, also to Mr. Blake's question about, you know, was this
18 self-created, no. Our client bought the property ten years ago
19 with the unit there. When they bought the property, the property
20 was using the space as a superintendent unit.

21 What we are trying to do is we are asking the Board for
22 relief that they have the ability to grant to make the unit
23 something that can be put under the rent control and rent rolls
24 of the building. Because right now if a unit is not obviously
25 on a CFO, it then cannot go through the DHCD's rent control

1 requirements and be identified as a unit for that purpose.

2 It's been used since the building was created uniquely
3 for a superintendent space. We have obviously, it's no longer
4 needed for that use and we are asking for it to be permitted as
5 a unit for -- to be marketed. And so that is a unique condition.
6 You know, that is a situation in which, you know, we have an
7 existing structure, it's an existing apartment building, we're
8 not looking to change anything. And modifying that space to
9 something else is what we believe, we've supported, would be
10 unduly challenging. Thank you.

11 CHAIRPERSON HILL: Okay. So this --

12 MR. HOOD: Mr. Chairman --

13 CHAIRPERSON HILL: Okay.

14 MR. HOOD: -- if I may respond?

15 CHAIRPERSON HOOD: Sure. Sure.

16 MR. HOOD: As I've noted, Ms. Moldenhauer, I still
17 don't think we've exhausted the uses that are permitted. You're
18 taking a non-conforming use, you're increasing that amount of
19 conformancy.

20 Apartment houses, apartment houses are not permitted
21 in R-1-B, and so the existing building is a non-conforming use.
22 It is permitted to continue to exist provided that it does not
23 expand.

24 You have not me -- I can hear how you persuade your
25 argument. You almost had me convinced, especially with the

1 gymnasium, when I thought about the treadmills. But as I
2 continued to look into this case, I just don't think you -- it
3 doesn't pass the test as far as I'm concerned.

4 So this is where I am. I'll hear from others and then
5 Board Member Blake brings another case. Is it self-created? You
6 know, I don't think the Board got into that. So I think he brings
7 another added value to that whole discussion. So I'm sorry, this
8 is a heavy hill for me to get up, and right now I can't get up.

9 Thank you, Mr. Chairman.

10 CHAIRPERSON HILL: Okay. All right. Okay.
11 Well, thank you all very much. Let's see, Mr. Young, is there
12 anyone here from the public?

13 I got you, Ms. John. One moment.

14 MR. YOUNG: We do not.

15 CHAIRPERSON HILL: Okay. Ms. John, you had a question
16 or comment?

17 VICE CHAIR JOHN: I wanted to follow up with Ms.
18 Moldenhauer on this question of whether or not the building was
19 constructed with that 20th unit. I didn't see anything in the
20 graphic that said that. I just saw that the Applicant purchased
21 the building with that unit. And I believe there's information
22 that that building existed before 1958.

23 MS. MOLDENHAUER: So, yes, everything that we can find,
24 I mean, the property owners own the property for ten years. When
25 he purchased the building, the prior owner indicated that that

1 was the condition of the building when he had bought it. And so
2 we have no -- we don't have any other information. And,
3 obviously, our understanding is that this was the existing
4 condition of the building, you know, when it was created.
5 There's, obviously -- that's our understanding.

6 VICE CHAIR JOHN: Okay. Thank you.

7 CHAIRPERSON HILL: Mr. Blake.

8 MR. BLAKE: I just want to clarify something. The
9 record says that the building was purchased in 2001. That would
10 be 20 years. I just want to make sure that which is the ten or
11 20, and also, Ms. Moldenhauer, since you're on Live, appreciate
12 if you explain to me why you believe that -- and I understand it
13 was -- the predecessors might also be a factor in creation for
14 self-creation, if you are aware the unit. Could you just
15 elaborate on it just a little bit more for me, please?

16 MS. MOLDENHAUER: So if you're looking at a question
17 of self-created hardship, you're looking at whether or not the
18 Applicant, so the current property owner, has clean hands. And
19 so -- or whether they are asking for a leave for something that
20 they created.

21 Given that our client purchased the property with the
22 existing condition and we believe that it existed prior to his
23 ownership, we believe there is no self-created hardship. And I
24 just got a communication with my client. He said it could be
25 approximately 20 years, that obviously this condition is -- that

1 he's aware of the condition.

2 And again, the uniqueness of the fact that this was a
3 superintendent's -- or it was used for habitable space, is unique.
4 It's not, you know, this isn't a storage room that we're looking
5 to convert and put investment into. We're looking to simply
6 maintain it as is and not change the space.

7 MR. BLAKE: One quick question on that point. When was
8 the last time you actually used it as a maintenance facility, a
9 unit?

10 MS. MOLDENHAUER: I'm communicating with my client.
11 Let me find out.

12 MR. BLAKE: Okay. Along those lines, you also mentioned
13 that the base was essentially complete, which you had framing and
14 so forth for a bathroom, but it wasn't actually a complete
15 bathroom. And I didn't notice any pictures of the facility in
16 the presentation. So I was just kind of understanding what the
17 current condition of the unit was.

18 You indicated that it was -- the ACAC was operational.
19 I'm assuming a unit that's 20, 30 years old might be a little
20 antiquated. And would it actually meet the standards of current
21 code? Just want to get clarification on that.

22 MS. MOLDENHAUER: Yeah, so in the prior hearing, the
23 architect, and is part of the record, testified that the unit,
24 first of all, does not have air conditioning, but that they're
25 not required to have air conditioning. The unit is in a rentable

1 condition that could get C of O today. The bathroom is fully
2 completed. There would be no renovation, no construction needed.
3 It would literally be, you know, turnkey for the existing space.
4 I think your question is kind of is it maybe dated?
5 Answer is this is going to be a cellar unit that will go for a
6 low, low rent. The intent is not to renovate it or spruce it
7 up, but to rent it in its existing condition.

8 So that kind of leads to the question of the fact of
9 the undue hardship is that it's either doing nothing and creating
10 a rental unit or changing it to some other possible use. And we
11 have -- we believe we've proven that any other change in use
12 would actually create -- require substantial changes. And that's
13 what the architect testified to, stating that (indiscernible),
14 that you would need to move the bathroom or you need to comply
15 with handicapped ADA requirements, and either expand the bathroom
16 and expand the door for any other type of community use that was
17 identified as potential alternative spaces. And the unit has not
18 been used as a superintendent space for over three years.

19 MR. BLAKE: Okay. Thank you.

20 CHAIRPERSON HILL: Okay. Mr. Smith, you got anything?
21 You don't got anything?

22 Okay. Ms. John, you got anything more? Okay.

23 I hate to do this. Mr. Jesick, can you hear me?

24 MR. JESICK: Yes, Mr. Chairman.

25 CHAIRPERSON HILL: I'm sorry to bug you. Can you go

1 over -- and I know I just said "bug you," can you go over again
2 why you think they are meeting the variance test?

3 MR. JESICK: I sure can.

4 CHAIRPERSON HILL: And I'm going to look up your point
5 again.

6 MR. JESICK: Yes, the 1st part of the test, is there
7 an extraordinary or exceptional situation? And again, we were
8 basing this analysis on, you know, the same type of analysis
9 we've done for other use variances. Is there a built condition,
10 you know, for this non-conforming use? Yes, there is an existing
11 apartment unit that's set up as an apartment. It was an
12 apartment. From the information that we were given, it seemed
13 to be from when the building was built. And would that
14 exceptional condition lead to an undue hardship? Yes. The,
15 again, in the past, the Board has found that significant
16 structural changes to a use to convert it to a conforming use
17 would be the basis for an undue hardship for a property owner.

18 So that's how we got through that first part of the
19 variance test. Then you look at substantial detriment to the
20 public good. We don't feel there'd be any detriment to the public
21 good. The, you know, the unit was used as an apartment in the
22 past. It would be used as an apartment in the future. There
23 would be no sort of visual or noise impacts to neighbors, that
24 sort of thing.

25 And then is there an impairment to the intent or purpose

1 of the zoning regulations? Yes, certainly the R-1 zone is
2 intended to be a single-family zone. This apartment building
3 dates back to the 1930s. It's part of the fabric of the
4 neighborhood. We felt that restoring this once-existing
5 apartment unit would not necessarily detract from the intent of
6 the zone to protect the single-family detached character of the
7 neighborhood. That's why we were comfortable with the variance
8 test.

9 CHAIRPERSON HILL: Okay. Thanks. All right.

10 Okay. I'm going to close the hearing unless any of my
11 fellow Board members raise their hands. Okay. All right. The
12 hearing is closed. Thank you all very much. Thanks for coming.
13 Bye-bye.

14 Mr. Young, if you'll excuse them.

15 (Pause.)

16 CHAIRPERSON HILL: Okay. All right. So I don't know
17 where we are, so I'm going to actually do this to create the most
18 drama because I think I kind of know where some of us are.

19 So Chairman Hood, would you like to begin?

20 MR. HOOD: So since everybody kind of knows where I am,
21 I would suggest that I hear from others, especially Board Member
22 Smith and Vice Chair John. I actually because I'm not there.
23 So I would like to hear what they have to say that may convince
24 me.

25 CHAIRPERSON HILL: Okay. So we may or may not be where

1 you think we are, but we'll see also. I know where Mr. Smith
2 is.

3 Mr. Smith, would you like to go next?

4 MR. SMITH: Chairman Hood, am I getting your poker
5 face?

6 MR. HOOD: I'm sorry I didn't hear you. What exactly
7 --

8 MR. SMITH: A poker face? You giving a good one? Well,
9 you know, I'll let it be known and I'll go prong by prong here.

10 So first prong. The first part of that prong,
11 extraordinary or exceptional situation or condition. I do not
12 believe that the subject property has an exceptional condition
13 because the space is currently configured as a residential unit.
14 That sounds like no one can actually prove to me in the record
15 or based on the specific questions that was just asked, that it
16 legally existed in the first place, even going back to 1940.

17 There are a multitude of non-conforming apartments
18 within the District that have similar spaces to the case in
19 question. And the request before, as I believe is general and
20 reoccurring, is a general reoccurring situation within the
21 District where it's not a unique condition. And there is nothing
22 unique about the design and shape of the space that will preclude
23 the use of this space from being designed in a manner that is a
24 conforming use or a conforming space, which may include
25 (indiscernible) space.

1 I'm not sold that amenities -- that some form of an
2 amenity space can't be located down there, or simply a storage
3 space that does not require, you know, this probably has to be
4 brought up to Code to even bring it to an apartment space. So
5 there will be some kind of construction.

6 Converting it into a storage space, I believe, is no
7 more expensive than trying to bring this apartment up to Code for
8 a new apartment unit that is conforming.

9 So to the second part of the first prong, undue
10 hardship. It has been noted that Applicant still has use of the
11 rest of the building for an apartment use, and unit in question
12 is not precluded from use as a mini-storage space, as I just
13 said.

14 Any request to convert the space into a residential
15 space contrary to the purpose and intent of the zoning
16 regulations, I believe constitutes a self-imposed hardship on the
17 part of the Applicant, who can currently operate the legally non-
18 conforming apartment building that can provide a reasonable
19 economic return on investment without increasing the number of
20 units within the building.

21 And the Applicant has not demonstrated through their
22 presentation of facts of this case that without this one
23 additional unit that continuing or even operating the apartment
24 building in its existing configuration as a 19-unit building is
25 economically feasible. I have not heard any justification of

1 just because the property has storage units, does not mean that
2 it's unreasonable -- is unreasonable to put in another storage
3 unit within the space.

4 We don't even have the context of what the size of the
5 storage units in the building currently are. So I don't believe
6 that that (indiscernible), especially (indiscernible), to set
7 aside the first prong.

8 On to the second prong. (Indiscernible.) I can agree
9 that -- I can agree and do not believe that the proposed
10 conversion of the non-conforming residential use in the basement
11 will result in detriments to the public good.

12 The proposal would not physically involve a non-
13 conforming apartment building, and construction (indiscernible)
14 to the existing building. So I don't see a (indiscernible)
15 detriment to the public good.

16 But on to the third prong, (indiscernible) compared to
17 the intent, purpose and integrity of a zoning ordinance, I believe
18 that the requested variance, as Chairman Hood stated, would cause
19 a substantial detriment to the intent, purpose, and integrity of
20 the zoning ordinance by allowing an increase in the capacity of
21 multi-family residential units from 19 to 20 units in a zone
22 where they are not currently permitted to exist.

23 Only single-family dwellings are permitted to exist
24 within the zone. Therefore, I do not believe that this case has
25 the first and third prongs of the variance test and the property

1 could continue to operate and -- not -- the property owner could
2 continue to operate a non-conforming 19-unit apartment building
3 without substantial detriment or hardship to the owner.

4 A request for a variance is an intention to alleviate
5 self-imposed hardship. And I would recommend denial of the
6 variance. So poker face rule. That's where I stand.

7 CHAIRPERSON HILL: Okay. Yeah, I didn't think there
8 was a poker face or not. Like, I just think I knew where you
9 were.

10 So Ms. John, I don't know where you are.

11 VICE CHAIR JOHN: So I'm with the Office of Planning.
12 I believe that this building from what we know so far in the
13 record, has existed for ten years in this configuration as a
14 residential unit, not as something else. It's been a residential
15 unit and it's been there for ten years, probably 20 and probably
16 since the inception.

17 So this is not a situation where the Applicant has come
18 to us and said, "Oh, I want to build an extension of my building
19 and I want to add two apartment buildings." That's not what
20 they're doing. They have this existing space. They don't need
21 it. I believe we have to interpret the regulations so that our
22 interpretation is reasonable under the circumstances.

23 There's absolutely no use to this building to take --
24 to this unit. They've testified that they don't need it for
25 storage, that the other potential uses would be too expensive to

1 the owner. The issues and the impact on the owner. This
2 particular owner is saying that I can use this for the purpose
3 that for which it has been -- has existed for probably 20 years
4 as a unit. I'm trying to make it legal.

5 We do this all the time before the Board. Help people
6 to legalize their units. So the idea that there was this non-
7 conforming unit, I don't think it's consistent with how the Board
8 has practiced in terms of allowing people to bring their
9 properties into compliance with the regulations, which is really
10 what we're doing here.

11 There is an existing apartment building that's sitting
12 there vacant, and so I don't think that that is consistent with
13 the regulations or with the interpretation of undue hardship,
14 which says that the property can't be put to any conforming use
15 with a reasonable return or expectation arising out of it.
16 Doesn't have to be. He doesn't have to prove that he has no use
17 of the apartment building.

18 I don't believe that that's what we're called upon to
19 do. So I sort of do not agree with the line of thought that says
20 that an apartment building that has existed for such a long time
21 in that configuration does not present an economic hardship or
22 undue hardship to the owner in converting it to the uses that
23 have been described by the Applicant in its application.

24 So I am -- that's sort of where I am and I will be
25 voting in support. I think we're looking at an intensification

1 of the use of one apartment. That's not significant in the scheme
2 of things, in the Karma (phonetic) case that the Applicant cited,
3 the apartments were increased from 8 to 12, which is a 50 percent
4 increase.

5 Now, granted, that case was decided, and I disagree
6 with the Applicant on this, that case was decided based on
7 detrimental reliance, whereas this case doesn't have detrimental
8 reliance. It does not involve detrimental reliance. And I don't
9 think it's reasonable to say that the property owner has use of
10 the entire building. So this space would be vacant and the City
11 would lose valuable housing stock. So I will be quiet now.

12 CHAIRPERSON HILL: Okay. Chairman Hood, are you
13 interested?

14 MR. HOOD: Oh, yeah, I'm interested. I think that,
15 again, what I said previously about C 204.1, non-conforming use
16 of land structures shall not be extended in land area,
17 (indiscernible), or use intensity.

18 Again, as I stated, apartment/house is not permitted
19 in the zone. And so the existing building as a non-conforming
20 use is permitted to continue to exist, provided that it does not
21 extend. I think, as I mentioned earlier, the zone plan is being
22 attacked -- I'm not going to necessarily say "attacked" -- yeah
23 it's being attacked, but also even this undue hardship.

24 And I notice that Ms. Moldenhauer and others always
25 talk about Palmer (phonetic). And if we keep moving in this

1 direction, we're going to have a new case law, which is not going
2 to be Palmer, but we're going to be -- there's going to be a new
3 case law probably is going to come up at some point, and it won't
4 be Palmer v. the Board of Zoning Adjustment. I don't know who
5 would it be, but I'll tell you to show undue hardship, as
6 (indiscernible) by Vice Chair John, an applicant must show his
7 property can't be put to any conforming use with a reasonable
8 return or expectation arising out of it. In general, a reasonable
9 use, and Ms. Moldenhauer kept using the word "reasonable," if you
10 look at the case law, which I did, it said "reasonable" and at
11 the end it said "original."

12 And that stands for something in legal terms. So in
13 general, a reasonable use means that the land can be used in some
14 economically viable or feasible manner without being granted
15 variance relief. There lies the issue.

16 They're in here asking for it, because here's the
17 thing, just because the property unit could be put on to a use
18 that would be more profitable for the property owner, it's not
19 sufficient to constitute a undue hardship, particularly when
20 there appears to be other uses, options, available that would not
21 require variance relief.

22 And that's it. I think that's -- I think that's the
23 gist of Palmer v. the Board of Zoning Adjustment, and there's
24 some other case law out there as well. But you can not always
25 swing a argument to favor what you're trying to do. And I think,

1 no offense, they're doing their job, but I just don't think it
2 meets our approval. And that's my 20 cents worth.

3 CHAIRPERSON HILL: Okay. If you all don't mind, I'm
4 going to do a little back and forth because I also just don't
5 know where I am.

6 So, Ms. John, do you -- did that do anything for you
7 or do you have any response to Chairman Hood?

8 VICE CHAIR JOHN: So that's the other side of the coin.
9 I deeply respect Commissioner Hood and his analysis, and may I
10 just sort of look at this in a different way.

11 I would distinguish this from the situation where the
12 applicant comes in and says, you know, I would like to build an
13 addition to add a 20th residential unit. That's not what we
14 have, and that, to me, is expanding -- well, not the conforming
15 use, in a way that I don't think would be appropriate, but here,
16 the building already exists.

17 This residential use, even if it was illegally used by
18 a superintendent, and I don't know what the regulations were at
19 the time, but residential use has always been there, at least for
20 about 20 years. So what he's trying to do is to get an occupancy
21 permit and increase the density of the use by one-20th of what
22 is there.

23 So, I mean, I'm not trying to convince anybody. That's
24 just how I want to look, how I look at this case. And so I
25 respect all of the other positions, but I've thought about this

1 a lot. And I think that the City needs housing stock. I think
2 maybe this is something a Commission needs to look at to see
3 what's going to happen as the City evolves and owners start
4 renovating properties and moving things around. Are we going to
5 say to people, you know, leave these spaces vacant?

6 So that's kind of how I look at it. I don't think if
7 I were a property owner, I would think (indiscernible) for me to
8 spend a fortune to change the configuration of a building where
9 I could spend a few, you know, a few dollars to paint it, and
10 change fixtures, and put it -- and rent it to create a, quote/
11 unquote, affordable unit.

12 So that's -- I look at this in terms of an arm to the
13 to the purpose and intent of the regulations. So I just don't
14 see it. And I think the undue hardship is there in terms of the
15 economic cost of making that conversion. And I don't think it's
16 self-created. There's no testimony that the Applicant created
17 that unit. So I think I don't have anything else to add, Mr.
18 Chair, but I respect everyone's -- how everyone (indiscernible).

19 CHAIRPERSON HILL: You know, Ms. John, I mean, we all,
20 thankfully, do get along and respect one another, and so I'm just
21 giving you more time to talk because I don't know where Mr. Blake
22 is, whether or not I'm going to be making this decision.

23 So, Mr. Blake, where are you? Do you know?

24 MR. BLAKE: I do have a good idea of what I know. I
25 will give up the self-creation argument based on the fact that

1 no one knows when the unit was actually created and we can't put
2 a finger on it. But otherwise, I would probably be concerned
3 with that. But I can give up that point.

4 But in terms of the undue hardship, it looks like there
5 are other applications that could be used for the space, which
6 would be consistent with the zoning regulations. For example,
7 if you were to use it for a -- it says a non-profit could use
8 the space for something. Well, the argument was made that the
9 space wasn't sufficiently sized to facilitate that.

10 The reality of it, a non-profit could have a single-
11 person office, which could sit there and conduct all the business
12 and affairs they want, and it would be an adequate size to provide
13 that. So there are elements where I think there are uses that
14 are possible that would fit within -- that there are alternative
15 uses.

16 I also think as we kind of go down that and look at
17 the issue, I agree that this is a very common problem that can
18 happen throughout the City with the older housing stock. And
19 from a public policy standpoint, it totally makes sense to have
20 this available space made available. But the existing zoning law
21 in this zone doesn't permit that, and other zones have text
22 amendments, which allow you to do this via a special exception,
23 which I would argue would make sense. but the current zoning law,
24 it does go against that.

25 So based on those factors, I would be not in favor of

1 approving this variance -- of supporting this variance.

2 CHAIRPERSON HILL: Okay. Well, there you go then. All
3 right. Let's see.

4 Mr. Smith, would you like to make a motion? I mean, I
5 mean, not that it matters. Like, I was also kind of like -- and
6 this is where it's one of those odd things, just doesn't matter.

7 I mean, Ms. John, I'm a little bit not really sure
8 where I would have been had Mr. Blake gone the other way, but
9 now seems pretty confident in his particular opinion. I don't
10 really want to try to think or change it, however.

11 And Mr. Hood, I'll get you one second.

12 However, I understand your position, Ms. John. And I'm
13 going to vote on your side.

14 Mr. Hood.

15 MR. HOOD: So I, too, want to say to Ms. John, I respect
16 her a lot and all the Board members, but I think -- that's why
17 it's five of us. We don't necessarily have to always leave
18 agreeing, and I don't think that's what's being asked, but I
19 think it's good to have this discussion.

20 It's actually, for me, it actually looks like the Board
21 really thought this out. We all put up our five opinions on the
22 table and let the votes fall where they may

23 So I really respect what Vice Chair John is saying,
24 even though I disagree with a lot of it, but I think it makes a
25 healthier process. So I just want to put that on the record as

1 she was mentioning something similar. So thank you, Mr. Chairman.

2 CHAIRPERSON HILL: All right. Well, Mr. Chairman Hood,
3 had since you got the mic and you know how to make a motion, why
4 don't you go ahead and make a motion?

5 MR. HOOD: I'm going to yield to -- I want to yield to
6 Board Member Smith to make a motion.

7 CHAIRPERSON HILL: All right. All right.

8 MR. SMITH: (Indiscernible) that often. Chairman
9 Hood's probably going to have to make one tonight.

10 MR. HOOD: I make plenty of motions. That's why I'm
11 yielding.

12 MR. SMITH: All right. So I will make a motion to deny
13 a use variance for a non-conforming structural requirements for
14 this case.

15 CHAIRPERSON HILL: You want to second that, Mr. Blake?

16 MR. BLAKE: Second it.

17 CHAIRPERSON MOY: Mr. Moy, the motion's been made and
18 seconded. Could you take a roll call?

19 MR. MOY: Thank you, Mr. Chairman. When I call your
20 name, if you would please respond with a yes, no, or abstain to
21 the motion made by Mr. Smith to deny the application for the
22 relief being requested. The motion was -- the denial motion was
23 seconded by Mr. Blake.

24 Zoning Commission Chair Hood.

25 MR. HOOD: Yes, to the motion.

1 MR. MOY: Mr. Blake.

2 MR. BLAKE: Yes, to the motion.

3 MR. MOY: Mr. Smith.

4 MR. SMITH: Yes, to the motion.

5 MR. MOY: Vice Chair John.

6 VICE CHAIR JOHN: No.

7 MR. MOY: Chairman Hill.

8 CHAIRPERSON HILL: No.

9 MR. MOY: Staff will record the vote as 3-2-0. And
10 this is on the motion of Mr. Smith to deny the application.
11 Motion was seconded by Mr. Blake. Also in support of the motion
12 to deny is Zoning Commission Chair Anthony Hood. Opposed to the
13 motion is Chairman Hill and Vice Chair John. The motion carries
14 on a vote of 3-2-0.

15 CHAIRPERSON HILL: Okay. Great. Thank you. And I
16 guess, Chairman Hood, you know, if this is something that you
17 guys need to talk about at the Zoning Commission, that might be
18 (indiscernible).

19 MR. HOOD: So, okay, we'll -- okay. I'll talk to you
20 about that.

21 CHAIRPERSON HILL: Okay. All right. So we got one
22 more case and it's got it's going to take a little while, I think.
23 So why don't we go ahead and take lunch. You want to say. I
24 don't know, we can see what happens in like 150. Oh, no, what
25 time is it? 12:50, 12:50. Let's come back, like, you know --

1 MR. HOOD: Mr. Chairman. Will we be finished before
2 5:30??

3 CHAIRPERSON HILL: Oh, yeah.

4 MR. HOOD: Okay.

5 CHAIRPERSON HILL: Okay?

6 MR. HOOD: All right. Thank you.

7 VICE CHAIR JOHN: Thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 12:50 p.m., and reconvened at 1:06 p.m.)

10 CHAIRPERSON HILL: Mr. Moy, why don't you go ahead and
11 try and call the next case and let's see what happens to me.

12 MR. MOY: All right. Thank you, Mr. Chairman. So the
13 Board is back in its hearing session after a lunch recess, and
14 the time is at or about 1:06 p.m.

15 And the next and last case on today's docket is Case
16 Application No. 20380 of Polygon Holdings, LLC. This is captioned
17 and advertised for a special exception under the new residential
18 development requirements, Subtitle U, Section 421, and from the
19 side yard requirements of Subtitle F, Sections 306.2(a). This
20 would construct a three-story addition to a nine-unit residential
21 apartment house, RA-1 Zone, and the property is located at 4457
22 MacArthur Boulevard, NW, Corner 1363, Lot 57.

23 Very quickly, Mr. Chairman, this has some preliminary
24 matters.

25 Number one, there is a PowerPoint filing in the record,

1 dated April the 27th, which would have been yesterday, within the
2 24-hour filing block, and prior to the hearing, under Exhibit 54.

3 Number two, there are two requests for party status.
4 One of the two is untimely, which is the Foxhall Terrace Group,
5 under Exhibit 45, dated April 14th, untimely because the baseline
6 was February the 10th.

7 And finally, there is a matter of the, perhaps, a 40-
8 days referral notice from the -- from OZ to DPR and DCPS in terms
9 of untimely filing from OZ.

10 And that's it for me, Mr. Chairman.

11 CHAIRPERSON HILL: Okay. As far as the untimely filing
12 from OZ to DPR and DCPS, I don't have any problem waiving that
13 time unless someone on the Board does, and if so, please raise
14 your hand.

15 (No response.)

16 CHAIRPERSON HILL: Okay. So we're done with that.
17 Let's see. Mr. Sullivan, could you introduce yourself for the
18 record, please.

19 MR. SULLIVAN: Yes. Thank you, Mr. Chair, Members of
20 the Board. Marty Sullivan with Sullivan and Barros, on behalf
21 of the Applicant.

22 CHAIRPERSON HILL: Mr. Sullivan, who's here with you?

23 MR. SULLIVAN: I have the architect, Adam Crain, and a
24 representative of the property owner, Frank Rameshni.

25 CHAIRPERSON HILL: Got you. Thank you. Mr. Crain,

1 could you introduce yourself for the record, please.

2 MR. CRAIN: Sure. Adam Crain with 2Plys Project
3 Architect.

4 CHAIRPERSON HILL: Mr. Rameshni, can you hear me -- or
5 Rameshni.

6 MR. RAMESHNI: Yes, I can.

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

9 MR. RAMESHNI: Sure. I'm Frank Rameshni, and I'm
10 representing Polygon Holdings.

11 CHAIRPERSON HILL: Okay. Are you choosing not to use
12 your camera?

13 MR. RAMESHNI: At the moment, yes.

14 CHAIRPERSON HILL: Okay. All right. Let's see. Mr.
15 Brown, can you hear me?

16 (No audible response.)

17 CHAIRPERSON HILL: You're on mute, Mr. Brown.

18 MR. BROWN: I can, Chairman Hill.

19 CHAIRPERSON HILL: Could you introduce yourself for the
20 record, please.

21 MR. BROWN: Patrick Brown from Greenstein, DeLorme &
22 Luchs on behalf of Foxhall Terrace, LLC, at 4465 MacArthur
23 Boulevard.

24 CHAIRPERSON HILL: Great. Thank you. Mr. Brown, who
25 -- is there anyone here with you?

1 MR. BROWN: Mr. Jack Feldman, who is a member of the
2 LLC, should be here.

3 CHAIRPERSON HILL: He's on. And he's on. Okay. Who's
4 Mr. DuPont?

5 MR. BROWN: Mr. DuPont is -- speaking out of turn, Mr.
6 DuPont is a witness for Dr. Dawn Lea.

7 CHAIRPERSON HILL: Okay. Got it. Okay. Thank you,
8 Mr. Brown. Mr. Feldman, can you hear me?

9 MR. FELDMAN: Can you hear me now?

10 CHAIRPERSON HILL: Yes. Is this -- is that Mr. Feldman?

11 MR. FELDMAN: Yes, Jack Feldman.

12 CHAIRPERSON HILL: Could you introduce yourself for the
13 record, please.

14 MR. FELDMAN: I'm Jack Feldman, member of the LLC at
15 4465 MacArthur Boulevard.

16 CHAIRPERSON HILL: Sorry, you guys. Something is going
17 on with my computer. One moment, please.

18 (Pause.)

19 CHAIRPERSON HILL: All right. Great. Mr. Feldman,
20 okay. Great. Ms. Lea, can you hear -- Dr. Lea, can you hear
21 me?

22 DR. LEA: Hi, yes. Dawn Lea here, and I'm a resident
23 at 4459 MacArthur, and I'll be representing myself in this
24 matter.

25 CHAIRPERSON HILL: Okay. Is it "Lea"?

1 DR. LEA: Yes, you can pronounce it "Lea," L-E-A.

2 CHAIRPERSON HILL: All right. All right.

3 DR. LEA: Thank you for clarifying that.

4 CHAIRPERSON HILL: Sure, and Dr. Lea, who is with you,
5 again, here? Is there a witness somewhere?

6 DR. LEA: Yes. Mr. Stephen DuPont, he's an architect,
7 is here, and Mr. Judah Milgram is here, and I am not aware of
8 anyone else that may be here at this time.

9 CHAIRPERSON HILL: Okay. I don't see -- I saw Mr.
10 DuPont a minute ago, and then who was the other person you said?

11 DR. LEA: Judah Milgram. His -- he -- his browser
12 won't allow him to connect in, but he has called in. He's on
13 the phone.

14 CHAIRPERSON HILL: Mr. Young, did you let that person
15 in?

16 MR. YOUNG: He's on the phone, so I can unmute him.

17 CHAIRPERSON HILL: Mr. Milgram, can you hear me?

18 MR. MILGRAM: Yes, loud and clear.

19 CHAIRPERSON HILL: Could you introduce yourself for the
20 record, please.

21 MR. MILGRAM: Yeah. Good afternoon. I'm Judah Milgram.
22 I'm a resident at 4465 McArthur Boulevard.

23 CHAIRPERSON HILL: Okay. Great. Thank you. Mr.
24 Rameshni, can you hear me?

25 MR. RAMESHNI: I can, yes.

1 CHAIRPERSON HILL: It would be helpful if you can turn
2 on your camera if it is possible. If not, that's fine, but it's
3 just -- it makes it easier for me to run the hearing.

4 MR. RAMESHNI: Sure. Hang on.

5 CHAIRPERSON HILL: That's all right. You can just mute
6 yourself and see if you can figure it out.

7 MR. RAMESHNI: Okay. Give me two minutes.

8 CHAIRPERSON HILL: Okay. No problem. All right. Mr.
9 Sullivan -- oh, wait. So Dr. Lea, I guess you're the adjacent
10 neighbor, correct?

11 DR. LEA: That is correct.

12 CHAIRPERSON HILL: Okay. And then Mr. Brown, you're
13 representing the Terrace, the apartments that are right across
14 that small alley, correct?

15 MR. BROWN: (No audible response.)

16 CHAIRPERSON HILL: You're on mute, Mr. Brown.

17 MR. BROWN: It's not an alley, it's a private driveway
18 located on 4465. I'm here on behalf of that building, which is
19 immediately adjacent to Dr. Lea's --

20 CHAIRPERSON HILL: Got it. I got it. All right.
21 You're correct. It's a private driveway. I didn't mean it was
22 an alley, but thank you for the clarification.

23 Okay. So, and again, the filing is late, but it's not
24 -- I mean, it's late, but I can't remember, Mr. Moy, it's because
25 there was, like, the whole thing with -- this was originally in

1 front of us in February; is that correct, Mr. Moy?

2 MR. MOY: It was initially scheduled for that date in
3 February, sir, and as you know, it's been our rules and procedures
4 to use that as the baseline.

5 CHAIRPERSON HILL: Right. I don't -- unless the Board
6 raises their hands, I mean, there's been plenty of notice now for
7 this. I don't have any problem allowing the party status person
8 applying for party status, which is the Terrace Apartments. And
9 so I'm going to go ahead and allow that into the record.

10 Mr. -- is it -- I can't pronounce your last name --
11 Szymkowicz?

12 MR. SZYMKOWICZ: Szymkowicz. Yes. I'm the ANC
13 Commissioner for Single-Member District 3D09, and I speak on
14 behalf of the ANC 3D as a whole.

15 CHAIRPERSON HILL: Oh. Okay. Hi, Commissioner, how
16 are you?

17 MR. SZYMKOWICZ: I'm doing well, thank you.

18 CHAIRPERSON HILL: Good. All right. Okay. We've got
19 a full deck today. So let's see. Okay. So unless -- I'm going
20 to just, kind of, look at my Board Members. I have the screens
21 moving all over the place. But so I don't have any issue -- Dr.
22 Lea is sharing a party wall or sharing the attic with the
23 development, so I mean, I think that she qualifies for the party
24 status per the regulations, and I would even go so far as to say
25 that I don't have an issue with Mr. Brown being allowed -- the

1 Terrace Apartment Building being allowed party status, again,
2 because of that shared driveway and their proximity to the
3 property. So unless any of you -- my Board Members, and if so
4 raise your hand, have an issue, I'm going to allow both Dr. Lea
5 and the Terrace Apartment Buildings to be included as party status
6 unless someone raises their hand.

7 No one's raising their hand. Okay. So then, both you,
8 Mr. Brown -- I mean, the Terrace Association and Dr. Lea, you
9 will be given party status. What -- I just want to explain to
10 Dr. Lea what that means and how this works then.

11 So the Applicant, being represented by Mr. Sullivan,
12 will go ahead and give his presentation as to how he believes
13 they're meeting the criteria for us to grant the relief requested.
14 Then I will go ahead and have -- if anyone has any questions
15 concerning what the presentation was from Mr. Sullivan, you can
16 ask him at that time. Usually the questions -- and I know Mr.
17 Brown knows, because he's an attorney, but Dr. Lea, it's kind of
18 -- they're questions pertaining to the presentation. Like, you
19 might have any clarifying questions about the presentation, but
20 it's not your time to present, you're just giving -- having
21 questions about the presentation. And so I'll try to wrangle us,
22 if we're getting a little bit too off scope, but then I was going
23 to go to Mr. Brown to give his presentation. You will then have,
24 Dr. Lea, as Mr. Sullivan, have an opportunity to ask questions
25 of Mr. Brown's presentation. Then, Dr. Lea, you'll be able to

1 go. They'll have an opportunity to ask questions of you. Then
2 we're going to go back to the Office of Planning, which is
3 represented by Mr. Kirschenbaum. He will give his report.
4 Everyone will have an opportunity to ask questions of Mr.
5 Kirschenbaum. And the Board asks questions this whole way
6 through. Then at the end, the attorney for the Applicant will
7 have an opportunity to rebut anything that was said. And then
8 we usually go ahead and -- it's not in the regulations, but I
9 usually allow everybody to give a conclusion in reverse order,
10 meaning the last person that gets the word is the Applicant. So
11 that's the process. And somewhere in there, we will take
12 testimony from the public, if there is anybody here from the
13 public.

14 So that being the case, Mr. Sullivan, you can go ahead
15 and begin whenever you like. Mr. Young, if you could get a clock
16 for me counting forward, and also Dr. Lea and Mr. Brown, I do
17 know you know this, but you, basically, get the same amount of
18 time as Mr. Sullivan; however, I'm not going to be cutting people
19 off or -- unless it's going way over, so just to kind of give
20 you an idea as to how much time you would have.

21 DR. LEA: Thank you.

22 CHAIRPERSON HILL: Sure. So Mr. Sullivan, you can
23 begin whenever you like.

24 MR. SULLIVAN: Thank you, Mr. Chair, Members of the
25 Board. Marty Sullivan with Sullivan & Barros on behalf of the

1 Applicant, Polygon Holdings, LLC. We do have a power point, if
2 Mr. Young could load that, please.

3 CHAIRPERSON HILL: Mr. Sullivan, is that the one in
4 Exhibit 54?

5 MR. SULLIVAN: It's the one that was -- yeah, it was
6 sent in about five minutes late.

7 CHAIRPERSON HILL: Okay.

8 MR. SULLIVAN: So it's one that Mr. Young has.

9 CHAIRPERSON HILL: So thank you.

10 MR. SULLIVAN: Yeah.

11 CHAIRPERSON HILL: I appreciate it. So that -- unless
12 the Board has any objection, and if so you can raise your hand
13 or speak up, I'd like to have the PowerPoint in the record so we
14 could follow through and along with it. So I'm going to go ahead
15 and allow that into the record. And thank you, Mr. Sullivan. Go
16 ahead.

17 MR. SULLIVAN: Thank you. So I'll give a brief
18 introduction and then turn it over to Mr. Crain to go through
19 the project.

20 Next slide, please.

21 So the property is in the RA-1 Zone, it's existing.
22 It's a two-story semi-detached single family dwelling. And the
23 Applicant's proposing to do an addition and to extend the existing
24 side yard, proposing to use the property as an 8-unit building.
25 And the two areas of relief, first of all, are the relief -- the

1 U-421 relief for any new residential development in the RA-1
2 Zone, and second, is side yard relief.

3 Because the building is currently a single family
4 dwelling, the eight-foot side yard is not non-conforming. And
5 so in extending the eight-foot side yard, we are not -- we don't
6 fall under the provision that allows you to extend a non-
7 conforming side yard. And it's -- in effect, it's the addition
8 and the conversion to eight units that triggers a side yard
9 requirement of a little less than nine feet -- if you -- so yeah,
10 at 10 and a half inches of relief for the side yard to extend it
11 at the existing eight foot amount. So that's the second area of
12 relief.

13 I'll go to the next slide, please, and then turn it
14 over to Mr. Crain.

15 You see the subject property there, and it's -- aside
16 from this building and the attached -- the other half of the
17 semi-detached, and there's a single family building in the rear,
18 there are three larger apartment complexes surrounding these
19 three properties, including the Foxhall Terrace, which is a 36-
20 unit apartment building on the other side of Dr. Lea's property.

21 Next slide, please.

22 So Adam, if you would like to take them through the
23 photos and the plans, please.

24 MR. CRAIN: Sure. Again, for the record, my name is
25 Adam Crain, project architect with 2Plys.

1 So what we're looking at in these slides are the rear
2 of the subject property, showing that existing side yard.

3 Can you flip to the next slide?

4 Again, on the left-hand side, you're looking at the
5 existing parking area and garage that's towards the rear of the
6 property. On the right-hand side, you're, kind of, looking
7 through the side yard that's existing there.

8 Next slide.

9 These are some of the adjacent buildings on the street
10 scape to give you a little bit of context.

11 Next slide.

12 Again, some more buildings for adjacent context. The
13 one of the left, 4455 MacArthur, that's one of the directly
14 adjacent existing apartment buildings. That's a two-level one.

15 Next slide.

16 These are, I believe, across the street. So I'm just
17 giving you a little more context of the surroundings.

18 Next slide, please.

19 This is our site plan from the plat. This -- the
20 existing house, single family, two levels, was built in
21 conjunction with the attached one on the left-hand side. So
22 they're, more or less, mirror images of each other, you know,
23 corresponding front to sides, overall building size, covered
24 porches and stairs, and then a front lead walk access.

25 We're proposing additions and conversion to an eight-

1 unit apartment house, as this is a multi-family zone. As Marty
2 mentioned, we're looking to retain that side yard going through
3 that you can see on the right-hand side, here, with proposed
4 parking in the rear.

5 Next slide.

6 Here's some renderings showing the front and rear
7 perspectives. This here on the left-hand side, we're maintaining
8 that front facade and porch, got some kind of landscaping and a
9 walkway going through that side yard. The addition's obviously
10 visible above and towards the rear. From the rear view, there's
11 a terrace that will be accessed from the first-floor unit.

12 Next slide, please.

13 This gives a little clarity on the site plan. We do
14 know that, you know, in these multi-family zones when there's a
15 change from single family to the multi-family, the addition and
16 increase in units has -- obviously is going to have an impact
17 with the neighbors and neighboring properties. So I wanted to
18 highlight some of the things we've done in an effort to mitigate
19 that impact.

20 You know, as you saw in the front rendering, we're
21 maintaining the front facade in an effort to preserve the
22 streetscape so that the existing covered porch and stairs will
23 be retained and remain and repaired. This keeps the duet of the
24 two buildings that were built together in tact from the
25 streetscape at the front.

1 Again, for our design, we're choosing to maintain the
2 side yard. We're actually utilizing that as a direct entry for
3 four of the eight units. There'd be three at the cellar and one
4 at the rear of the first floor. The whole purpose in doing this
5 is to lessen the traffic that's going in and out of the front
6 door and the stairs that is connecting directly adjacent to that
7 neighbor. So this gets half of those -- half of the entries away
8 from that and off of that front porch. We thought that was, kind
9 of, a respectful thing to do, directing people to the side.

10 We worked with OP to provide a landscape, the more
11 enjoyable and nice entrance sequence which you can see at the
12 front with some planters. We had initially proposed some visible
13 railings, and those were replaced to make that a nicer entrance
14 for those that were choosing to have their entries come from the
15 side.

16 You'll see in the back where we're proposing four
17 parking spaces. This is well in excess -- several spaces in
18 excess of what's required. You know, in doing a lot of these
19 cases and conversions, we know that cars in the street -- an
20 increased amount of cars in the street is always a concern. So
21 we made an effort to, kind of, pack them in there to keep cars
22 off the street.

23 We did -- I also wanted to point out, we located the
24 trash area at the rear away from the adjacent house as much as
25 possible. Obviously, we don't want to put that right up against

1 any neighboring houses.

2 Next slide, please.

3 Just a quick overview of the plans. In the cellar
4 level, we've got three one-bedrooms. As I mentioned previously,
5 these all will have direct access from that side yard.

6 Next slide.

7 Moving up to the first floor, this here on the right-
8 hand side, that's the shared porch for Unit 4, at this level,
9 and then the units on the upper level. Unit 5 has an access
10 from, actually, the rear terrace, and it's got a little balcony
11 or deck on the side yard, there.

12 Next slide, please.

13 You can see the upper portion, the bedroom level of
14 Unit 4 towards the front, you'll see a two-bedroom, Unit 6,
15 towards the rear here, and then the stairs in the middle will
16 continue up to the next slide, which has the third floor, and
17 this is where Units 7 and 8 are. So Unit 8 is a two-bedroom,
18 and Unit 7 has it's living area here, and then on the next slide,
19 you'll see the penthouse level, which contains the bedrooms for
20 Unit 7. And we worked with Office of Planning to ensure all the
21 proper setbacks and sizing requirements were compliant with this
22 penthouse. And we're also proposing a green roof in the areas
23 that we're setting back, as you can see.

24 Next slide, please.

25 This is just an upper view of the penthouse roof, which

1 also will have a green roof to meet the GAR requirements in the
2 Zone.

3 Next slide, please.

4 So front and side elevations here. On the right-hand
5 side you'll see the -- we're, again, keeping in tact the porch
6 roof, the stairs, and the facade with the additions that will be
7 visible, but set back, behind. On the left-hand side, we show,
8 kind of, a cut through to the adjacent neighbor and a comparison
9 as to how the additions will look from that perspective.

10 Next slide, please.

11 This is an elevation view from that side yard that we
12 mentioned, kind of showing some people and how they'll access it
13 there. We've got some people up top, showing them enjoying the
14 roof decks that we're proposing.

15 Next slide, please

16 I'll turn it back over to Marty.

17 MR. SULLIVAN: Thank you, Adam. So the general special
18 exception requirements, which apply to both areas of relief,
19 granting relief will be in harmony with the general purpose --

20 MR. CRAIN: Marty, I think you might be on mute.

21 MR. SULLIVAN: Can you hear me?

22 CHAIRPERSON HILL: Yes, we can hear you, Mr. Sullivan.

23 MR. SULLIVAN: Yeah, with the general purpose and
24 intent of the RA-1 Zone and regulations and maps and granting
25 relief will not tend to affect, adversely, the use of neighboring

1 property in accordance with the Zoning Regulations and Zoning
2 Maps.

3 This is, of course, the RZ-1 Zone, which is an apartment
4 zone meant for moderate density, multi-residential buildings.
5 The area is -- it's a mix in the area, but there are three larger
6 apartment buildings within the closest six properties. So aside
7 from this pair of semi-detached buildings and the single family
8 in the back, there is apartment buildings on both sides, and then
9 another much large apartment building on the other side of Foxhall
10 Terrace. So in a lot of ways, for an RA-1 case, this is more
11 compatible with the surrounding area than most other RA-1 cases.

12 And regarding the side yard relief, it's less than a
13 foot of relief, and that relief is requested on the side that
14 faces another apartment building, which is 30 feet away from that
15 point.

16 Next slide, please.

17 For the special exception for the side yard, there are
18 specific criteria. The light and air available to neighboring
19 properties shall not be unduly affected. As mentioned, it's less
20 than a foot of relief. There's no impact on the attached property
21 to the east, because the relief is requested on the other side,
22 and it's just extending a foot closer to the apartment building
23 on the west side -- on the east side of the property. I'm sorry.

24 And privacy, use and enjoyment of neighboring
25 properties shall not be unduly compromised. There -- of course,

1 there's no windows facing the property to the west -- the attached
2 building property, and windows facing the other way, again, are
3 30 feet away from that building's parking area.

4 Next slide, please.

5 And regarding the character, scale, and pattern, the
6 proposed third floor is going to be set back about five feet from
7 the existing mansard roof, which matches the mansard roof on the
8 property to the west. Also the Applicant made several changes
9 in response to comments from the Office of Planning we think,
10 specifically, addressing this particular criteria.

11 Next slide, please.

12 The specific special exception criteria for U-421,
13 existing and planned area of schools to accommodate the number
14 of students that can be expected to reside in the project, and
15 we've put the numbers there. And actually, the requirement is
16 that it be referred to the applicable D.C. agencies to address
17 that question.

18 Second, public streets, recreation, and other services
19 to accommodate the residents can be expected -- who can be
20 expected to reside in the project. And we are providing four
21 parking spaces, three more than the requirement of one. We're
22 on a major bus route, which actually provided the 50 percent
23 reduction in the parking requirement, which otherwise, would have
24 been two spaces. And it's 1,000 feet from a Capital Bikeshare
25 station.

1 And the BZA shall refer the application to the Office
2 of Planning for comment and recommendation on site plan,
3 arrangement of buildings and structures, provisions of light and
4 air, parking, recreation, landscaping, and grading as they relate
5 to the surrounding neighborhood. And you have the Office of
6 Planning report commenting on that, specifically. Again, the
7 Applicant has made several changes, including the retention of
8 the porch and the traditional entryway and orienting the
9 entrances to the apartments -- to most of the apartments to the
10 side on the open side.

11 And also this included -- there was a removal of --
12 that accessory building in the back was removed as part of this,
13 as well. So there's some existing massing taken away, which was
14 closer to the property to the rear.

15 Next slide, please.

16 I'll briefly address some of the comments made so far.
17 I know their testimony's coming, and so I won't spend too much
18 time on this, and we can address it in rebuttal, but the
19 opposition from Foxhall Terrace seems to, mostly, as far as I can
20 tell, it's mostly related to the easement across their property,
21 which gives 4457 access to parking.

22 There's two questions in there. One is is that access
23 provide legal access sufficient to satisfy the parking
24 requirement? We believe it does, and that is an issue that is
25 self-certified.

1 And second, whether or not the increase in the use of
2 that easement adversely affects the use of this property? I'm
3 not certain that that's before the board, properly, or if that's
4 just a function of the agreement between those two properties,
5 because there is an agreement that provides an easement across
6 that property. It is not limited to single-family use anywhere
7 as stated. So there was no limited scope in that easement. I
8 don't want to get too far into easement, because it's the legal
9 issue, and maybe that will be -- have to be figured out later,
10 but the increase is -- you could fit one or two cars back there
11 now. And now there's going to be room for four cars. So an
12 increase of two cars using that -- there's about 30 parking spaces
13 back there now for Foxhall Terrace. So it gets considerable use.
14 We don't believe that the slight increase in the use of that
15 easement will have a significant or material impact on Foxhall
16 Terrace.

17 Next slide, please.

18 Regarding the opposition from Ms. Lea, I certainly
19 understand her concerns and, I believe, most of them are related
20 to construction. And the interaction with this neighbor has been
21 difficult to this point. It hasn't gone the way I would like it
22 to go. It hasn't gone the way the Applicant would like it to
23 go. We have interacted with her counsel, who withdrew and now
24 represents Foxhall Terrace. We had some discussions, but it
25 didn't really -- it didn't go anywhere, but the Applicant

1 understands the concerns about construction, and will, obviously,
2 have to deal with that if and when this building goes before DCRA
3 for a building permit application.

4 Regarding noise, it was one of the comments, I believe,
5 that Dr. Lea had, and the Applicant could certainly address that
6 with any noise attenuation or mitigation within the structure
7 itself, as well.

8 Next slide, please.

9 Responding to 3D, I have to disagree with their
10 characterization of how this went. If it was combative, I think
11 we were, sort of, on our heels from the beginning, from the first
12 meeting. And then the Applicant did what it could -- what it
13 thought it could do to improve the project. When it came time
14 to present again at the ANC, we were told that we didn't need to
15 re-present, because it was clear what the opinions were. And
16 they have to represent their constituents, who were obviously
17 -- there's two of them in opposition to this.

18 So -- and regarding the snow load report that's brought
19 up in the ANC 3D report, we have that. It's not part of -- it's
20 not before the BZA. It's a DCRA issue. It's something, actually,
21 anybody that does an addition adjacent to a building with a party
22 wall has to deal with these days, and the Applicant will have to
23 deal with that issue, but we do not have an engineer on board,
24 and so we didn't address that as part of this proceeding.

25 Next slide, please, and I think that's it.

1 Next slide. Okay. No. I'm sorry.

2 They also note -- primary concerns, construction-
3 related impacts. Understandable, and we'll deal with those if
4 and when, at the building permit stage.

5 And the ANC mentioned that -- or at the end they had
6 made findings that reference the special exception criteria for
7 the side yard relief. And again, that side yard relief was for
8 less than a foot of relief on the east side of the apartment,
9 which case is the apartment building, not facing the attached
10 -- semi-detached other half of the building.

11 Next slide, please.

12 So that's our presentation, and we are ready for
13 questions. Thank you.

14 CHAIRPERSON HILL: Okay. Thanks, Mr. Sullivan. Real
15 quick, Mr. Sullivan, there was a thing from DDOT about bike
16 parking and whether -- that you're complying with that. Did you
17 put the bike parking somewhere on your plans?

18 MR. CRAIN: Yes, we did. We've got the long-term
19 bicycle parking, which will be at the cellar level, and then
20 short-term bicycle parking is shown in the site plan outside,
21 towards the front.

22 CHAIRPERSON HILL: Okay. Mr. Sullivan, that complies
23 with what DDOT was asking for?

24 MR. SULLIVAN: Mr. Chair, if I might, while this is
25 going on, I'll take a look at --

1 CHAIRPERSON HILL: Okay.

2 MR. SULLIVAN: -- the DDOT file.

3 CHAIRPERSON HILL: Okay. Then the other -- Dr. Lea,
4 we'll get to you in one second. Then the other is, Mr. Sullivan,
5 did you hear from that building to the east?

6 MR. SULLIVAN: No, we have not heard anything from
7 them, no --

8 CHAIRPERSON HILL: Yeah, did you reach --

9 MR. SULLIVAN: -- the other apartment building.

10 CHAIRPERSON HILL: Did you reach out to them?

11 MR. SULLIVAN: I don't -- the owner has -- he reached
12 out to several of the neighbors. I'm not sure that he -- we
13 contacted that --

14 CHAIRPERSON HILL: Okay.

15 MR. SULLIVAN: -- building directly.

16 CHAIRPERSON HILL: I was just curious, because that's
17 the one that's the one-foot side yard difference, right?

18 MR. SULLIVAN: Right.

19 CHAIRPERSON HILL: Okay. Let's see. Okay. And then
20 the other thing, Mr. Crain, before -- I just don't want to forget
21 about it, you remind me, about sound proofing in terms of, like,
22 you know, how that wall is going to be soundproofed before --
23 between Dr. Lea's property and the new development, right? So
24 that's something I'll be curious about --

25 MR. CRAIN: Sure.

1 CHAIRPERSON HILL: -- later. Okay. All right.

2 Let's see. Does the Board have any questions for Mr.
3 Sullivan?

4 MR. HOOD: Mr. Chairman, I would like to reserve my
5 -- I have plenty, but I would like to reserve my time to ask
6 questions to -- after I hear from Dr. Lea and others. There may
7 be some questions that I may have for the Applicant, but I'd like
8 to hear, particularly, how things went, and especially the
9 interaction with the community, which -- I understand, Mr.
10 Sullivan says he disagrees with the analysis of others, but, you
11 know, it seems to me, from what I read, that didn't go over well.
12 And it's always to have a good neighbor policy. So I would like
13 to hold my questions in reserve, if you don't mind, Mr. Chairman.

14 CHAIRPERSON HILL: Sure. Of course. If everyone could
15 just mute their microphone unless you are speaking, that way I
16 won't get any feedback. Thank you so much.

17 Let's see. What was I going to say. Okay. Does anyone
18 else have a question?

19 (No audible response.)

20 CHAIRPERSON HILL: No? Well, you do, Mr. Smith?

21 BOARD MEMBER SMITH: I do.

22 CHAIRPERSON HILL: Dr. Lea, I'll get your question.
23 You'll get a time for questions on your own. Go ahead, Mr. Smith.

24 BOARD MEMBER SMITH: To the Applicant, you know,
25 whoever can address this question. What is the height of the

1 proposed addition from -- the height -- the base-height
2 measurement going up to the roof of the third floor relative to
3 Ms. Lea's property and the apartment to the east?

4 MR. CRAIN: Well, we've got (audio malfunction) on the
5 elevation page of the -- Marty's slide. That would be, I think,
6 Slide No. 19. We show a dimension. I think it's 30 feet.

7 UNIDENTIFIED SPEAKER: 40 feet.

8 MR. SULLIVAN: The actual -- the building height from
9 BHMP, is 35 feet, 6 inches.

10 MR. CRAIN: Sorry. (Indiscernible) report right here.

11 MR. SULLIVAN: So I'm not sure what the relative
12 difference is. We can get that information for you at some point
13 today.

14 BOARD MEMBER SMITH: Also, was there an analysis done
15 -- based on that height, was there an analysis done on shadowing
16 of the property to the attached structure.

17 MR. SULLIVAN: No, because the structure, as proposed,
18 is within the matter of right, other than the -- for the relief,
19 which is on the other side of the property. So there wouldn't
20 be any shadow impact with increasing it from the special exception
21 for the side yard relief, but we typically haven't done shadow
22 studies when the structure itself is -- because our shadow studies
23 show the difference between the matter of right structure and the
24 proposed structure, and the only difference is one foot on the
25 east side for that small portion in the back.

1 BOARD MEMBER SMITH: Okay. All right. Thank you.

2 CHAIRPERSON HILL: Okay. And Mr. Sullivan, I don't
3 know where we are, and we'll see how it goes, but you know --
4 well, never mind. Okay.

5 Let's see. Anyone else from the Board?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay. Mr. Brown, do you have any
8 questions?

9 MR. BROWN: Perhaps I'd defer for the moment to Dr.
10 Lea, if that's okay.

11 CHAIRPERSON HILL: Okay. Sure. Dr. Lea, do you have
12 any questions?

13 DR. LEA: Sure. So when -- I have -- there's some
14 confusion about extending the side yard. There are multiple
15 exhibits, at this time, I think, 54 to 55, and that side yard,
16 it's changed back and forth. And so I want confirmation on
17 exactly what special exception they're seeking for the side yard.
18 Are they seeking that special exception for the side yard, or are
19 they not? Yes or no.

20 CHAIRPERSON HILL: Okay. I believe the answer is yes.
21 Mr. Sullivan?

22 MR. SULLIVAN: Yes.

23 DR. LEA: Okay. My second question is to Adam, and
24 it's related to Slide 5, if you can bring that up.

25 CHAIRPERSON HILL: Mr. Young, could you bring Slide 5

1 from the deck?

2 DR. LEA: Sorry, Mr. Young, you're going to get a
3 workout today. Let's go to the next one, I think. Sorry. Go
4 to No. 9. I please apologize. I am scratching everywhere. Okay.

5 If we look at this drawing -- drawings that I have that
6 are related to my property are signed by someone, and they're
7 stamped by the District. In this diagram, if you look at the
8 rear of the 4459 side on the left, there's a line there that
9 looks to be about 3 feet behind the existing garage. Can you
10 tell me what that line represents, because it's not the property
11 line?

12 CHAIRPERSON HILL: Mr. Crain, do you see that, and do
13 you know what she's talking about?

14 MR. CRAIN: I do. So I'm actually just, kind of,
15 pulling it up on Property Quest to see if I can compare that. I
16 think we're really showing the easement -- the parking easement
17 going in.

18 DR. LEA: No, sir. That's -- then that is misrepresents
19 the parking easement going in. The parking easement going in is
20 12 feet from the uppermost diagonal line there from 4461. That
21 is not 12 feet. So that is a misrepresentation. I just -- I
22 want to bring this up, because this image appears multiple times
23 within this application, and it is incorrect.

24 So actually, if Mr. Young could bring up a slide that
25 we just admitted in this morning, hopefully.

1 CHAIRPERSON HILL: Ms. -- Dr. Lea, I don't mind, I'm
2 just trying to let you know. This part is for questions.

3 DR. LEA: Okay.

4 CHAIRPERSON HILL: So it's not --

5 DR. LEA: Okay.

6 CHAIRPERSON HILL: It's not your presentation, which
7 -- we want to get to --

8 DR. LEA: Thank you.

9 CHAIRPERSON HILL: -- your presentation.

10 DR. LEA: So it answered my question. Thank you,
11 Chairman Hill, that the line that they're indicating, they're
12 indicating as easement.

13 And so can we go to the next slide. I have a question
14 there.

15 There's a terrace -- a deck evident on the building to
16 the right. Can you tell me how far above 4459 that projects?
17 There's a seven-foot cinder block wall between the two
18 properties. Can you tell me exactly how that terrace meets that
19 cinder block wall and how that impacts the privacy for the patio
20 at 4459?

21 MR. CRAIN: Not off-hand. I'd need to have an exact
22 elevation to give you that dimension.

23 CHAIRPERSON HILL: What's your question again? I'm
24 just trying to understand the question, Dr. Lea. Mr. Crain, what
25 do you understand the question to be?

1 MR. CRAIN: (No audible response.)

2 CHAIRPERSON HILL: Go ahead, Dr. Lea. Tell me the
3 question again.

4 DR. LEA: This is regarding privacy at 4459 due to the
5 proposal of a deck at the rear of 4457, and I believe that
6 proposed deck totally overlooks my patio between the residence
7 and the garage. And I'm asking about what is the elevation of
8 that deck and what -- how is privacy going to be maintained for
9 4459.

10 CHAIRPERSON HILL: Okay. What deck -- I don't see the
11 deck. That's what I'm trying to -- are you talking about the
12 roof deck?

13 DR. LEA: It's a brown image. If you look at the right
14 image -- there are two images of the building, and if you look
15 at the one on the right, there's a brown area. That is what I
16 believe they're determining to be their deck.

17 CHAIRPERSON HILL: It looks like a patio to me. You're
18 saying that's a deck?

19 DR. LEA: It's not. Yes, sir, that is a deck.

20 CHAIRPERSON HILL: Mr. Crain, so is that a deck or the
21 patio?

22 MR. CRAIN: It's a rear terrace. It actually sits over
23 -- the cellar level will project under that. So it's, kind of
24 -- it's somewhere between a deck and a patio just because of the
25 height of it.

1 CHAIRPERSON HILL: Got it.

2 MR. CRAIN: So it's almost (audio malfunction). We do
3 show a fence in this rendering, and also on the elevations, that
4 will be, kind of, blocking the view between this --

5 CHAIRPERSON HILL: Okay.

6 MR. CRAIN: -- and next door.

7 CHAIRPERSON HILL: That's right. So you're --

8 MR. CRAIN: That was just the privacy.

9 CHAIRPERSON HILL: I got you. So okay. So Dr. Lea,
10 I'm just trying to understand the question. You're just trying
11 to understand how high that deck is, right?

12 DR. LEA: Yes. I'm trying to understand the height of
13 the deck and the privacy that will be provided for 4459 property.

14 CHAIRPERSON HILL: All right. So I guess --

15 DR. LEA: Because -- a deck is a deck. A patio is on
16 the ground. So I wanted to clarify that this is, indeed, a deck,
17 and I am requesting the height of that deck and the assurances
18 that privacy will be granted for 4459. That's my question, the
19 height of this deck.

20 CHAIRPERSON HILL: Got it. What was I going to say.
21 Oh, yes. Right. So Mr. Crain, I guess, from grade, that's, kind
22 of like, how far above, from the backyard of Dr. Lea? Okay.
23 What's your next question?

24 DR. LEA: My other question would be, actually, going
25 back to -- I guess it's -- is it Mr. Brown, Chrishaun? I only

1 know the first name but not the second. He raised an issue about
2 a shadow issue, and I am requesting that that shadow issue be
3 addressed, because my property at 4459 is directly abutting 4457,
4 and the eastern sun comes up on that side. And so I, indeed --
5 I'm requesting -- if there wasn't a study done about the shadow
6 and light, I'm requesting will that be considered?

7 CHAIRPERSON HILL: Dr. Lea, that's something that we
8 would make a request for of the Applicant if we determined that
9 that's something we want to take a look at, and I guess that
10 still is somewhat still on the table. What Mr. Sullivan --

11 DR. LEA: Okay.

12 CHAIRPERSON HILL: What Mr. Sullivan had said, in
13 defense of that, was that this building is a matter of right
14 massing. I somewhat disagree with Mr. Sullivan, meaning that the
15 fact that it matter of right massing or not, it doesn't matter,
16 because, you know, if we want to see a shadow study, it's, you
17 know, it's the added density that you're bringing also to the
18 area.

19 DR. LEA: Okay.

20 CHAIRPERSON HILL: But nonetheless, Dr. Lea, we'll see
21 if we get to that, but that's something that we would ask for if
22 we are interested in seeing that. And I'll let Mr. Smith follow
23 up with that at a later time.

24 Do you have any more questions?

25 DR. LEA: I'll raise one more on Slide 20, please.

1 Throughout Mr. Sullivan's presentation, he's mentioned
2 the effects on the apartment building to the east of 4457. Very
3 little -- miniscule comments have been raised about the effects
4 on 4459, and I'm wondering why. I'm going to act like I'm 2
5 years old. Why? Why?

6 CHAIRPERSON HILL: Your question is -- what's your
7 question, Dr. Lea?

8 DR. LEA: My question is why have the impacts of this
9 project on 4459 not been addressed. They bring up issues on the
10 apartment building to the east a lot. Hardly ever -- except for
11 mentioning windows on the addition, they don't mention any effect
12 on 4459. And my question is why has 4459 been overlooked as part
13 of, you know, an impact of this proposed development?

14 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have a
15 response?

16 MR. SULLIVAN: The relief requested on that side is
17 less than one foot extending closer. It's still an eight-foot
18 side yard, and it's still 30 feet away from that building, which
19 happens to be angled from southwest to northeast. So in an area
20 where we're --

21 CHAIRPERSON HILL: Mr. Sullivan? Hold on. Hold on.
22 Hold on. Dr. Lea, don't -- Mr. Sullivan, I was just trying to
23 clarify the question. What I think --

24 DR. LEA: Thank you.

25 CHAIRPERSON HILL: -- Dr. Lea was asking was, like, you

1 don't -- in your presentation, you don't speak much to the effects
2 of her property. And I guess, I'm just asking if you have an
3 answer for that, meaning, you're saying that there's nothing that
4 you want to speak to on her side. You're only asking for relief
5 on the other side. Is that your answer? I don't understand.

6 MR. SULLIVAN: No. I thought her question was about
7 -- I thought she was asking a question about the other side.

8 Regarding her property, yes. So what would be the
9 potential impacts? Nothing from the side yard relief, yes. From
10 the conversion itself, one of the things that the -- or maybe
11 the only relevant thing that the ANC brought up was noise, and
12 we think we can address noise.

13 When it comes to just saying that -- I mean, other than
14 that, it's construction issues, of course. Anytime you have a
15 party wall attachment, you're going to have construction
16 concerns, and that needs to be addressed at the construction
17 stage, but that's not a function of this relief, because there
18 could always be construction, and they could always do an
19 addition, actually, in this same massing if they kept it as a
20 single family or a flat.

21 So I'm not --

22 CHAIRPERSON HILL: Okay. Mr. Sullivan, I got --

23 MR. SULLIVAN: I'm not --

24 CHAIRPERSON HILL: I got --

25 MR. SULLIVAN: -- not dismissing you --

1 CHAIRPERSON HILL: I got --

2 MR. SULLIVAN: -- at all.

3 CHAIRPERSON HILL: I got your answer. Dr. Lea, I'd
4 like to get to your presentation. Do you have any other
5 questions?

6 DR. LEA: I do not have other questions at this time.

7 CHAIRPERSON HILL: Okay. Mr. Brown, do you have any
8 questions?

9 MR. BROWN: I actually, do, but I'll be brief. I think
10 they're for Mr. Crain. If we could pull up his site plan drawing.

11 CHAIRPERSON HILL: Do you know which slide that is or
12 which exhibit?

13 DR. LEA: I think.

14 MR. BROWN: They're not -- unfortunately, mine don't
15 have numbers on them. That one. That's fine. Perfect.

16 Mr. Crain, are you showing the accurate property line
17 for Dr. Lea's property?

18 MR. CRAIN: I believe so. We have a -- we based ours
19 on a survey plat that was provided from a surveyor. It didn't
20 include the entire outline of her property, but --

21 MR. BROWN: So it extends beyond to the rear property
22 line that is shared by both 4457 and 59?

23 MR. CRAIN: I believe so, yes. Do you mean on the
24 bottom left -- or the left side --

25 MR. BROWN: Yes.

1 MR. CRAIN: -- where it says, "Drive access"?

2 MR. BROWN: Yes.

3 MR. CRAIN: Yes. That's my understanding where the
4 property line continues to, which means there's -- the easement
5 will come across the back, down -- across the bottom and then up
6 past the back of hers.

7 MR. BROWN: And in your site plan, you don't show the
8 dimensions of the 10-foot right of way from MacArthur Boulevard?

9 MR. CRAIN: That dimension is not shown in this site
10 plan.

11 MR. BROWN: Would you do --

12 MR. CRAIN: We call that "alley drive access" on the
13 bottom there.

14 MR. BROWN: Well, that's an existing condition. That's
15 not the -- that's not meant to depict the actual 10-foot right
16 of way; is that correct?

17 MR. CRAIN: It's meant to reference the existing
18 easement that's accessing for parking.

19 MR. BROWN: Well, now, we need to be precise, Mr. Crain.

20 MR. CRAIN: I'm not sure what exactly you're asking.
21 Can you clarify?

22 MR. BROWN: And you're not a surveyor, but there is a
23 10-foot right of way. It is not necessarily -- and in fact, it
24 is not, best I can tell, contiguous or represented by the alley
25 drive. So I'm asking you and you've answered, you have not shown

1 the 10-foot right of way on the plan. So --

2 MR. CRAIN: No.

3 MR. BROWN: All right. Would you be willing to provide
4 the Board that?

5 MR. CRAIN: If --

6 MR. BROWN: That's probably a Marty Sullivan question,
7 but --

8 MR. SULLIVAN: If I'm provided with the proper
9 documentation.

10 MR. BROWN: Going back to the rear of the two
11 properties, you have a label that says, "Drive access." And that
12 appears to be the width of two parking spots, which would be
13 about 18 feet; is that correct?

14 MR. CRAIN: Yes, it is.

15 MR. BROWN: But you're also aware that the right of way
16 there is only 12 feet, measured from the rear property line? So
17 that -- in fact, and we'll get to it in our presentation about
18 the validity of those two parking spaces, but you certainly --
19 your drive access is overstated in this drawing; is that correct?

20 MR. CRAIN: I don't know if it's correct or not. We're
21 just showing what's on our property. Also, I mean, I guess, you
22 know --

23 MR. BROWN: Well, Mr. Crain --

24 MR. CRAIN: -- our goal is to --

25 MR. BROWN: Mr. Crain, you're not answering my

1 question.

2 MR. CRAIN: (Indiscernible.)

3 MR. BROWN: The two property spaces you're showing
4 running parallel to the rear property line, they're both 9 feet
5 wide, correct?

6 MR. CRAIN: That's right.

7 MR. BROWN: All right. So that space is 18 feet wide,
8 yet the right of way, as it crosses -- in my view, as it crosses
9 both properties, specifically, but certainly as it crosses Dr.
10 Lea's property, is only 12 feet, measured from the property line.
11 Yet you're, basically, implying that the access is 18 feet wide;
12 is that correct?

13 MR. CRAIN: No, we're not implying that. We actually
14 don't show a dimension. We actually just don't really show it
15 at all, because we weren't provided with a survey of adjacent
16 properties.

17 CHAIRPERSON HILL: Mr. Brown, I understand what you're
18 saying, and I guess we can, kind of, figure this out later. So,
19 right, you're saying that that's not as wide as they are pointing
20 it out to be, correct?

21 MR. BROWN: That's correct.

22 CHAIRPERSON HILL: Okay. Fine. What's your next
23 question, Mr. Brown?

24 MR. BROWN: And I think on the first page of your slide,
25 you're showing the front of the two buildings, 4457 and 4459, and

1 I don't want to put words in your mouth, but you indicated that,
2 I'm paraphrasing, that you were going to maintain the front porch,
3 front facade of the two properties. Can we, Paul Young, I'm
4 sorry.

5 CHAIRPERSON HILL: That's all right. I pulled it up
6 right now. Mr. Crain, the question is, right, and I guess we
7 can -- I'm a little confused as to your question, Mr. Brown.
8 You're asking Mr. Crain whether they plan on making it that way;
9 is that what you're contending?

10 MR. BROWN: Yes, that's correct. Is that an accurate
11 depiction?

12 CHAIRPERSON HILL: I would assume that there would have
13 to be some cooperation from Dr. Lea, which we don't know yet,
14 but I -- so Mr. Crain, the question is is that the way you propose
15 the design to be, it's on the front -- your first slide?

16 MR. CRAIN: Yeah. Our design intent is to keep the
17 existing portion of the facade in tact with repairs that are
18 required.

19 CHAIRPERSON HILL: Got it. Okay.

20 MR. BROWN: Okay. They let me ask you, Mr. Crain, does
21 the existing front facade and porch -- and you've see pictures
22 and we'll bring them up in our presentation. Does the existing
23 condition look like what you're showing in your drawing?

24 MR. CRAIN: I think I actually have a third window in
25 there, which we can take out if that's needed or an issue.

1 MR. BROWN: I'm focused more on --

2 MR. CRAIN: Other than that --

3 MR. BROWN: -- on the --

4 CHAIRPERSON HILL: I think the answer, Mr. Brown --
5 it's okay. The answer, Mr. Brown, is no. It doesn't look that
6 way now, right, Mr. Crain? It doesn't look that way now. Mr.
7 Brown, do you have another question?

8 MR. BROWN: No, I'm done. Thank you.

9 CHAIRPERSON HILL: Okay. All right. Great. All right.
10 Mr. Young, thanks so much. All right.

11 Mr. Brown, you have your time whenever you like, and I
12 don't know what you want done, Mr. -- what you would like Mr.
13 Young to pull up, but please let me know, and then, Mr. Brown
14 -- I'm sorry. Mr. Young, if you could restart that clock to zero
15 when you get a chance. And Mr. Brown, you can begin whenever
16 you like.

17 Mr. Brown, you're on mute.

18 MR. BROWN: I'm trying to be a good citizen and my own
19 worst enemy, at times.

20 I have a slide presentation that was submitted --

21 CHAIRPERSON HILL: Yes. You got Part I of IV; is that
22 correct, Mr. Brown?

23 MR. BROWN: Yes. 53A. And I'll make a brief
24 introduction and then let Mr. Greenstein -- I mean, Mr. Feldman
25 speak. But -- and our concern -- and obviously supportive of

1 Dr. Lea and the ANC position, but our concern and participation
2 is very focused here today, and it's on what we think is the
3 unauthorized and unwarranted and excessive use of the 10-foot
4 right of way from MacArthur Boulevard as the sole means of access
5 to the rear of this new property. And I want to put it in some
6 context.

7 The 10-foot right of way arose in 1929. At that time,
8 4465, the apartment building, obviously, wasn't there, but the
9 three single family homes, 4457, 4459, and Mrs. Weathers', who's
10 been there for 62 years at 4461, at the rear. And the right of
11 way was created for the limited purpose to serve those three
12 single family dwellings. And to somehow justify it being used
13 now for eight dwelling units at 4457, I don't think is factually
14 or legally correct, and I think the Board needs to be aware of
15 that, particularly in the context of Mr. Sullivan having the
16 burden of proof in this case.

17 Also, and throughout this process and why we came to
18 it later, is that OP and DDOT and the Applicant have extended
19 the purpose of that -- proposed us of that right of way well
20 beyond a couple of cars coming in and out. It's there, as they
21 propose, for the parkers, where we take exception to the number
22 of cars that will be permitted there.

23 CHAIRPERSON HILL: Mr. Brown, let me interrupt you one
24 second. Mr. Young, did you find Mr. Brown's PowerPoint?

25 UNIDENTIFIED SPEAKER: It's the 301.

1 CHAIRPERSON HILL: Yes. Its' the first on of the four.
2 I mean, maybe Mr. Young was waiting for Mr. Brown, but if you
3 can go ahead and pull that one up so we can -- 'cause I see
4 already -- you can tell us about the slide. I can see the
5 driveway in the first -- excuse me -- slide.

6 (Pause.)

7 CHAIRPERSON HILL: Mr. Young? Did I lose Mr. Young?

8 MR. YOUNG: Yeah. I'm pulling it up now. Sorry.

9 CHAIRPERSON HILL: Okay. No problem. I just didn't
10 know if I lost you.

11 (Pause.)

12 CHAIRPERSON HILL: Mr. Brown, I guess you can keep
13 talking while we pull it up.

14 MR. BROWN: Well, based on the Applicant, OP, and DDOT,
15 this is not -- the proposed use of the 10-foot right of way is
16 not simply for a few cars to come to the rear parking area, but
17 it's to be used for move-ins, move-outs, trash, deliveries,
18 pedestrians, and that greatly exceeds the scope of the limited
19 purpose of the right of way.

20 Also, as I pointed out on cross-examination, the
21 Applicant has failed to show us where the right of way is, and
22 again, we're talking about a 10-foot right of way, and where it's
23 located in relation to the driveway is unclear. So that, again,
24 the Applicant's burden to show that they actually have a usable
25 use of right of way and not necessarily what's shown on this --

1 the driveway access that exists now.

2 The use -- the intensified and, I believe, unauthorized
3 use of that right of way, obviously benefits 4457, but does so
4 at the burden of 4459 and 4461, who are just single family
5 dwellings hoping to use that driveway. It also imposes -- and
6 I'll let Mr. Feldman speak about this, a substantial and
7 unauthorized burden on 4465. And that's something that, I think,
8 the Board should be aware of.

9 Also, as far as the right of way that extends from the
10 rear property line of 4457 and 4459, it's 12 feet deep from the
11 rear property line. And if you read the document, which I
12 provided in my request for party status, it's clear that that
13 right of way is reciprocal between 4457 and 4459. What that
14 means in English is that Dr. Lea has an equal right to cross over
15 that 12-foot right of way on to 4459 as 4459 has to cross onto
16 her property. As a result of that, those two parking spaces,
17 which are standard size, are in the 12-foot right of way, and
18 neither one are possible. Again, the Applicant bears the burden
19 of proof that they can provide those parking spaces, and the
20 limited driveway access that I mentioned in cross-examination.

21 You've heard enough from me for the time being. Mr.
22 Feldman, would you -- I think what we'd like to do is hear from
23 you, and let's walk through some of the pictures, which, I think,
24 are significant.

25 MR. FELDMAN: Okay.

1 MR. BRWON: And just briefly tell us about the building
2 and your involvement, and then we'll walk through the pictures.

3 MR. FELDMAN: Well, I've been involved with the
4 building since 1973, but it was built in the '60s. The driveway
5 was put in on our land with an easement for the three houses to
6 utilize it. The intended use was for houses.

7 I know from past experiences people use other people's
8 property, whether it's for guest parking or turn arounds. There's
9 a guest parking, and I have it at other properties, too, but
10 since I'll only be here for 10 minutes, and utilize my property,
11 but -- and some stay overnight. And so I'm concerned about the
12 excess parking abuses.

13 And also we do our trash removal from the front of the
14 building on MacArthur. Our trash trucks do not come up our
15 driveway. And so I feel there'll be some amount of abuses.
16 Besides the maintenance that I have done, solely, for all these
17 years, there's a storm drain at the bottom of the driveway,
18 probably 10 feet from MacArthur Boulevard. We do the snow
19 plowing, general maintenance, the occasional leaf blowing and
20 cleaning of the driveway, knowing none of the three neighbors
21 have contributed to that. And I wasn't losing sleep over that,
22 but, you know, we have 30 cars rather than two or three.

23 But at some point I got to draw the line and say now
24 things are getting a little more abused, and times have changed
25 in the last 30 or 40 years. I think some compensation would be

1 in order, but that's, I guess, extending beyond how many spaces
2 4457 will actually have. It just seems to me that the maintenance
3 of the driveway, the narrowness of it is my burden, and I want
4 it shared or not have the extra use of the driveway.

5 CHAIRPERSON HILL: Mr. Young, can we just go through
6 some of the slides, the photos, just --

7 MR. FELDMAN: Okay. That's a picture of -- facing
8 MacArthur Boulevard. You can see the storm drain -- it's probably
9 20 feet from the street rather than what I said, but it's in the
10 middle. It gets filled with sediment periodically, probably
11 every two years I need to have a plumber come, pull the grate
12 out and -- to clean it out. It's probably about five, six feet
13 down, generally costs \$1,000 or so to get it cleared up.

14 CHAIRPERSON HILL: We'll go to the next photo, Mr.
15 Young.

16 MR. FELDMAN: That's a photo of the driveway.

17 CHAIRPERSON HILL: And the next photo, Mr. Young.

18 MR. FELDMAN: That's from my parking lot -- well, from
19 my rooftop looking towards the driveway, and Ms. Lea's house --
20 Dr. Lea's house.

21 CHAIRPERSON HILL: Next photo.

22 (Pause.)

23 CHAIRPERSON HILL: I think, Mr. Young, you have to pull
24 up -- so the PowerPoint, Part II and Part III is one photo, and
25 then Part IV is five, it looks like. And I can see them, Mr.

1 Brown. You got the drive -- picture of the driveway, and I guess
2 my Board Members can also see it, and then the sign for parking
3 and violators.

4 MR. BROWN: Yeah, and then there's a picture that shows
5 a white maintenance van blocking the access to the rear of 4457
6 and 4459. One of the things that -- and one, the Applicant hasn't
7 shown the boundaries of the right of way, but, two, hasn't
8 provided any turning movements or other information that would
9 indicate that they can respect the right of way and still enter
10 the rear of the property for the intended -- the purposes they
11 propose.

12 There's another photo just showing the rear of 4457
13 showing two cars in it, and --

14 MR. FELDMAN: And this kind of thing happens a lot,
15 this -- just leaving something in the driveway. It's not
16 (indiscernible) mine, but it certainly limits the access to the
17 other houses there.

18 CHAIRPERSON HILL: Yes. I see the next one also, Mr.
19 Brown. You might as well to jump down to, maybe, your Slide 10.

20 MR. BROWN: Yeah. And I've outlined there, which the
21 Board can see, this right of way which the Applicant is relying
22 on was never intended for this purpose, and Mr. Feldman, I think,
23 is being polite that his position is that he objects to it being
24 used for eight units. And it's really, given it's -- no, it's
25 10 feet, it's not suitable for the purposes that are being

1 proposed. It certainly won't -- 10 feet won't permit two-way
2 circulation, which is likely, given the increased use. A vehicle
3 can block it easily. There will be safety hazards, because,
4 again, you're competing with pedestrians not only at 4457, but
5 also at 4465 and their parking lot. And again, the Applicant
6 hasn't shown the boundaries of the right of way, but it's almost
7 guaranteed that the usage will encroach beyond the boundaries of
8 the right of way in using it, and also the illegal parking.

9 This is there for a very limited purpose, and there'll
10 be excessive wear and tear. There's been no communication -- Mr.
11 Sullivan and I spoke briefly yesterday, but there's been no
12 communication between the Applicant and Mr. Feldman about how to
13 make this work. And one would have hoped that would have occurred
14 previously, long before we got here, and obviously, no provision
15 for, if it was permitted, cost sharing and maintenance and
16 insurance.

17 And then my last point, which I've made several times,
18 is I -- my strong belief in the language is clear that provided
19 that the parking spaces being proposed at the rear of 4459 are
20 in the right of way and can't be provided.

21 CHAIRPERSON HILL: Okay.

22 MR. BROWN: 4457, excuse me.

23 MR. FELDMAN: I'd like to add one thing, if I can, that
24 the I don't think the intended use of our parking lot should be
25 the turn around for vehicles going to any of the houses, and I

1 don't see how a truck backing out or pulling out -- well, backing
2 out especially, would not have to use part of my parking lot or
3 the one at 4461. Thank you.

4 MR. BROWN: And then, certainly, I think, as I've asked
5 before -- or mentioned before, the absence of one showing the
6 dimensions or the actual location of the right of way in
7 conjunction with not providing turning movements for the
8 anticipated types of vehicles makes Mr. Feldman's point.

9 CHAIRPERSON HILL: Okay. Okay. Well, I -- before Mr.
10 Sullivan has an opportunity to ask any questions if he has any,
11 I guess, Mr. Sullivan, you know, I know that, you know, there's
12 been a lot of discussion -- there's a lot of discussion about
13 this right of way thing and whether or not that is before the
14 Board or not, but there are things that I know the Board could
15 ask about that are before the Board, and I know that I am curious
16 about these two spots that you guys, you know, is -- are those
17 two spots on your property or are those two spots on the easement
18 is one question I have for you. I don't even know right now.
19 I'm just saying. And then -- and I don't even know whether we're
20 going to get to the width issue or not. I'm just curious if
21 those two spots actually are on your property or are on the
22 easement.

23 And so, let's see. Mr. Sullivan -- oh, first of all,
24 does the Board have any questions for Mr. Brown? Sure, Chairman
25 Hood.

1 MR. HOOD: Thank you, Mr. Chairman. I have a couple
2 of clarifying questions whether they're applicable or not. I'm
3 just trying to get there.

4 Mr. Brown, these two cars here in the photograph, what
5 are they -- what are those two cars doing? Are they just parked,
6 just sitting? What's going on with that. I don't understand
7 that.

8 MR. BROWN: Parked.

9 MR. HOOD: Just parked. So you just park. And that
10 is an easement that's being used, and people just come and park
11 their cars and go on about their business?

12 MR. BROWN: Apparently.

13 MR. HOOD: Interesting. On my side of town, you park
14 like that, you come back, your car's gone. And the other thing
15 is, Mr. Brown, I also want to ask you, you keep alluding to
16 intensity and unauthorized use, and if you put something in the
17 file, forgive me, did you put something of that nature in the
18 file? I mean, what do you keep meaning when you say intensity
19 and unauthorized use?

20 MR. BROWN: Well, and one, you'd have to look at the
21 historical context and purpose of this right of way. And
22 unfortunately, the original 1929 document, I have not been able
23 to find, partly, one, it's age, and we don't actually have access
24 -- physical access to the Recorder of Deeds right now. It's all
25 online, and the records aren't complete in that way. But if you

1 look at the, one, the origin of the right way -- it was created
2 in 1929. At that time, the three single family dwellings, 4457
3 and 4459 and 4461, Mrs. Weathers, at the rear, those houses
4 existed starting in 1905. So the right of way was for no other
5 purpose than to serve those three single family homes. And my
6 view is that the right of way would be interpreted based on that
7 context and not given a, you know, an open door to expanding the
8 scope and use of the right of way.

9 MR. HOOD: Okay. Thank you. I will tell you where I
10 am right now, even before I get to the RA and the zoning and what
11 I really need to be getting to. I'm having problems with the
12 lack of communication, because some of these things, I think,
13 could possibly be resolved even before we get to the zoning. I
14 mean, it looks to me, like, for me, this is very scattered, and
15 I'm having some problems with the communication, as has been
16 mentioned, and from what I've seen in the record. Some may
17 disagree. And I will follow Board Member Smith's lead on the
18 shadow study. So that's just, kind of, where I am. Thank you,
19 Mr. Chairman.

20 CHAIRPERSON HILL: Okay. Anyone have any questions for
21 Mr. Brown? Yes, Ms. John.

22 VICE CHAIR JOHN: Mr. Brown, Mr. Feldman mentioned that
23 the easement is created on his property. Did I understand that?
24 And if you're not the person to answer, I would ask Mr. Feldman.

25 MR. BROWN: I'm sorry, Ms. John, I'm having trouble

1 hearing you. Let me see if I can turn my speaker up a little.

2 VICE CHAIR JOHN: And I will try to speak a little
3 louder. Can you hear me now?

4 MR. BROWN: That's better.

5 VICE CHAIR JOHN: Okay. So Mr. Feldman mentioned that
6 the easement was created out of his property for the walkway?
7 I'm not quite sure which one.

8 MR. BROWN: Well, the easement -- it may be a
9 distinction without a difference, but the term that's used is
10 "right of way." And the right of way was created to provide
11 access to those three houses, and in 1929 there were cars and
12 horses, perhaps, too, and certainly pedestrians, but it was
13 limited to those three single family dwelling.

14 VICE CHAIR JOHN: Thank you. Then I'm confused. I
15 should ask Mr. Feldman. Mr. Feldman, which one is your property?
16 What -- are you at 4461?

17 MR. FELDMAN: No. 4465, the apartment building,
18 Foxhall Terrace Apartments.

19 VICE CHAIR JOHN: Okay. You're at this apartment
20 building. So the right of way, you're saying, was created out
21 of that property --

22 MR. FELDMAN: Yes.

23 VICE CHAIR JOHN: -- is that what I heard you say?
24 Okay. And so the right of way was created by the two owners of
25 4461 and 4467 to provide access up in there? So it seems like

1 it was a three-way arrangement between 4461 and the two
2 properties?

3 MR. FELDMAN: I'm sorry. I can't hear.

4 VICE CHAIR JOHN: I'm speaking into the
5 (indiscernible).

6 MR. BROWN: And I don't have the original document, Ms.
7 John, but it was certainly created from the property which is now
8 4465 for the benefit of the three single family dwellings.

9 MR. FELDMAN: Yes.

10 VICE CHAIR JOHN: Okay. I get it now. Thank you. I
11 was just trying to figure out the relationship between the four
12 properties. Thank you. Thank you.

13 CHAIRPERSON HILL: Okay. Anyone else? Mr. Young, can
14 you bring up that last exhibit that had the photographs for me,
15 real quick, the one that had the white van?

16 (Pause.)

17 CHAIRPERSON HILL: And this is going to be for Mr.
18 Crain, actually, when we get this up.

19 MR. YOUNG: I'm sorry, what did you need up?

20 CHAIRPERSON HILL: Yes, that's all right. It's Exhibit
21 53A4.

22 (Pause.)

23 CHAIRPERSON HILL: Okay. So go to the first picture.
24 Yes. Okay. So Mr. Crain, can you hear me?

25 MR. CRAIN: Yes, I can.

1 CHAIRPERSON HILL: So that's the width? That red -- I
2 just want to make sure I understand. I'm a little confused.
3 That red car, that's the width of the two -- the back -- the two
4 back properties behind 4457 and 4459, correct?

5 MR. CRAIN: Yeah.

6 CHAIRPERSON HILL: Okay. So scroll to the next photo,
7 then, please, Mr. Young. So this is, again, that same picture.
8 That's the back of 4457 and the back of 4459, correct?

9 MR. CRAIN: Yes, it is. That little garage, more in
10 the middle, we'll be, actually, removing as part of our proposal.

11 CHAIRPERSON HILL: Right, but that's 4457?

12 MR. CRAIN: Yes, it is.

13 CHAIRPERSON HILL: Got it. And that's, again, the
14 width. For some reason this photo looked narrower than the photo
15 above, but that -- if you go to that first photo again, Mr. Young.
16 Where that red car is, more or less, is where the red car is in
17 the second photo, correct

18 MR. CRAIN: Yes.

19 CHAIRPERSON HILL: Okay. All right. Got it.

20 MR. CRAIN: Perspectives do look quite different. I
21 agree with you.

22 CHAIRPERSON HILL: Got it. I understand. And then the
23 -- where that -- where's the third home? It's to the left of
24 that red car?

25 MR. CRAIN: Yeah. Yeah.

1 CHAIRPERSON HILL: Okay.

2 MR. FELDMAN: The truck is facing the third home.

3 CHAIRPERSON HILL: Okay. All right. Okay. You can
4 drop it now.

5 Mr. Sullivan, can you hear me? I don't know, we'll see
6 where we get, again, and I don't know what's going to happen,
7 but just, kind of, keep tabs on this stuff. I'd like to see a
8 little bit more about that whole area right there, like, that
9 third house, kind of, the driveway that's behind 4465. I mean,
10 I don't know whether we will or not, it depends on how this, kind
11 of, continues to go, but it's a little bit unclear to me how this
12 third house plays out with all that and the driveway and the
13 easement that, you know, how big that parking lot is back there
14 at 4465.

15 Mr. Feldman?

16 MR. FELDMAN: Yes.

17 CHAIRPERSON HILL: At 4465, is that all above -- it's
18 not below grade parking, it's just a big lot back there?

19 MR. FELDMAN: It's a lot.

20 CHAIRPERSON HILL: So that's for the 30 cars?

21 MR. FELDMAN: Yes.

22 CHAIRPERSON HILL: Okay. All right. So then maybe I
23 just -- I could probably just look on the satellite, actually,
24 but just so -- anyway. So we'll see. Okay. Let's see. I did
25 Mr. -- oh, sorry. Dr. Lea, do you have any questions for Mr.

1 Brown?

2 DR. LEA: No, I do not. Thank you very much.

3 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have any
4 questions for Mr. Brown?

5 MR. SULLIVAN: Yes.

6 CHAIRPERSON HILL: Okay.

7 MR. SULLIVAN: A couple. So Mr. Brown, you mentioned
8 -- I think what you're saying is the 12-foot wide easement at
9 the rear of 4459 is reciprocal and that Dr. Lea's property has a
10 right to also go on that 12 feet on 4457; is that correct? Is
11 that what you meant by "reciprocal"?

12 MR. BROWN: Yes. And that is -- that's what the
13 document says.

14 MR. SULLIVAN: Okay. Can you point out where it says
15 that in the document, 'cause you submitted a document that seems
16 to show that the easement is only on 4459 and doesn't encroach
17 on 4457.

18 MR. BROWN: In my Exhibit 45 -- in the Board Exhibit
19 45, which is my party status request, and Exhibit C in that --
20 to -- just to preface this, Lot 9 -- I'm going to get this right,
21 Lot 962 is now Lot 57, which is your client's property. Lot 961
22 is Dr. Lea's property, and if you go to the second page of the
23 agreement, dated 1959, and I've highlighted it, "Whereas the
24 above-described properties taxed as Lots 961 and 962, in Square
25 1363 are subject to a right of way over the north 12 feet of the

1 same," and that's 12 feet measured from the rear property line
2 of those two properties. "Said right of way, having been reserved
3 by deed, dated April 1, 1929," which I can't find or cannot access
4 yet, at Folio blah, blah, blah, "among (indiscernible) records
5 for the use and benefit of land in the rear of said Lots 961 and
6 962." And my reading of that, on its face, is that it has created
7 a right of way over both properties for the use of both
8 properties, reciprocal.

9 MR. SULLIVAN: And so what do you think it means when
10 it says, "for the use and benefit of land in the rear of said
11 Lots 961 and 962"? Doesn't that apply to the lot that's to the
12 north of 961 and 962?

13 MR. BROWN: No. Well, hold on.

14 MR. SULLIVAN: Okay. So, and if you continue to read
15 --

16 MR. BROWN: Repeat your question.

17 MR. SULLIVAN: If you continue to read, the next
18 paragraph, where it, then, explains --

19 MR. BROWN: Well --

20 MR. SULLIVAN: -- it explains that. It says, "Whereas
21 the predecessors in title of said parties hereto of the first and
22 third part have used the aforesaid right of way as a means of
23 ingress and egress to the rear of their respective properties,
24 although there is no valid conveyance of records specifically
25 creating a right of way over the rear 12 feet of said Lots 961

1 for the use and benefit of 962." And then the next paragraph
2 goes on to actually convey that easement -- create that easement.

3 CHAIRPERSON HILL: Mr. Sullivan?

4 MR. SULLIVAN: Yes.

5 CHAIRPERSON HILL: Mr. Sullivan? Let me just interrupt
6 you, because we're, kind of, going down a road where you guys
7 are going to be arguing about this in another place, probably,
8 or could be. I just --

9 MR. SULLIVAN: I inclined to think it has nothing to
10 do with the BZA. It's self-certified --

11 CHAIRPERSON HILL: Okay.

12 MR. SULLIVAN: -- and if it's not --

13 CHAIRPERSON HILL: I --

14 MR. SULLIVAN: -- authorized --

15 CHAIRPERSON HILL: I understand.

16 MR. SULLIVAN: -- then we shouldn't have anything to
17 worry about.

18 CHAIRPERSON HILL: I'm just telling you, I'm with you.
19 So what -- I understand your question. I think your question
20 was answered. Do you have another question?

21 MR. SULLIVAN: Yes. Mr. Brown, you mentioned that the
22 increase, as a result of this application, would turn the 10-
23 foot driveway from a one-way driveway to a two-way driveway? Are
24 you saying going from 30 cars -- 32 cars, if you count the cars
25 already on the 4457 property and adding two cars -- so you have

1 32 cars using this, and now you're going to add two cars and have
2 34, that's what trips it from one way to two way?

3 MR. BROWN: No. I said that the increased use -- and
4 it's not just cars, it's people, it's the trash truck, it's the
5 move-ins, the move-outs, it's the visitors, it's deliveries. The
6 only means of access to 4457 is through this 10-foot right of
7 way from MacArthur Boulevard. And the pictures, I think, prove
8 this out, is that there's a two-way element to that, including
9 the existing use of 4465, and it doesn't work. And --

10 MR. SULLIVAN: And that's a two-way element that
11 doesn't exist, apparently?

12 MR. BROWN: It doesn't exist --

13 MR. SULLIVAN: (Indiscernible.)

14 MR. BROWN: -- in the context you're proposing.

15 MR. SULLIVAN: Okay. The 30 spaces don't need that.
16 Okay. So next question is you have said -- you used the word
17 "unauthorized" many, many times. And then I think you said you
18 don't actually have the document. You said you don't have the
19 document that says what you are saying it says, but you're just
20 certain that it was created for a limited scope of access to
21 single family houses. Do you have any support for that, that
22 there's a limited scope, because we do have the document,
23 actually, and we can submit that to the Board if the Board wants
24 to go down that path.

25 MR. BROWN: I'd be happy --

1 MR. SULLIVAN: And there is no mention whatsoever of
2 --

3 MR. BROWN: I'd be happy to see it, but my reading of
4 the documents that I've provided is that, on the right of way
5 question -- there are two separate questions, the rear right of
6 way, is that the right of way is reciprocal between the two, and
7 my reading of the 10-foot right of way from MacArthur is that
8 it's for the limited purposes of three single family dwellings.

9 MR. SULLIVAN: And where would you -- if it is
10 unauthorized and that the owner of 4457 begins to use that
11 easement beyond this limited authorization, where would you go
12 to enforce that, to the BZA?

13 MR. BROWN: Putting aside self-help, which I never
14 recommend, it would not be the BZA, no.

15 MR. SULLIVAN: Thank you.

16 CHAIRPERSON HILL: Okay. Mr. Sullivan, you got any
17 more?

18 MR. SULLIVAN: No, thank you.

19 CHAIRPERSON HILL: Okay. All right. Let's see. All
20 right. Dr. Lea, you're up next.

21 DR. LEA: Thank you so much.

22 CHAIRPERSON HILL: Do you have any kind of
23 presentation, or are you just going to give testimony?

24 DR. LEA: Because I wasn't sure I would be granted
25 party status, I wrote testimony, but within that are figures

1 which I will ask Mr. Young to please bring up Exhibit 52 in the
2 event we need to show pictures. And those pictures are going to
3 answer a lot of the questions that have been raised in the two
4 prior presentations.

5 I tried to cover my bases. I'm sorry. But I didn't
6 -- I embedded pictures within my testimony.

7 CHAIRPERSON HILL: You're okay. You're okay. You're
8 okay.

9 DR. LEA: It will show and answer a lot of questions
10 that have been raised.

11 CHAIRPERSON HILL: Okay. So Ms. -- Dr. Lea, go ahead
12 -- and Mr. Young, if you could restart the clock, and if you can
13 bring up Exhibit 52, which I have now brought up, Dr. Lea, and
14 please give us --

15 DR. LEA: Thank you.

16 CHAIRPERSON HILL: -- your testimony.

17 DR. LEA: I'll be very quick. I first want to express
18 my condolences to Mr. Kamyab (phonetic). So if Mr. Rameshni can
19 relay those to him on the death of his father, I wanted to bring
20 that up before I got started with my presentation, because I know
21 that Mr. Kamyab was (audio malfunction) himself.

22 MR. RAMESHNI: Thank you.

23 DR. LEA: So I'm going to read my testimony, and I will
24 ask Mr. Young to, again, focus on the figures that are embedded
25 in my testimony.

1 "The owners of property 4459 MacArthur Boulevard, NW,
2 adjacent to subject property at 4457 MacArthur Boulevard, are
3 representing themselves in opposition to Case 20380.

4 "The 4457 property is part of the same structure as the
5 4459 property. Given the age and unique unitary construction of
6 the 4457, 4459 structure, the construction of the proposed
7 project will physically involve and impact the 4459 property in
8 ways that are currently under review; therefore, the proposed
9 redevelopment and extreme expansion and occupancy load and
10 density of the 4457 property cannot be viewed in isolation from
11 the 4459 property.

12 "The application for Case 20380 provides no discussion
13 or analysis of the proposed project's impact on the 4459
14 property," as I've alluded to earlier. "Typically, a responsible
15 developer would have engaged the adjacent property owners prior
16 to filing an application, and that application was filed on
17 September 14th. The property was purchased on, I believe it
18 closed on July 30th, and so the application was submitted on
19 September 14th to the Board of Zoning, yet no one representing
20 the application contacted the owners of 4459 property directly
21 regarding the proposed project prior to September 14th, and
22 hardly after.

23 "The two properties were constructed as a single
24 structure, circa 1905. There is a common single flat metal roof,
25 common attic, meaning that we can access both properties by going

1 into the attic space of one property and emerging inside the
2 other property, and a common, undivided front porch and front
3 facade. The electrical wiring and plumbing for 4457 and 4459 run
4 through the simple common wall between the properties and have
5 joint connections."

6 Mr. Young, if you can show Figure 1. It doesn't have
7 to be long. It's just a quick flip to show that this is what
8 happened -- this is what is inside the common walls. I believe
9 the Board -- if you brought up Exhibit 52, I believe you may be
10 able to see this picture.

11 CHAIRPERSON HILL: Yes, we see it, Dr. Lea. Hold on,
12 just let Mr. Young pull it up.

13 DR. LEA: It doesn't have to stay there long, it's just
14 that I want to impress upon everyone that this common wall has
15 shared features, which, I'm sure, Mr. Sullivan will say will be
16 addressed later, but I wanted to give you a visual.

17 (Pause.)

18 DR. LEA: So you can see the galvanized pipe is
19 specifically 4459, and this white PVC pipe and the electrical
20 wiring and the copper, those are all from 4457 when they did a
21 renovation there. So they're joined -- there's joined access for
22 the two properties within these common walls.

23 That's a -- now, Mr. Young, we're going to go to another
24 section. You can take that one away.

25 "The stone foundation was constructed for a single

1 building in a square configuration." Excuse me. "At one time,
2 there were interior doors connecting what is now 4457 and 4459
3 MacArthur Boulevard. The properties constitute a single
4 structure and remain inextricably linked together.

5 "Regarding the application, Case 20380, by Polygon
6 Holdings, LLC, the design of the proposed 4457 property heavily
7 impacts the continued use, enjoyment, privacy, and occupancy of
8 the 4459 property, in violation of" -- and I may not have done
9 this right, but it's "Subtitle F, 5201 of the Zoning Regulations
10 that provides an application for special exceptions," in quotes,
11 "'shall not have a substantially adverse affect on the use or
12 enjoyment of any abutting or adjacent dwelling or property, in
13 particular, the privacy of use and enjoyment of neighboring
14 properties shall not be unduly compromised,'" close quotes.

15 "The proposed project will totally overwhelm the 4459
16 property by the scale and proximity of the proposed multi-family
17 development. As previously mentioned," and then my next
18 paragraph, basically, goes into construction issues, and I can
19 skip that paragraph, and I'll just move on down.

20 "The application states that there are grocery stores
21 within walking distance. The nearest grocery store," which will
22 be expressed by another person, "is up and down hill, 30-minute
23 walk along Reservoir Road to 1855 Wisconsin Avenue. The only
24 public transportation serving this address is the D-6 bus. No
25 access to a Metro station without that bus. This leads to an

1 increased dependance on automobiles.

2 "The application" -- "it does mention a bike share on
3 Q Street, and it's likely that any bike or scooter, when residents
4 return to 4457, are going to be left out on the front of the
5 sidewalk, just like you see all over town, causing congestion of
6 the sidewalk and leading to potentially hazardous conditions.

7 "Parking on this area of MacArthur Boulevard has a
8 rush-hour lane going toward downtown, and vehicles must be moved
9 by 7:00 a.m. Pre-pandemic traffic was congested due to cars
10 being parked in the rush-hour lanes, because there's usually no
11 parking on the opposite side of the street as people return home
12 from work. So if anyone's going to get a parking spot on
13 MacArthur and tries to park there, it's going to be on my side
14 of the street. DDOT's solution to construction equipment on
15 MacArthur Boulevard is to have them park at the rears, and this
16 non-solution will be addressed later in this document.

17 "During the ANC meeting, January 6, owners of 4459
18 commented on the difficulties of redeveloping one house of a
19 common structure. Since then, the owners engaged a structural
20 engineer to assess the impact of the 4459 property and the
21 proposed redevelopment of 4457." And I'd like to say that Mr.
22 Stephen DuPont is an architect, and he was present during the
23 visit of the structural engineer.

24 "The structural engineer" -- the summary reads, "'Dear
25 Ms. Lea, further to your request, I visited your property located

1 at 4459 MacArthur Boulevard, NW, Washington, D.C. I checked the
2 existing structure for applicable loads. Per my observation, the
3 existing roof of the building is constructed with 2 x 6 at 24-
4 inch OC joists. The joists span approximately 14 feet between
5 the supports. Per my attached calculations, the joists can barely
6 carry the existing applicable snow load. The future development
7 on the neighboring property will certainly add more snow drift
8 load to the roof which will be beyond the roof structural capacity;
9 therefore, the roof structure will not be able to handle the
10 future increased snow load and must be reinforced and
11 strengthened if any additional load will be added. Thank you for
12 providing" -- and this is by Dr. Yahya Aliabadi.

13 Mr. Young, can you show Figure 2, please.

14 This is an image of the shared attic between the two
15 -- between 4457 and 4459. The arrow points to -- you see, kind
16 of, a triangle over there. That's the grease vent for 4457.
17 This photograph was taken from my attic access looking over to
18 4457. I just want to impress there is a common attic and common
19 roof.

20 Thank you, Mr. Young.

21 "Referencing an opposition letter, Exhibit 45, dated
22 April 14th, 2021, from Greenstein, DeLorme & Luchs, as legal
23 counsel for Foxhall Terrace, the 4457 and 4459 properties are
24 landlocked and have no direct vehicular access to MacArthur
25 Boulevard or any public alley. The only access to the rear of

1 4457 and 4459 is limited to a 10-foot driveway," and I say,
2 "Please reference the deeds of Foxhall Terrace."

3 So this has been discussed. I won't rehash this, but
4 I will say there is very limited size, scope, and requires
5 reciprocal access to the 4457 property. It is landlocked, and
6 there is no area to turn around vehicles unless they utilize the
7 driveway at 4450 -- 4461 McArthur and/or also back down into the
8 parking lot of Foxhall Terrace.

9 Give me a minute, keep waiting.

10 "So logically, a potential solution may be to place
11 this driveway for 4457 and access for parking on the eastern
12 portion of their property for which a special exception for the
13 side yard was being considered."

14 Mr. Young, I was going to show Figure 3, but I think
15 it's the plat, the survey plat for my property. So if you could
16 bring that up. It should have been submitted yesterday.

17 CHAIRPERSON HILL: Dr. Lea. Dr. Lea. We got you. I'm
18 following along here.

19 DR. LEA: Okay.

20 CHAIRPERSON HILL: So why don't you just -- it's
21 actually easier for us to just follow along. I mean, we --

22 DR. LEA: Okay.

23 CHAIRPERSON HILL: -- see the plat. And then we're
24 just in the exhibit. Everything's in your exhibit.

25 DR. LEA: Okay. Great. Thank you. Thank you so much.

1 It makes it so much easier.

2 "Contrary to the survey image, the drawing in Exhibit
3 33C, page 2, does not distinguish a 12-foot right of way at the
4 rear of 4457 and 4459, and that leads one to believe that no
5 easement exists behind the properties, yet this 12-foot easement
6 does run the rear of the property lines."

7 And so on my diagram, I identified where 4461 property
8 line is. It's written vertically, and I'm sorry if it's hard to
9 read. And then I have identified easement, here, and I've
10 identified the patio -- where my patio is and how this deck that
11 I asked about earlier, how that overlooks my patio. So --

12 CHAIRPERSON HILL: Mr. Sullivan? Dr. Lea, hold on
13 again. Again, Mr. Crain, just -- let's not forget about that
14 deck thing, okay, when we get back to it. Okay. Thanks. Go
15 ahead, Dr. Lea.

16 DR. LEA: So if we go to page 7, everyone is asking
17 about the property at 4461 and that driveway. Here is a picture.
18 So as you're coming up the easement, the 10-foot drive from
19 MacArthur Boulevard, you drive straight in to the property at
20 4461. You see the mailbox there. You see the fence. That's
21 been shown in other pictures. If you make a 90 degree turn, that
22 is the easement. That's the property and easement behind 4459
23 leading to 4457.

24 CHAIRPERSON HILL: Got it. That's helpful.

25 DR. LEA: Looking from that -- looking from the 4461

1 driveway, you will notice, at the bottom, a light color, which
2 is the cement that is part of the driveway of 4461. So if you
3 stand at the end of 4461, you see a very sharp decline in a hill
4 here. I don't know if you can see -- you see two cars and you
5 -- okay. I'll move on. I just want to show you.

6 "The Office of Planning, BZA Exhibit 35 and DDOT
7 Exhibit 37, specifically relied upon the 10-foot driveway
8 easement of Foxhall Terrace on the 12-foot rear reciprocal right
9 of way at the rear for the 4459 property to provide off-street
10 vehicular and truck access, parking, multiple residents moving
11 in and out, contracted trash truck service, and" -- I'll move on,
12 "other service vehicles, demolition construction staging."

13 So I'm going to read verbatim -- and I'll only read,
14 really, what is bolded and italicized from DDOT. "'In this case,
15 loading can take place in the rear of the property via the
16 easement across 4459 and 4465 MacArthur Boulevard, NW. Access
17 to this building for loading and unloading, delivery, and trash
18 pick up is an important consideration, and DDOT expects the
19 Applicant to comply with DDOT standards for loading, per Subtitle
20 C, 901.1, of the Zoning Regulations. Buildings with fewer than
21 50 units are not required to provide a loading berth, as such,
22 future residents should use the rear of the property for move-
23 ins, move-outs, or obtain emergency no parking signs from DDOT
24 to reserve an on-street parking space.

25 "'Since the site has more than three units, the

1 Applicant must contract private trash collection. Trash should
2 be stored entirely on the private property out of view of the
3 sidewalk, collected at the rear property via the easement.'

4 You've seen the pictures, you see where the trash
5 receptacles are, you see where the car parking places are. I
6 don't know how they're going to get the trash cans out of there.
7 I'm going to keep moving.

8 "The owners of 4459 property are strongly opposed to
9 recommendations related to the responses by the Office of
10 Planning and the District -- and DDOT," those are Exhibits 35 and
11 37, respectively. "The 10-foot driveway belonging to Foxhall
12 Terrace experiences heavy vehicular and bicycle traffic, and also
13 serves as the primary pedestrian walkway to MacArthur Boulevard
14 for a large number of pedestrians. The additional traffic during
15 demolition, construction, and afterwards, following completion
16 of the property, will create hazardous situations.

17 "As cited in a letter of opposition from Foxhall
18 Terrace, these rights of way were created and maintained to
19 provide limited single family access, not for an 8-unit, multi-
20 family dwelling at 4457."

21 Now, I'll move on, and I'll try to be quick. "There
22 are at least 3 historical facts related to the easement at 4459.
23 The owners of 4459 have sustained damages to property by large
24 vehicles doing construction at the 4457 property with prior
25 owners. The garage roof and gutter have been damaged, and the

1 asphalt destroyed by large vehicles turning their wheels and
2 grinding the asphalt into pebbles on the 4459 property, which is
3 not on the easement. Large vehicular traffic nor construction
4 equipment can be accommodated in that 12-foot right of way without
5 damage to the 4459 property."

6 And I'm scrolling, and if you'll look on page 10, there
7 is an image of where my gutter and my garage roof were damaged
8 because large vehicles were coming back there for construction
9 at 4457 with prior owners.

10 CHAIRPERSON HILL: Hey, Dr. Lea.

11 DR. LEA: Yes, sir.

12 CHAIRPERSON HILL: I'm just -- I'm not trying to break
13 up your rhythm. I mean, I'm scrolling through all this, and I
14 can see all this. Do you know if there's a way we can, kind of,
15 move a little more quickly, just so I can, kind get to the
16 questions and stuff?

17 DR. LEA: Well, if everyone has read this -- I just
18 want to show one more thing, and that's a moving truck.

19 CHAIRPERSON HILL: Yes.

20 DR. LEA: And that shows you -- they can't fit. And I
21 will scroll right along and also show -- if you'll look down, a
22 post that is into the ground, Figure 9.

23 CHAIRPERSON HILL: Yes.

24 DR. LEA: That post helps signify that 10-foot
25 easement, and you can see how that post has been violated by

1 large vehicles going in and out that easement that's owned by
2 4465.

3 CHAIRPERSON HILL: Yes.

4 DR. LEA: So I will continue. One last thing that I'll
5 say, and probably Commissioner Szymkowicz might address this, but
6 this developer was never registered in the District of Columbia
7 until the ANC requested that. So there is -- Exhibit 22 is where
8 the ANC has requested that this developer be registered within
9 the District of Columbia.

10 CHAIRPERSON HILL: Okay.

11 DR. LEA: Okay. One other thing that I'll mention
12 quickly is that in a response by a different attorney, not Mr.
13 Sullivan, but a human rights attorney for Polygon Holdings, in
14 their response, they've noted doing multiple projects in the
15 District of Columbia, and if that is the case, they were never
16 registered to do those projects in the District of Columbia. So
17 I'm bringing up the ethical issues that are at play here. You
18 know, we're reviewing -- they are now registered. They took care
19 of that, paid their fines, took care of it, but this is what
20 we're dealing with.

21 And probably a picture that Commissioner Szymkowicz
22 might show, there is a picture of a Section 8 student
23 accommodations coming soon. That was also turned -- that was
24 turned over to the Office of the Attorney General and the Office
25 of Human Rights.

1 CHAIRPERSON HILL: Okay. Doctor, that's okay.

2 DR. LEA: (Audio malfunction.)

3 CHAIRPERSON HILL: That's all right. We don't have
4 anything to do with that stuff, but that's okay. I mean, I'm
5 scrolling -- we've read through this, and I am now scrolling
6 through it again. Do you have anything -- because I want to get
7 to the questions now. Do you have anything else?

8 DR. LEA: I'm sorry. That's fine. No, I have hit the
9 high points.

10 CHAIRPERSON HILL: Okay.

11 DR. LEA: Thank you very much for your time,

12 CHAIRPERSON HILL: Okay. Thank you. All right. Let's
13 see, and Commissioner, I keep neglecting to get to you. You'll
14 have an opportunity, as well. Does the Board have any questions
15 for Dr. Lea?

16 (No audible response.)

17 CHAIRPERSON HILL: Okay. All right. Commissioner --
18 I'm sorry. Mr. Brown, do you have any questions for Dr. Lea?

19 MR. BROWN: No.

20 CHAIRPERSON HILL: Mr. Sullivan, do you have any
21 questions for Dr. Lea?

22 MR. SULLIVAN: No, thank you.

23 CHAIRPERSON HILL: Commissioner, I have neglected, I'm
24 sorry, to ask you if you had any questions for anybody. You'll
25 have an opportunity to give a presentation now, but do you have

1 any questions particularly? One second --

2 MR. SZYMKOWICZ: No.

3 CHAIRPERSON HILL: -- Chairman Hood. No. Okay.
4 Chairman Hood, do you have any questions?

5 MR. SZYMKOWICZ: No, thank you for the opportunity.

6 MR. HOOD: Thank you, Mr. Chairman. I raised my hand,
7 I just want to be acknowledged. At some time, but I'm not --
8 you don't have to stop right here, I just want you to know I do
9 want to say something. So I don't want -- I know how it is when
10 it your chairing. I don't want you to think I'm pushing.

11 I do have a question for Dr. Lea. Dr. Lea, it seems
12 like you're heavily impacted. I want to go back to the
13 conversation (indiscernible) and working with the Applicant.
14 What is your take on how you have been responded to?

15 DR. LEA: I don't exactly know how to politely respond
16 to that. Mr. Sullivan says there's been communications between
17 counsel, but there were -- that wasn't until later. There were
18 communications that began in July of 2020 that were intimidating
19 and threatening to me by the person representing the developer
20 saying that if I didn't sell my property that it, you know, it's
21 going to be knocked down, it's going to be damaged. I was very
22 highly offended, and I -- we met on my back patio with our masks
23 on, and I raised my eyebrows, and I said no. And I showed him
24 the gate. It was -- I perceived him to be aggressive and
25 threatening, and that, literally, was the last conversation for

1 someone that represented the developer -- the last in-person
2 verbal conversation.

3 The second part of the communication, as it were, was
4 when he put the same person -- and he admitted it. It's at a
5 link in my testimony. He admitted to putting a Section 8 student
6 accommodation sign, "Coming Soon," in the front of 4457. That
7 was the next communication, as it were, which I found to be
8 intimidating, but honestly, I just laughed about it, because I
9 said, "You guys don't know what you've done. You guys are digging
10 a hole, here."

11 So -- and that's as far as my communication, sir. That
12 is it.

13 MR. HOOD: Thank you, Dr. Lea. I know some counsel
14 will say that the Board does not have jurisdiction to do certain
15 things, but I will tell you, I sit on the Zoning Commission, and
16 the courts have told me what my jurisdiction is, and I'm going
17 to exercise that in this case and every other case that I continue
18 to sit on.

19 But my issue, though, Mr. Chairman, is I think
20 sometime, if you have good communication -- and I forgot who
21 brought that up, in relations and then try to work to resolve
22 some of it, yeah, you might not bring it all together, but you
23 can get it closer together. So I will continue to hear what
24 others have to say, and then we'll see where we land at the end.
25 Thank you, Mr. Chairman, and thank you, Dr. Lea.

1 CHAIRPERSON HILL: All right, Chairman Hood. Thank
2 you, and, yeah, this is going to go on for a while, meaning this
3 hearing. So let's see. All right.

4 Mr. Sullivan, do you have any questions? No.

5 Commissioner, do you want to go ahead and give any kind
6 of presentation you'd like to give?

7 MR. SZYMKOWICZ: Yes, thank you. The ANC voted 9-0,
8 or 10-0, it was unanimous, to reject the pending -- to request
9 that the BZA reject the pending application for special exception
10 submitted by Polygon Holdings, LLC.

11 As I will discuss further, ANC 3D believes that the
12 proposed project will have a substantially adverse effect on the
13 use and enjoyment of neighboring properties, but most especially
14 Dr. Lea's property at 4459 MacArthur. ANC 3D is also deeply
15 troubled by the dismissive and combative approach that Polygon
16 has adopted both toward ANC 3D and the community throughout this
17 process.

18 Polygon has largely refused to respond to legitimate
19 concerns raised by the Commissioners and community members about
20 the potential negative impacts that Polygon's proposed project
21 might have on the adjacent homeowner, Dr. Lea, and other community
22 members, including the possibility that the project may threaten
23 the physical structure of Dr. Lea's home. Polygon has also
24 neither attempted nor succeeded in articulating compelling
25 reasons why the community should support this project in spite

1 of any negative impacts on the neighboring property owners.

2 At its regularly scheduled and noticed meeting, we
3 voted to send a letter, which is included as an exhibit in this
4 hearing record, as well as to allow me to testify on behalf of
5 the ANC. ANC 3D devoted substantial and significant time to
6 discussing this project during its January 6th, 2021, meeting,
7 including extensive time for questions and comments from
8 Commissioners, Polygon's representatives, and interested
9 community members. The project was further discussed at the ANC
10 3D's February 3rd meeting, although this discussion did not focus
11 on the merits of the proposal. Before and after these meetings,
12 ANC 3D also solicited and received written submissions and
13 comments from Polygon, the neighboring property owner, and
14 members of the community.

15 Polygon proposes to replace a single family home that
16 makes up one half of the duplex building with an 8-unit multi-
17 family building. Polygon's property at 4457 MacArthur is located
18 in an RA-1 Zone. This property, together with the adjoining home
19 at 4459, in which Dr. Lea lives, was shown in the photograph that
20 Dr. Lea, I believe referred to, that said, "Section 8 and Student
21 Accommodation Coming Soon." Dr. Lea, who owns the 4459 property,
22 has raised significant and compelling concerns to the ANC about
23 the impact of Polygon's plans on the structural integrity of her
24 home, which shares an undivided front porch, a common roof, a
25 common attic, and a common basement with Polygon's 4457 property.

1 Other community members, as well as Dr. Lea, also noticed the
2 potential, if not properly mitigated, for increased noise,
3 traffic, and other nuisances.

4 In our judgment, speaking as the ANC, Polygon has not
5 addressed these concerns in a good-faith manner, despite being
6 given multiple opportunities to do so orally and in writing. In
7 fact, Polygon's representatives were overtly dismissive and
8 disdainful when pressed about concerns raised by Dr. Lea or
9 another community member. In other instances, Polygon simply
10 refused to provide an answer, repeatedly chastising Commissioners
11 and community members for asking about topics that Polygon's
12 representative viewed as beyond the scope of the ANC review.

13 Most notably, Polygon has declined to address a
14 structural analysis report submitted by Dr. Lea in advance of the
15 April 7th meeting of the ANC prepared at Dr. Lea's request by
16 Yahya Aliabadi, PhD, professional engineer. The report concluded
17 that the roof structure on the 4459 side of the duplex will not
18 be able to carry the future increase snow load and must be
19 reinforced and strengthened if any additional load will be added.

20 In considering the applicable Zoning Regulations, ANC
21 3D is persuaded that the proposed special exception will have a
22 substantially adverse effect on the use and enjoyment of Dr.
23 Lea's property at 4459 both during and after the construction of
24 the proposed project.

25 First, ANC 3D is concerned about the construction-

1 related impacts on the adjoining property. As previously
2 discussed, Dr. Lea submitted the structural integrity report that
3 concluded that her portion of the shared roof cannot handle the
4 increased snow load without, at a minimum, reinforcement and
5 strengthening. In addition, Stephen DuPont, an architect
6 retained by Dr. Lea, testified at our January 6th meeting that
7 construction of the proposed project will have significant
8 negative effects on the physical structure of Dr. Lea's home
9 absent significant modifications, and would, necessarily, impact
10 her use and enjoyment of the property. In our judgment, Polygon
11 did not sufficiently address or rebut these concerns, nor did
12 Polygon adequately explain how the issues identified by Mr.
13 DuPont, Mr. Aliabadi, or others would be mitigated by Polygon.

14 Second, given that the properties are separated by mere
15 inches and share undivided front porch, common roof, common
16 attic, and common basement, ANC 3D's persuaded that, absent any
17 mitigation, there is a much greater likelihood of the rebuilding
18 of 4457 as a multi-unit family property will result in
19 objectionable impacts for the neighboring property owner,
20 particularly with respect to noise than if Polygon were seeking
21 to just renovate the single family home.

22 Polygon did not seriously dispute the increased
23 likelihood of objectionable impacts on the owner of 4459, Dr.
24 Lea, due to the nature of the duplex-style building. We also
25 note that Polygon did not adequately explain these impacts which

1 we are persuaded are likely to occur. We're not in a position
2 to evaluate the technical claims by Mr. DuPont or Dr. Aliabadi;
3 however, we take their conclusion very seriously. If correct,
4 it is indisputable that the proposed project will have a
5 substantially adverse effect on Dr. Lea, the neighboring property
6 owner. In our opinion, Polygon's silence, despite repeated
7 requests to address these issues, speaks volumes.

8 In addition, we note that Polygon has also not made any
9 meaningful attempt to articulate compelling reasons why the
10 community should welcome this project despite any negative
11 impacts that it might have. We can only conclude that Polygon
12 made a tactical decision to write off the ANC and to simply go
13 through the motions with us before proceeding to the BZA.
14 Engaging with community members in the relevant ANC when seeking
15 a special exception should not be simply a hoop that the builder
16 must go through or a box they must check before heading to the
17 real decision makers. Regardless of whether an ANC ultimately
18 endorses a project, the builder should be expected to
19 meaningfully engage with the ANC before seeking an exception at
20 the BZA. We request that the Board consider Polygon's failure
21 to do so as you consider the pending application.

22 And in conclusion, I state, on behalf of the ANC, that
23 based on our review of the proposed project, ANC 3D finds that,
24 if granted, this special exception requested by Polygon, will
25 have a substantially adverse impact on the use or enjoyment of

1 the abutting property owner, i.e., Dr. Lea. Specifically, ANC
2 3D finds that, A, the light and air available to Dr. Lea will be
3 unduly compromised; B, the privacy, peace, and enjoyment for Dr.
4 Lea will be unduly compromised; and C, the proposed addition or
5 accessory structure, together with the original building or the
6 new building as viewed from the street, alley, or other public
7 way, shall substantially visually intrude upon the character,
8 scale, and pattern of the adjoining home occupied by Dr. Lea.

9 Thank you very much.

10 CHAIRPERSON HILL: Okay. Thank you, Commissioner. I
11 got to do -- I have one real quick thing. It's an administrative
12 task. Dr. Lea, can you hear me?

13 DR. LEA: Yes, I can.

14 CHAIRPERSON HILL: Did you file a survey this morning?

15 DR. LEA: I filed that yesterday, but it did not make
16 it in time, so it was kicked back. And so that's why I was
17 requesting, at the beginning of the meeting, to have that accepted
18 and --

19 CHAIRPERSON HILL: What survey was it?

20 DR. LEA: It is the survey for 4459. It is --

21 CHAIRPERSON HILL: Okay.

22 DR. LEA: -- dated --

23 CHAIRPERSON HILL: Okay.

24 DR. LEA: -- and (audio malfunction).

25 CHAIRPERSON HILL: Okay. Okay. Thanks. Mr. Moy, if

1 you could go ahead and put that into the record, we can take a
2 look at it, unless the Board has any issues with my allowing that
3 into the record.

4 DR. LEA: Chairman Hill, I'm sorry to interrupt you,
5 but that same exact image is in my testimony, but I wanted to
6 have a better -- I wanted you all to have a better image of that
7 survey. So it was scanned in, and that's the reason it was done.

8 CHAIRPERSON HILL: Okay. No problem.

9 DR. LEA: Thank you.

10 CHAIRPERSON HILL: Thank you. Mr. Sullivan, can you
11 hear me?

12 MR. SULLIVAN: (No audible response.)

13 CHAIRPERSON HILL: So it's -- Mr. Rameshni is the
14 property owner, correct?

15 MR. SULLIVAN: Yes. Mr. Rameshni's working as
16 principal in the ownership group.

17 CHAIRPERSON HILL: Rameshni. Mr. Rameshni, I don't
18 have a question for you just yet. Just put yourself on mute, if
19 you don't mind. And Mr. -- yeah. Could everybody mute -- okay.
20 Great. Perfect.

21 And I guess, Mr. Sullivan, I don't want us to get into
22 a big he said, she said thing a little later and everything. I'm
23 kind of making a comment where I'm a little confused in that --
24 and I just -- I'm trying to be -- I don't mean to be flippant
25 about this, I mean, to be kind of kind about this, which is that,

1 I guess, Mr. Rameshni -- I'm sorry if I'm not pronouncing that
2 correct, you apparently suffered a loss in your family, and that
3 was, you know, noticed by Dr. Lea, and there seemed to be a little
4 bit of, you know, good will that was there. And so Mr. Sullivan,
5 I'm just surprised that there hasn't been a lot of good
6 communication. I'm just, kind of -- and Mr. Rameshni, I'll let
7 you respond, because I am bring this up to you, but that there
8 -- you know, it seems as though we are going to have to help with
9 some fences, as well as other things that we, kind of, go through
10 the BZA aspect of this, Mr. Sullivan. I know Mr. Hood has --
11 Chairman Hood's going to have a bunch of things that he's going
12 to want to talk about, as well.

13 But Mr. Rameshni, I'm sorry, you did want to say
14 something (audio malfunction).

15 MR. RAMESHNI: Yeah. I'm not sure when it's my turn
16 to speak, but I'd just like to respond to some of the things that
17 have been said, because they're not quite as we see them.

18 CHAIRPERSON HILL: Okay.

19 MR. RAMESHNI: So whenever it's my turn --

20 CHAIRPERSON HILL: That's fine. That's great. Then
21 we can do that in with the final. Mr. Sullivan, if you want to
22 give your client an opportunity during rebuttal to speak. Okay.

23 All right. Let's see. Does the Board have any
24 questions for the Commissioner -- the ANC Commissioner, and if
25 so, please raise your hand.

1 (No response.)

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

4 MR. KIRSCHENEBAUM: Good afternoon, Chair Hill and
5 Members of Board of Zoning Adjustment. I'm Jonathan Kirschenbaum
6 with the Office of Planning, and we recommend approval of the two
7 special exceptions that are requested for this application, one
8 being the residential development in the RA-1 Zone, and for a
9 side yard relief. And that condition -- I'm sorry. And that
10 approval is based on the conditions that are outlined on page 1
11 of the OP report.

12 I am available for any questions, if you have them.
13 Thank you.

14 CHAIRPERSON HILL: Okay. Mr. Sullivan, I didn't read
15 through all of those conditions that OP had. It seemed as though
16 you guys had already done a lot of them. But you're in agreement
17 in all of the conditions that the OP put forward, correct?

18 MR. SULLIVAN: Correct. Yeah. It is my understanding
19 that we have revised the plans accordingly already.

20 CHAIRPERSON HILL: Yes. Got it. Mr. Kirschenbaum, can
21 you, kind of, just go over, since there's so much discussion,
22 what your analysis was as to how you got to -- your belief that
23 we should approve this -- that they're meeting the criteria for
24 us to grant the relief?

25 MR. KIRSCHENBAUM: Sure. Our analysis was based on the

1 zoning criteria. So the first special exception is for the
2 residential development in the RA-1 Zone. There's a school
3 capacity analysis that -- a school top capacity. There is also
4 a criteria for the adequacy of public streets, recreation, and
5 other services to accommodate the residents that can be expected
6 to reside at the development.

7 And so the property is located 140 feet from the D-6
8 Metro bus line. It's about 1,000 square feet from a Capital Bike
9 Share station, located at the Hardy Recreation Center. Both of
10 these are within a short walking distance. There will also be
11 four parking spaces provided on the site, which is three more
12 parking spaces than required -- the zoning requirement is only
13 one parking space. I know the Applicant thought it was two, it's
14 one. The --

15 CHAIRPERSON HILL: Mr. Kirschenbaum, can I interrupt
16 you one second? Let's just say that they were here applying for,
17 you know, no parking. I mean, I guess you could tell me whether
18 or not OP -- I guess the answer always is no to this. You can't
19 tell me what you think, if they were in front of you requesting
20 no parking relief?

21 MR. KIRSCHENBAUM: Not at this time.

22 CHAIRPERSON HILL: Okay. Great. Thanks. Okay. Go
23 ahead, Mr. Kirschenbaum.

24 MR. KIRSCHENBAUM: And also -- the property is also
25 located close to the Hardy Recreation Center and also to the

1 Foundry Branch Battery Park.

2 The crux of the residential development, RA-1 special
3 exception, is Type 10 review, and the proposed development would
4 be the only development located on the property, and it would
5 comply with the development (indiscernible) of the RA-1 Zone
6 except for side yard set back, which we can talk about later on.
7 The building would be set back 8 feet, 10 and a half inches from
8 the eastern side of the property line, and this property, located
9 to the east of the subject property, are separated by about 30
10 feet. The subject property is currently and proposed to remain
11 attached to the building located on Lot 961, which is Dr. Lea's
12 property, and semi-detached buildings are anticipated building
13 typology in the RA-1 Zone, as is an apartment house use that is
14 anticipated for the RA-1 Zone.

15 A rear yard with four (indiscernible) parking spaces
16 would be provided of 47 feet, which is a significantly deeper
17 rear yard than what is required. The front of the building would
18 be located 20 feet back from the front property line, and there
19 would be an additional 15 feet on top of that of public space
20 between the front property line and the sidewalk.

21 The criteria is about undue adverse impacts of the
22 provision of light and air as it relates to the surrounding
23 neighborhood, and we believe that given that the proposal would
24 generally leave the (indiscernible) so should not be a negative
25 impact on light and air. The proposal would also generally retain

1 the footprint of the existing house and would also demolish an
2 existing accessory building in the rear which would provide for
3 additional open space on the lot.

4 We did provide concerns to the Applicant about the
5 original proposal, it was very out of scale to what was -- what
6 is -- the property that it's attached to. We were against the
7 proposed removal of the existing covered front porch and the
8 shifting of the front entry stairs further east, because these
9 features are attached to (indiscernible) of a front porch and
10 entry way that are located at Dr. Lea's house. We suggested to
11 the Applicant that the existing form of the porch and the
12 placement of the entryway stairs be retained to help the proposed
13 apartment house relate better to the building it is attached to
14 and to also improve the streetscape character of the proposal,
15 in general.

16 The Applicant did revise the architectural plans to
17 show that the existing porch will be refurbished, and that was
18 one of our conditions that that porch be retained, including its
19 form and roofline. The architectural plans were also revised to
20 show that the location of the existing entry stairs will also be
21 retained.

22 The Applicant also did not provide a zoning compliant
23 penthouse. They revised it. I do have to say that since this
24 report was written, we have understood that penthouses in the RA-
25 1 Zone may not be allowed whatsoever, habitable penthouses may

1 not be allowed. This application is sub-certified, and the
2 Applicant can refer to Subtitle C, 1500.3(b) about this and can
3 work that out with the Zoning Administrator, just to see what the
4 Zoning Administrator would allowed.

5 They are proposed to provide this penthouse, and that
6 does require an IZ housing requirement. We prefer that to be
7 provided on site, but the Applicant has opted, instead, to fulfil
8 the requirement by making a contribution to the Housing
9 Production Trust Fund, which is allowed by the regulations, but
10 given that this is an area of the District with very little
11 affordable housing, we always like to encourage applicants to
12 provide that IZ requirement on site.

13 OP also expressed concern to the Applicant about the
14 original proposed multiple entry stairs about making it along the
15 eastern side of the property as being not typical and unfriendly
16 to the streets. We often prefer front entrances to be contained
17 by one entry and not multiple and for them to be street-facing,
18 but we do allow front-facing of the entries. All the units on
19 the front facade could considerably result in internal layout
20 deficiencies.

21 The Applicant did revise the architectural plans and
22 the landscaping plan to show several large, raised planters along
23 the side entry path. The planter boxes are also proposed to have
24 unit numbers to the side entrances, which we requested to help
25 wayfinding on the property easier for both tenants and guests of

1 the tenants that will reside at the property. And we do find
2 that this is a better condition, overall.

3 And lastly, the Applicant had originally proposed to
4 have the trash stored outside in the rear of the property and
5 have it (audio malfunction) trash collection. We were not in
6 favor of this trash maintenance plan, and advised the Applicant
7 that trash should be stored inside the building. They have not
8 done that, but that is, certainly, something we do encourage that
9 trash should be stored inside. The Applicant has advised OP that
10 the trash company will be able to pick up the trash in the rear,
11 which we generally find is a better solution. Our worry is that
12 we do not want trash to be stored outside in the rear brought to
13 the front, and then it's just left in the front, and you know,
14 create a condition that is not good for the front of the property
15 or for the sidewalk.

16 As I mentioned earlier, the onsite parking -- they
17 exceed the minimum parking requirement by three additional
18 parking spaces. We did base our analysis on what the Applicant
19 represented by the easement. I don't have any further information
20 about the easement, and, you know, this is -- again, this is a
21 self-certified application, and as the Chair mentioned earlier,
22 the issue of the easement probably will be fulfilled in some sort
23 of other venue, so to speak.

24 The architectural plans indicate that there's a 48-
25 inch solid screen fence that would be located along the surface

1 parking spaces in the rear, and a bicycle (indiscernible) would
2 located on the cellar level and could provide storage for four
3 bicycles, and one short-term bicycle space would be provided
4 towards the front of the property.

5 And that is, more or less, what I have for the RA-1
6 special exception. And then for the side yard relief, this is
7 -- the width of the side yard is not changing. It's currently 8
8 feet, it will continue to be 8 feet. And so the -- because
9 they're adding additional storage to the building, the
10 requirement increases by 10 and a half inches. If this existing
11 side yard was already non-conforming, they would actually not
12 need relief to do this. So this is a (indiscernible) zoning
13 regulations, but because the side yard is already complying, then
14 they can't use the rule to extend the non-conforming side yard.
15 If they could use the rule to extend the non-conforming side
16 yard, then the side yard would only have to be three feet.

17 And that, more or less, concludes, I think, my analysis
18 for this. Thank you.

19 CHAIRPERSON HILL: Okay. Mr. Sullivan, can you hear
20 me?

21 MR. SULLIVAN: (No audible response.)

22 CHAIRPERSON HILL: You didn't -- what was the whole
23 thing about why -- how come you guys couldn't provide an IZ in
24 an onsite? You just chose not to, and you're just doing the fine?

25 MR. SULLIVAN: Yeah. The fine, and I think it's about

1 30-something, about 37 or 39,000.

2 CHAIRPERSON HILL: Okay. These are going to be
3 apartments, correct?

4 MR. SULLIVAN: (No audible response.)

5 CHAIRPERSON HILL: Are they condos?

6 MR. SULLIVAN: Actually, I'm not --

7 CHAIRPERSON HILL: They're condos. The owner's shaking
8 his head that they're going to be condos. Okay.

9 All right. Let's see. Okay. Does anybody have any
10 questions for the Office of Planning? Chairman Hood?

11 MR. HOOD: Yes. Mr. Kirschenbaum, I --

12 MR. SZYMKOWICZ: I do.

13 CHAIRPERSON HILL: One second, Commissioner. I'll get
14 you there, too.

15 MR. HOOD: Mr. Kirschenbaum, thank you for your report.
16 I'm just trying to make sure I understand your analysis. In my
17 -- when you said that because it meets the development standards
18 that there are no adverse impacts, or did I mis-quote you -- or
19 am I misquoting you?

20 MR. KIRSCHENBAUM: You do not misquote me.

21 MR. HOOD: Okay. So because it meets the development
22 standards -- so if -- let me ask it this way. Mr. Kirschenbaum,
23 are there any -- and let me say this. I like you. I think you
24 do a great job. And now I'm a little (audio malfunction). So
25 let me just ask you. So are you mentioning to the Board that

1 there are no -- you don't see any impacts -- any adverse impacts
2 -- I'm not saying they can't be mitigated, to your report and to
3 your report to us, there are no impacts?

4 MR. KIRSCHENBAUM: We live in a dense city, and of
5 course, there are always going to be some adverse impacts of
6 building, but our review, generally, is about, you know,
7 substantial adverse impacts. And in this case, we do not believe
8 there would be substantial adverse impacts.

9 MR. HOOD: Well, can I get you to at least say that
10 you believe that the adverse impacts are mitigated, because you
11 know that there are adverse impacts, but you believe that, through
12 your analysis, they have been mitigated?

13 MR. KIRSCHENBAUM: Like I said, we don't believe there
14 will be any substantial adverse impacts.

15 MR. HOOD: Okay. I will take that. And let me ask
16 you, the IZ unit, and I understand from Mr. Sullivan, it's like
17 39 or 40,000, and you mentioned that -- and this may be a question
18 for later, but I'm just going to throw it out there now. We're
19 trying to get more affordable housing in certain areas. I wonder
20 -- and I'm thinking out loud. I wonder what would happen if we
21 made -- I'm sure it will probably be appealed -- I mean, go to
22 court, but I wonder what would happen if the Zoning Commission
23 would make it mandatory -- and not even mandatory -- make it a
24 threshold higher to be able to provide that unit or provide that
25 funding off site, even though I know it goes into the Housing

1 Production Trust Fund, but I think the Mayor, and I think all of
2 us want to see affordable housing across this city. So I don't
3 necessarily -- you know what, I don't even want you to answer
4 that. I don't want you to answer that, but that's something I
5 am going to look into.

6 I don't necessarily -- I'm not with you on the
7 development standards, but we'll see how this goes.

8 And I think that's all the questions I had. Thank you,
9 Mr. Chairman.

10 CHAIRPERSON HILL: Thank you. Mr. Smith?

11 BOARD MEMBER SMITH: Mr. Kirschenbaum, I would echo
12 what Chairman Hood said. I like you, and (indiscernible),
13 honestly. I don't really agree with you on the notion of the
14 development standard. The development standard is -- provides
15 for guard rails, but it doesn't mean that you necessarily fill
16 out that box -- or you're allowed to fill out that box simply
17 because the regulations state that as a maxim.

18 So my question is about your analysis of the impacts.
19 So when it comes down to it, to -- and you know, I'm on record
20 for requesting a shadow study. I think that's necessary given
21 the size and scale of this particular addition, regardless of the
22 major issues within the special exception for a setback. The
23 other special exception that we're here is that this is taken
24 because (indiscernible) of the new development, so they get you
25 to mitigate some development intensity regardless of what the

1 development standards say. Given that this proposal, this
2 particular development is attached to a dwelling to the west. So
3 you know, I won't harp on the light and air. That will be a
4 request, Mr. Sullivan, I'm on record of that. I would need a
5 shadow -- a light and shadow study for me to gauge the impact to
6 5201.4(a).

7 So my question to you is about (c), 5201.4(c), "the
8 proposed addition or accessory structure, together with the
9 original building or the new building, as viewed from the street,
10 alley, or other public way shall not substantially visually
11 intrude upon the character, scale, and pattern of houses along
12 the street and alley frontage."

13 So you're on record as stating that you believe that
14 an urban environment -- and there are a mixture of dwelling units
15 or structures along MacArthur Boulevard. But my question is did
16 you conduct a thorough analysis of those structures? Even the
17 height of this particular development before us, along that
18 block, did you look to see -- look at the heights of the buildings
19 along that block, their setbacks relative to the front yards
20 along MacArthur Boulevard to do a thorough analysis that this
21 particular proposal, given the third-floor addition and the
22 penthouse height, is in character with the pattern along
23 MacArthur Boulevard?

24 MR. KIRSCHENBAUM: We did not look at -- oops
25 (indiscernible). Sorry. We did not look at the specific heights.

1 I would just like to say that that criteria is in regards to the
2 side yard relief. It's not in regards to any, sort of, height
3 relief. And again, that side yard is not being decreased in any
4 way, because 8 feet will continue to be 8 feet, because of a
5 certain anomaly in the zoning regulations, they needed side yard
6 relief. But the side yard, as it pertains to 5201 does not change
7 any.

8 BOARD MEMBER SMITH: Okay. All right. Thank you. Mr.
9 Chairman, that's all I have.

10 CHAIRPERSON HILL: All right. Anybody else for the
11 Office of Planning?

12 (No audible response.)

13 CHAIRPERSON HILL: Commissioner? I'm sorry. Wait a
14 minute. Give me a second, Commissioner. I'm sorry. My Board
15 Member -- Ms. John, you had a question?

16 VICE CHAIR JOHN: (No audible response.)

17 CHAIRPERSON HILL: You're on mute, Ms. John.

18 VICE CHAIR JOHN: I just wanted to follow up
19 (indiscernible) with Mr. Kirschenbaum about that 5201.4(c),
20 because it says, "The addition together with the original
21 building doesn't visually intrude on the character." So you're
22 saying that that particular provision is not applicable to
23 special exception for the side yard?

24 MR. KIRSCHENBAUM: It I think what it saying is that
25 it is -- that we are in this section because of the side yard

1 relief that is being requested.

2 VICE CHAIR JOHN: Yes, but it still -- the provision
3 still says that you have to look at the entire structure.

4 MR. KIRSCHENBAUM: Well, again, the height is -- they
5 could go up to 40 feet. They're only doing 35 feet. So again,
6 the only (indiscernible) that is not being complied with here is
7 side yard, which is why we're in 5201.

8 VICE CHAIR JOHN: Okay. That's all right. Thank you.

9 CHAIRPERSON HILL: All right. Commissioner, you had a
10 question?

11 MR. SZYMKOWICZ: Yes. I've got four questions, Mr.
12 Chair.

13 The first, did the Office of Planning consider the
14 physical impact of this project on Dr. Lea's home considering the
15 fact that the proposed building will cut an existing physical
16 structure with a common roof, porch, and basement in half
17 resulting in the potential for significant damage to that
18 building?

19 MR. KIRSCHENBAUM: So I, you know, I understand Dr.
20 Lea. I mean, I'm very sympathetic to the concerns about any sort
21 of construction next door to her house will have. These were
22 not analyzed out, because that was not part of our zoning review.
23 That is -- that has to do with building, and that is something
24 that would have to be mitigated through DCRA.

25 MR. SZYMKOWICZ: But this is not an additional

1 building. It's the same structure; would you agree with that?

2 MR. KIRSCHENBAUM: I'm not an engineer, and -- or a
3 building inspector. So I really don't have the expertise to
4 comment on that.

5 MR. SZYMKOWICZ: Did the Office of Planning consider
6 the impact of eight apartments on parking on an already congested
7 MacArthur Boulevard?

8 MR. KIRSCHENBAUM: The District Department of
9 Transportation did, and they did not find that there would be an
10 adverse impact. And again, the parking requirement -- the number
11 of parking spaces the Applicant is providing is higher than what
12 is required by zoning.

13 MR. SZYMKOWICZ: Did the Office of Planning evaluate
14 whether the scope of the easement over Dr. Lea's back driveway
15 would be exceeded with five families and a trash truck accessing
16 the 4457 property from the rear considering that the easement was
17 created when the 4457 property was built 90 years ago -- 100
18 years ago as a single family home?

19 MR. KIRSCHENBAUM: Right. So we, you know, easements
20 are not part of the zoning. So, again, that's, sort of, out of
21 our scope of review. We did have a question about whether or
22 not the Applicant -- if the easement would satisfy the access
23 requirements to those parking spaces. And the Applicant has
24 testified and self-certified that they can use that easement as
25 a appropriate way to access those parking spaces. But again,

1 that is something that, you know, the Applicant has stated he can
2 do that, and that will have to be double checked by the Zoning
3 Administrator at DCRA.

4 MR. SZYMKOWICZ: But whether this -- whether the
5 easement scope was exceeded or not does go to the substantial
6 impact factor; is that something we can agree upon?

7 MR. KIRSCHENBAUM: I don't think at this moment,
8 because we -- I don't have enough information to know whether or
9 not, you know, how the easement -- if, you know, the Applicant
10 has testified that they can use the easement, and I haven't heard
11 anything -- there has been, really, nothing, yet to the contrary
12 that they can't. And again, that really is separate from zoning
13 at this point.

14 MR. SZYMKOWICZ: I have no further questions.

15 CHAIRPERSON HILL: Okay. Commissioner Szymkowicz, are
16 you an attorney?

17 MR. SZYMKOWICZ: I am.

18 CHAIRPERSON HILL: You sound like an attorney. Okay.

19 MR. SZYMKOWICZ: I don't know if that's a good thing
20 or a bad thing.

21 CHAIRPERSON HILL: It's -- I guess it's a good thing.
22 All right. Let's see.

23 MR. SZYMKOWICZ: I'm not an attorney here, though, I'm
24 an ANC Commissioner here. I don't represent anybody.

25 CHAIRPERSON HILL: I'm just having fun, Commissioner.

1 MR. SZYMKOWICZ: Thank you.

2 CHAIRPERSON HILL: Let's see. Okay. Does anybody else
3 -- oh, yes. Wait. Sorry. So Mr. Sullivan, do you have any
4 questions for the Office of Planning?

5 MR. SULLIVAN: No, thank you.

6 CHAIRPERSON HILL: Mr. Brown, do you have any questions
7 for the Office of Planning?

8 MR. BROWN: No, I do not.

9 CHAIRPERSON HILL: Dr. Lea, do you have any questions
10 for the Office of Planning?

11 DR. LEA: No, I do not.

12 CHAIRPERSON HILL: All right. Mr. Young, is there
13 anybody here wishing to testify?

14 MR. MILGRAM: Mr. Chairman, may I speak?

15 CHAIRPERSON HILL: Sure, of course. Who's that again?
16 I'm sorry.

17 MR. MILGRAM: I'm sorry. I wasn't sure if I needed to
18 star 6 to unmute. This is Judah Milgram. I was introduced
19 earlier as being with Dr. Lea, which I don't object to, 'cause I
20 tend to agree with her. But actually -- Okay. I'm sorry. May
21 I speak just for a few minutes?

22 CHAIRPERSON HILL: Give me on second. Is it Mr.
23 Milgram?

24 MR. MILGRAM: Milgram, yes.

25 CHAIRPERSON HILL: Yes. I'm sorry, Mr. Milgram. Since

1 you're not part of the screen, I forgot you were even there. So

2 --

3 MR. MILGRAM: I'm sorry. I'm --

4 CHAIRPERSON HILL: That's all right, Mr. Milgram. You
5 were going to be a witness for Dr. Lea as I recall, correct?

6 MR. MILGRAM: That's the way I was introduced.
7 Actually, when I submitted my comments and signed up to testify,
8 I thought I was just part of the general public. I mean, I don't
9 object to being characterized as a witness for Dr. Lea, but --

10 CHAIRPERSON HILL: Sure, no problem.

11 MR. MILGRAM: -- really I'm here for myself.

12 CHAIRPERSON HILL: Sure. Okay. Great. Then why don't
13 -- you'll have 3 minutes to testify, and I don't know, can you
14 see the screen by any chance?

15 MR. MILGRAM: I cannot. I'm on phone only. My phone
16 will not connect with WebEx for --

17 CHAIRPERSON HILL: Okay. Got it. Well, you're a
18 trooper for hanging in there then for this long just on the phone.
19 Okay. All right.

20 MR. MILGRAM: Yes. It's been interesting. So --

21 CHAIRPERSON HILL: All right. You can go and give your
22 three minutes of testimony whenever you like, sir.

23 MR. MILGRAM: Okay. I'll keep it short. Much of what
24 I have to say has been said. First, like I say, I don't have
25 party status to this. I don't own any of the properties involved.

1 I'm just a guy who lives on the street, really. And as a member
2 of the general public, I think -- one might think there's a lot
3 of concern about this particular project.

4 So this is a free-standing structure. It's
5 symmetrically divided into two townhouses. It is not just, you
6 know, rebuilding one townhouse in a row of townhouses where it
7 doesn't really matter. It's really going to look, kind of, odd
8 once it's all done.

9 I have attempted, in my comments in Exhibit 48, if you
10 can pull that up and look at Figure 1, I, kind of, attempted to
11 sketch in what it will look like once this thing is built, and
12 it will, kind of, tower over the remaining half of the structure,
13 and it really -- well, okay. I will assert that it will intrude
14 visually on the character, scale, and pattern of the homes along
15 the street.

16 The issue of the light and air is relevant, 'cause I
17 had it measured correctly off of Figure 11 in -- I think it's
18 Exhibit 32 from the Applicant. I got an additional 16 feet of
19 height into this addition. So when talking about, maybe, the
20 side yard is going to be smaller by a foot or not, or maybe it
21 will be the same, the real relevant thing is the additional
22 height.

23 Traffic and parking is a problem on this block more
24 than DOT -- nobody was surprised to hear that DOT approved this,
25 'cause right now on-the-street parking is really only possible,

1 if you're doing overnight parking, on the east side. So half of
2 MacArthur Boulevard -- and this block is, like, a quarter of a
3 mile long where the parking restriction exists in the morning.
4 It's really hard to get a parking spot around dinner time when
5 you come home from work on the east side. And if you don't, then
6 you risk getting towed in the morning if you don't wake up early
7 enough to move your car. And this is a problem. An additional
8 four cars or however many cars that there are going to be that
9 are going to have to park on the street is going to make a
10 difference. People will be motivated to have cars. There is no
11 grocery shopping within walking distance. I hiked just recently
12 to Wisconsin Avenue, and my knee still hurts, although I won't
13 say it wasn't a good walk.

14 And finally, the driveway has been discussed
15 extensively, and it is shared by a number of properties. And
16 it's not just going to be a matter of two extra cars, there's
17 two extra cars and the garbage trucks and the recycling and God
18 knows what else. Right now, those trucks don't -- or at least
19 for the 4465 property, they don't come in through that alley. I
20 think, as Mr. Feldman mentioned, they pick up the trash for 4465,
21 that's the apartment building, from the other side of the
22 building. So they never come in, and they're not a factor, but
23 suddenly, we're going to have that.

24 So I urge you to read comments. They are in Exhibit
25 48. This does not seem like a very good idea to me at all. And

1 that's all I have to say. Thank you for letting me speak.

2 CHAIRPERSON HILL: No, thank you. And I -- your --
3 excuse me. Your exhibit actually is helpful. Does anybody have
4 any questions for the witness, and if so, raise your hand.

5 (No response.)

6 CHAIRPERSON HILL: Okay. All right, Mr. Milgram. Thank
7 you so much, and you're welcome to stay on the phone and just
8 listen, if you like. It's up to you.

9 MR. MILGRAM: Thank you.

10 CHAIRPERSON HILL: Okay. All right. Okay. Let's see.
11 Mr. Sullivan?

12 MR. SULLIVAN: Yes.

13 CHAIRPERSON HILL: I'm sorry, 'cause this is good. I
14 mean, we might come back here for a continued hearing. This is
15 actually going to be pretty -- never mind. You don't have to be
16 as amused as I am. What's with the Section 8 housing sign that's
17 in -- that was put in the yard?

18 MR. SULLIVAN: I can have Frank respond to that. Do
19 you want us to do, like, a whole, you know, one rebuttal at one
20 time, or --

21 CHAIRPERSON HILL: I would -- just include that in your
22 rebuttal. Okay.

23 MR. SULLIVAN: Okay.

24 CHAIRPERSON HILL: Because the sign's pretty janky.
25 Okay. So -- all right. Let's see. Anybody got anything else

1 for anybody before we do rebuttal and conclusions? Ms. John.

2 VICE CHAIR JOHN: So I have a question for the
3 Applicant's architect, because I just need to know. It's a
4 question that's been percolating. How is this construction,
5 physically, going to take place? This is one -- two houses that
6 are built together with this one partitioned wall -- I've never
7 seen that, actually -- and with a common attic. How -- what is
8 that process? And can you -- or can your contractor make
9 renovations to the porch without the consent of Ms. Lea? I mean,
10 I just don't understand that whole process. And I know a lot of
11 this will be taken care of at permitting, but for my benefit,
12 'cause it's just been percolating.

13 MR. CRAIN: Sure. It's definitely a unique condition.
14 I'm not going to -- I'll admit that. I don't see many that were
15 built in conjunction with two that are actually one.

16 I guess one way to look at this is that it's -- as it
17 is existing, it's not building-code compliant, meaning there's
18 not the required fire rating separation that is required with
19 that party wall on the property line. That doesn't exist right
20 now. So the new construction would actually bring it up to
21 building codes and include both the sound mitigation that's
22 required for us to see (indiscernible), and also the fire rating
23 separation that currently doesn't exist.

24 So basically, what -- it would -- the first thing is
25 it would be brought up to code with fire rated demising walls

1 along that property line. And we have to have --

2 VICE CHAIR JOHN: (Indiscernible.)

3 MR. CRAIN: -- a structural engineer do a thorough,
4 detailed analysis of everything.

5 VICE CHAIR JOHN: Right. So I'm putting myself in Ms.
6 Lea's position, and I'm sitting here happily in my house. Why
7 should I allow you or any other contractor to come in and start
8 poking around in my walls and my attic and on the front porch?

9 MR. CRAIN: Sure. I'm actually not the contractor, so
10 I would not be poking around.

11 VICE CHAIR JOHN: No, I'm just asking --

12 MR. CRAIN: Yeah.

13 VICE CHAIR JOHN: -- because I don't understand the
14 whole --

15 MR. CRAIN: Sure.

16 VICE CHAIR JOHN: I'm just sitting here --

17 MR. CRAIN: Sure.

18 BOARD MEMBER SMITH: -- as a public wanting to know,
19 and I have to put myself in her position.

20 MR. CRAIN: Uh-huh.

21 VICE CHAIR JOHN: Why in the world would I want to
22 disturb my peace and quiet in that way?

23 MR. CRAIN: Sure. I understand. I don't believe that
24 -- obviously, this would be more of a construction-process
25 related item.

1 VICE CHAIR JOHN: Yes.

2 MR. CRAIN: I'm not a contractor. I'm not sure that
3 they would have to be crawling around in her roof. I think a
4 substantial amount of the work being done would be done as a face
5 online, basically on the Applicant's side of the property line
6 for the construction. You know, as far as, like, if she's got
7 an open wall on her side with that shared party wall, obviously,
8 without her permission, they couldn't do anything there, but they
9 could create the fire rating from their side.

10 VICE CHAIR JOHN: Okay. So all the work would be done
11 on 4457's side.

12 MR. CRAIN: Yes, ma'am.

13 VICE CHAIR JOHN: But --

14 MR. CRAIN: It would be subject to the contractor's
15 (indiscernible), if possible. And I guess --

16 VICE CHAIR JOHN: And I'm Ms. Lea -- pretend I'm Ms.
17 Lea, and I don't want you going on --

18 MR. CRAIN: Yes. Uh-huh.

19 VICE CHAIR JOHN: -- setting foot on my property or on
20 the porch.

21 MR. CRAIN: Yes.

22 VICE CHAIR JOHN: How could you -- what is your best
23 idea of how that could be done?

24 MR. CRAIN: Sure. I would recommend that a
25 preconstruction meeting is held with the contractor, the

1 developer, structural engineer, and the neighbor to, kind of,
2 walk through what the build is so everybody is on board and
3 expectations are managed and set. That's how I'd recommend --
4 and you know, at that time that they walk through all the details
5 so everybody knows what the plan is.

6 I don't have everything designed right now. I can't
7 give you -- I can't describe the building verbally to you or how
8 it's going to be built all the way up, but you know, a plan could
9 be put in place, and she could be brought on board and made aware.

10 VICE CHAIR JOHN: Well, thank you, Mr. Crain, for
11 indulging this. I'm going to put Mr. Sullivan on the spot.

12 So Mr. Sullivan, I am Ms. Lea. I'm not (indiscernible)
13 where I'm going to go, and I'm quite happy like this. How do
14 all move forward, because there is real concern about the party
15 wall, the attic, and that porch that's jointly owned, as I
16 understand it. Maybe I'm wrong. And then there's the parking
17 pad at the back, which I don't know if the extra parking spaces
18 are on the right of the easement, whatever that is being called.
19 So that would need to be clarified to make sure it's on the
20 property line for 4457.

21 So the other question is -- or the real question is how
22 would this whole process be managed if Ms. Lea is not giving
23 anybody any permission to be in her house?

24 MR. SULLIVAN: I'm sorry. I didn't catch the last --
25 just the very last part of that. Just the last sentence.

1 VICE CHAIR JOHN: Ms. Lea -- let us pretend that Ms.
2 Lea is not interested in having any construction that interferes
3 with her walls or attic or the jointly owned porch, and she
4 doesn't want -- and the parking space, two of them, could be on
5 that right of way. What would be your client's solution? Can
6 it even be done without Ms. Lea's permission?

7 CHAIRPERSON HILL: No. We can't encroach on her
8 property, and if we could, it would be a lot easier to provide
9 housing in a lot of situations, because I know my client's --
10 and I don't always deal with that directly, because it's often
11 engineers and the contractors, and I don't practice that much at
12 OAH, which would sometimes hear the appeals in that regard. But
13 in my experience, a builder on one property is very limited to
14 what he can do when it comes to encroaching on the neighbor's
15 property in any way. And so that is -- that's something that
16 needs dealt with and -- at DCRA, and it's a burden. Yes, it is.

17 And, like, in regards to the, you know, the BZA is
18 considering not what happens during construction but should this
19 -- what's being proposed exist. So presume that construction's
20 done and DCRA has taken care of everything that needs to be taken
21 care of with construction, the question is does an 8-unit building
22 at .9 FAR and 40 percent more occupancy and 35 feet height, does
23 the existence of that building adversely effect the use of
24 neighboring properties. And we have a 27-unit building to the
25 right and a 36-unit building to the left. And I think what the

1 Board would be -- might have to say is, well, if you have a single
2 family home, then you have the right not to live next door to a
3 multi-family dwelling, which they haven't said in any other RA-
4 1 case, including cases that -- with party walls.

5 And it sure sounds like the construction-related issues
6 seem more complicated than your typical party wall. I'll agree
7 with that. And that's -- maybe that ends up stopping this, in
8 the end, at the DCRA level, or it certainly provides some work
9 around needs -- it requires some work arounds construction-wise,
10 but I don't think that touches on the issue of whether or not
11 granting relief that substantially adversely effects the use of
12 neighboring property.

13 On the question of the easement, what's creating the
14 easement -- the easements originally came from the owner of the
15 property at the rear, actually. And they gave themselves an
16 easement across both our property and Dr. Lea's property. And
17 that's the way it was for many years. And then in Mr. Brown's
18 Exhibit 45, it talks about that. And then it goes on to say,
19 okay, now we're going to grant an easement for the benefit of
20 our lot, which was Lot 962, across -- 12-foot easement across 961
21 so that our lot can get off the property. And that was used for
22 50 years after that was created.

23 So those parking spaces are not on -- not encroaching
24 on any right. Dr. Lea's property doesn't have any right, and
25 why would it? Why would she have to go in that direction, because

1 you can't get through that property anyway. So there's nowhere
2 to go.

3 So -- but I agree, though, I've seen some things today
4 that I think the Board would like -- I'm assuming would like to
5 see some more information on how those spaces get used. And on
6 the trash collection, as well. If the 36-unit building takes
7 their trash out to the front, then it would seem like the 8-unit
8 building should be able to do that, as well, if that absolves
9 one big concern.

10 If the use of the parking in the back needs reduced as
11 a result -- and I'm not saying it does, necessarily, because of
12 the use of the 10-foot easement, but maybe it does because of
13 turnarounds and getting in and out of that space. The trash
14 truck -- I understand that completely, and we'll -- we can work
15 with and talk to that neighbor and see how they did it.

16 So -- and I'm not an easement attorney. I'm not a
17 transactional attorney, I'm not necessarily a property rights or
18 property lawyer, strictly. I have the documents. The document
19 for the 10-foot easement is just for -- it's for access. It
20 doesn't say what it's for access for. And in the absence of
21 providing a scope, presumably, it would be an access for anything
22 that would be permitted on that property, and this is the
23 apartment zone.

24 So I don't know if that answers your question or not.
25 That's all I've got.

1 VICE CHAIR JOHN: Thank you. I mean, you sort of gave
2 me more -- enough, but I just didn't see how, physically, this
3 could happen without Ms. Lea. And so, I mean, this Board has no
4 jurisdiction over the easement/right of way issue, and that will
5 probably be resolved in another quorum. And if it turns out that
6 there is no access to parking, then the Applicant will have to
7 come back and request relief for parking, so -- because it's
8 associated by an application.

9 So I'm okay with not -- well, we're not at that stage
10 yet. So I'll just end it there, Mr. Sullivan, and thank you for
11 indulging me.

12 CHAIRPERSON HILL: (Muted.)

13 UNIDENTIFIED SPEAKER: Your muted, Mr. Chair.

14 CHAIRPERSON HILL: Okay. So Mr. Sullivan, what I want
15 to do is give you a little bit of time for rebuttal, and then
16 let's go ahead and, if you want to give a brief conclusion --
17 very brief, you guys -- a brief conclusion, Mr. -- I'll get you
18 in one second, Dr. Lea -- Mr. Brown, and then Dr. Lea.

19 And by the way, I don't think we're deciding this today.
20 We're going to ask for some stuff from the Applicant, and we're
21 probably going to come back and have a bit of a continued hearing
22 on this. But nonetheless, I want to give Mr. Sullivan has been
23 very patient in hearing things that have been put -- brought
24 forward. So now he's going to have a change for rebuttal. And
25 then, Mr. Brown, you have a little conclusion, Dr. Lea, you'll

1 have a little conclusion, and then Mr. Sullivan, you'll have the
2 last word. And then the Board will probably ask what they need
3 for the next hearing.

4 Dr. Lea, what is it that you had to ask?

5 DR. LEA: The architect, Mr. Stephen DuPont, has not
6 had an opportunity to speak, and I don't think he plans to speak
7 very long, but he is -- was supposedly on the list, and he's been
8 on the call all this time.

9 CHAIRPERSON HILL: Got you. Mr. DuPont, can you hear
10 me?

11 MR. DUPONT: Yes, Chairman Hill.

12 CHAIRPERSON HILL: Mr. DuPont, you've spoken before us
13 many times, you know, and so I'm trying to think, like, is there
14 anything you -- and I'm sorry you've been sitting there this
15 whole time, but I thought Ms. Lea would have brought you forward
16 or something. Is there anything you need to add or what to add
17 to this discussion?

18 MR. DUPONT: I was going to address Subtitle F, 103,
19 which is, literally, developing use of land and structures, and
20 I was also going to address -- can you hear me all right?

21 CHAIRPERSON HILL: Yes, I'm listening to you.

22 MR. DUPONT: The essential, sort of, chaotic nature of
23 that triangular section between Foxhall and MacArthur and how the
24 backs of buildings are all coming together in funny ways. The
25 --

1 CHAIRPERSON HILL: Okay. Go ahead and give your
2 testimony, Mr. DuPont.

3 MR. DUPONT: Okay. As an architect, I'm not interested
4 in -- I'm the architect in opposition supporting Dr. Lea. As an
5 architect, I'm obviously not opposed to development; however,
6 this case presents problems, and I will draw from three Subtitles,
7 F, U, and C.

8 Subtitle F, 103, provide for the orderly development
9 and use of land and structures. There's very little in
10 (indiscernible) site conditions that can be described as
11 "orderly." The access to three single family homes and apartment
12 house on easement for a driveway that's just not even on the
13 property of either 4457 or 4459, and it's just 10 feet wide. The
14 existing semi-detached homes are wood frame from 1905, and
15 they're completely out of context in this immediate neighborhood,
16 both structurally and visually. The moving only half of existing
17 will not contribute to order in the development.

18 The (indiscernible) home behind 4457 and 4459 is quite
19 some way from the street. The driveway easement, as land, is on
20 land owned and used by a substantial apartment house at 4465. It
21 has been suggested that a driveway might run up the east side of
22 4457. In fact, this points even more to the difficult character
23 of this proposal. (Indiscernible) side yard is already, I think,
24 subject to a request for an exception. It's further complicated
25 by at least on good-sized tree.

1 Ideally, both sides of the existing structure should
2 be converted at the same time. That's allowing for a more
3 thoughtful use of this desirable site. Even half of the 4457/4459
4 group (indiscernible) behind will only aggravate the asymmetrical
5 character of the situation and further disadvantage the occupant
6 of 4459.

7 I approached the probability between the location of
8 new buildings for construction, the existing incompatibility and
9 asymmetrical aspects of this situation will only be exacerbated
10 by the proposed construction.

11 In Subtitle U, 421.1, in the R-1 and R-6 Zones, all new
12 residential developments, except those comprising all one family
13 detached and semi-detached, shall be reviewed by the Board of
14 Zoning Adjustment as special exceptions. A Section like this
15 only exists in certain zones where incompatible and asymmetrical
16 results have been experienced, and they require special attention
17 to mitigate.

18 This section of the Code likely dates back to 2014 when
19 there was significant push back against (indiscernible) and other
20 disruptive proposals. Here we're faced with a situation that has
21 to deal with significant impact on abutters. It is an
22 asymmetrical (indiscernible) situation, and has likely not
23 addressed in an effective manner issues such as vehicular access.
24 A better access would be on the east where there is another wide
25 driveway. Unfortunately, the developer has opted to take what

1 at first (indiscernible) to be the path of less resistance, the
2 already existing easement. Then the developer has attempted to
3 bully his way, where a more considered conversation with all the
4 neighbors might have been more productive.

5 The BZA shall refer -- 421.3. "The BZA shall address
6 and refer the application to the OP for comment, light, air,
7 parking, recreation." 421.4, "In addition to other filing
8 requirements, the developer shall submit to the Board site plan
9 and set of typical floor plans." As far as I've been able to
10 review an early design level and only (indiscernible) and the
11 (indiscernible) are more developed now.

12 And finally, Chapter -- Subtitle C, Parking, Chapter
13 7. "A (indiscernible) for vehicle parking areas are located and
14 accessed and designed to minimize negative impacts on adjacent
15 property, urban design, pedestrian, environment, and public
16 spaces." This is part of the OP review per Subtitle U, 421.3,
17 above. In this case, parking is one of the significant problems.
18 The driveway is going to be shared by three single family homes
19 and a fairly large apartment house. The access is controlled by
20 an easement that is not even on either of the properties that
21 are the subject in this hearing. This development will add eight
22 dwellings of users and they will impact the worst possible
23 location, the (indiscernible) at the back of the garage at 4459,
24 already damaged by previous traffic.

25 The construction phase will be a real mess. While

1 access is intended to be by the easement for materials and
2 equipment, much of this movement will end up crossing a front
3 yard (indiscernible) side yard. The location is just too
4 congested for it to be (indiscernible). Parking for the crews
5 alone will be a problem that cannot be provided fully in the
6 easement and will be difficult in the street at that location.

7 Within 20 feet -- 711.6, "Within 20 feet of all street,
8 lot lines, a driveway, other than is described in C 711.5, shall
9 be at least 12 feet wide for one-way traffic or 20 feet wide for
10 two-way traffic." The driveway is only 10 feet wide, or at least
11 the easement portion of it, serves two-way traffic and far more
12 users than would be allowed by any possible provision of 711.5.
13 And again, the turn at the back of 4459 to get to the proposed
14 parking for 4457 is tight, being pinched by the garage at 4459.

15 IZ has already been addressed. My position is that
16 this project is (indiscernible) configuration and context and
17 will be difficult to construct. Everything about it seems to
18 have been rushed without much thought for the real complications
19 of the project. That is not unusual in this (indiscernible)
20 overheated market, but there are opportunities to submit
21 (indiscernible) proposal which should be considered.

22 And that's it.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. DuPont. Does
24 any -- does the Board have any questions for Mr. DuPont?

25 (No audible response.)

1 CHAIRPERSON HILL: Mr. Sullivan, do you have questions
2 for Mr. DuPont?

3 MR. SULLIVAN: Just one. I think -- I see him. Did
4 -- you mentioned that -- you said the Applicant chose to bully
5 their way by using an existing easement rather than trying to
6 create a new easement on a different property?

7 MR. DUPONT: The impression I have gotten is that the
8 relationship has been rancorous from early on, and that this
9 particular easement is really unsuited for the task that it's
10 being asked to serve, and that, maybe, there would have been an
11 opportunity on the other side with a wide driveway to the angles
12 relevant to a better easement there.

13 MR. SULLIVAN: And you're --

14 MR. DUPONT: But I don't (indiscernible.)

15 MR. SULLIVAN: You're aware that we don't have any
16 access to that property, and there's parking spaces where --

17 MR. DUPONT: I'm aware that you would have to arrange
18 for an easement by owner. Yes. I'm perfectly aware of that.
19 And I don't think this is simple. I do not.

20 MR. SULLIVAN: Thank you. I got it, question answered.
21 Thanks.

22 MR. DUPONT: Yes.

23 CHAIRPERSON HILL: It was the word "bully" that got you
24 in trouble, Mr. DuPont. So --

25 MR. DUPONT: I should have (indiscernible). I

1 apologize.

2 CHAIRPERSON HILL: All right.

3 MR. DUPONT: But I -- yeah.

4 CHAIRPERSON HILL: Okay. All right. So that's that.
5 All right. Mr. Sullivan, rebuttal.

6 MR. SULLIVAN: Thank you. I just -- just some quick
7 -- I have a couple quick things, and then I'm going to turn it
8 over to Frank, because there's a lot of things that we should
9 respond to, and I'm sure the Board would like to hear him. They
10 may have some follow up questions for him.

11 Just regarding some of the accusations flying out from
12 the ANC, in particular, about being disdainful or dismissive, the
13 first ANC meeting, right off before we could even present, with
14 accusations impugning the reputation of the Applicant simply for
15 not having their corporate registration, which wasn't required
16 yet at that point. And in response, they required their corporate
17 -- they got their corporate registration and basic business
18 license within weeks. I think that was responsive not dismissive.

19 The snow load report, I personally responded to J.P.
20 when he sent that to me and explained to him that that's something
21 that would be addressed when we had an engineer. And so I
22 responded to that, so we weren't dismissive there.

23 In the ANC report, they mention that before and after
24 two meetings, the ANC solicited and received written submissions
25 from the Applicant. So, but in other parts of the report it said

1 that we totally ignored the ANC.

2 Regarding the fair housing claim, which Frank will
3 address, the Applicant immediately hired separate counsel, fair
4 housing counsel, that -- to make sure that they responded to that
5 fully and appropriately and also so that they made sure they
6 complied in all ways.

7 And so I have -- I disagree with the characterizations.
8 It has not gone well, and I don't -- I just want to say that the
9 Applicant is not the sole party at fault for that, and we stand
10 willing and ready to talk about the issues and potential
11 mitigation of perceived concerns about having an 8-unit building
12 here constructed. But I think you see some of the reason why it
13 is so hard to provide housing.

14 In my PowerPoint presentation, I mentioned that the
15 District has gained something like 87,000 residents since the
16 last census. They're 14th of states and territories. So it's a
17 booming city, and I know the Office of Planning is focused on
18 providing those units in the apartment zone, where appropriate.
19 And so I -- and also a lot of the other comments relate to things
20 that are interesting when comparing this 8-unit building to the
21 63 units which are in two adjacent buildings besides these two
22 buildings.

23 So I'll turn it over to Frank and asks him to respond
24 to some of the other things that we've heard tonight. Thanks.

25 Go ahead, Frank.

1 MR. RAMESHNI: Thank you, Marty. And good afternoon
2 everyone. All right. There's quite a few points for me to
3 address there.

4 First of all, Dr. Lea, thank you for the message. I'll
5 call Spencer (indiscernible). It wasn't actually my dad, it was
6 (indiscernible) dad. So I appreciate that.

7 Yeah. It's -- we've been pegged for being quite a bad
8 bite, and we've been, you know, in quotes, "attacked" from
9 multiple, sort of, you know, ways. And I really want to try and
10 address some of these things.

11 I know that, generally speaking, people don't like
12 changing their area where they live, and it's -- especially if
13 they've lived there a long time. You know, we've faced in the
14 past. It's not a new thing, and I'm aware of that.

15 I just want to say that when we bought this property,
16 when it was presented to us, we bought it with knowledge of what
17 the zoning rules were and what we were allowed to do there. So
18 we haven't come in trying to change the rules. We bought into
19 an area which allowed the development that we are proposing under
20 the RA-1 rules. So I just want to explain that, you know, this
21 is the premise upon which we bought this property.

22 We really want to -- the question, Mr. Hill, about the
23 sign, before I forget. This area is a great area for student
24 rentals, and we are, actually developers. We only develop and
25 sell. We don't do rentals. And the agent who brought us this

1 property highlighted the benefits of the area for students.
2 Unfortunately, in the middle of the summer when there was
3 ambiguity as to whether or not that market would return and how
4 strong it would be, and another strong market which always has
5 good rental income is Section 8. So we entered this at a very
6 (indiscernible) time, and if you guys know the area, there's
7 plenty of signs always announcing the coming of student
8 accommodation in the area. It's not something new. And
9 unfortunately, it was perceived as a right we have to defend, and
10 we have to explain -- and we went into great detail with a lot
11 of evidence and third-party evidence proving that this is what
12 our intentions were. Unfortunately, the pace at which the market
13 changed over the summer due to COVID, we have to take commercial
14 views always whenever, you know, we're developing and,
15 ultimately, be led by the market, and the last 12 to 16 months
16 has been, you know, it's been very fast-changing.

17 So we had to react to that. Now, it can be painted in
18 many lights if someone wants to depending on the way they want
19 to view it, but we've expressed this. And we've actually put
20 all the information down in a quite long document that we
21 submitted to the Office of Fair Housing, and it's all backed up
22 with evidence.

23 So just to answer your question, Mr. Hill, there's
24 actually a very long document which has all the facts backed up
25 explaining this issue, if you're interested in it. I don't know

1 how they line up, but that is available.

2 With regards to Dr. Lea saying that we've bullied her
3 by representative, we don't have a representative. The way we
4 acquired this property was an agent we know -- he's not actually
5 our agent. Our agent is Max Raven. This agent approached us,
6 said that he had already secured this property under contract,
7 and whether or not we'd be interested in purchasing it. And he
8 actually highlighted something we already knew, which was the
9 benefits of student accommodation in the area. And he already
10 had the contract on it, and he offered it to us, and we took it.

11 Now, subsequently, he asked us whether or not if he was
12 to get a contract on the next door neighbor, which is Dr. Lea's
13 property, we would be interested in purchasing it. And we told
14 him yes. He was, independently -- he will sell that property to
15 whoever he wants to. He is not our representative. We did
16 express that we would be interested in it. I actually have
17 documentation (indiscernible) he did actually say to me that if
18 I don't get (indiscernible) I would sell it to whoever I could
19 sell it to. Now, actually, in the way of (indiscernible) takes,
20 but I have the evidence of that. He was not our representative.

21 Now, Dr. Lea, I apologize for the way he spoke to you
22 or however he approached it. He was not under direction from
23 us. He was not our representative. I just want you to be clear
24 that -- and we've heard this accusation several times. And I
25 want (indiscernible) twice --

1 MR. HOOD: Excuse me.

2 MR. RAMESHNI: -- about it.

3 MR. HOOD: Excuse me, Mr. Chairman. Excuse me, Mr.
4 Chairman. We're getting a lot of feedback. So I don't know if
5 there everybody's on mute, but you might want to mute, too, Mr.
6 Chairman, 'cause there's a lot of feedback. Thank you.

7 CHAIRPERSON HILL: All right. If everybody could mute
8 except for Mr. Rameshni that would be great. Thank you.

9 MR. RAMESHNI: Testing, testing. Is it okay? Okay.

10 Yeah. I just wanted to clarify that. And again,
11 there's plenty of evidence. I've got his own messages to us.
12 He's not our agent, and he's not our representative. He's someone
13 that -- what is known in the property business -- he's an agent,
14 but he's also a wholesaler. So we did express that we would be
15 interested, but he was not under our direction. We did not tell
16 him what to tell you. We didn't tell him how to speak to you.
17 He was totally independent. So I just need to clarify that.

18 And repeatedly we've been accused of this, and until
19 now, we haven't said anything. But now that, you know, I've got
20 the platform, I need to clarify that, Dr. Lea. And you can
21 believe what you want, but honestly, that is not true. And again,
22 I have all the evidence. I have texts, I have emails. I can
23 prove that he was not our representative. So please, I hope we
24 don't hear about this any more in that light, because it's really
25 not true and a misconception that, unfortunately, we've

1 repeatedly heard.

2 With regards to the engineering issues and structure
3 issues, of course, I mean, that will be addressed. We always
4 are as respectful as we can be to our neighbors. I mean, this
5 is not our first rodeo, we've done this many times before. It
6 obviously takes two to tango, as we say, and, you know, we'd hope
7 for some kind of neighborly, sort of, cooperation, but you know,
8 that's all we can hope for. And I hope that we can, sort of,
9 work in that light.

10 I know we haven't got off to a good start. I assure
11 you most of it has been, you know, wrong information or wrong
12 thoughts. I hope I've clarified everything. That's really all
13 I can say.

14 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
15 Rameshni.

16 You know, you guys, we're coming up on three and half
17 hours into this now, and so what I think -- if you want to do a
18 written conclusion, Mr. Brown or Dr. Lea or Mr. Sullivan, you can
19 go ahead and submit a written conclusion, or you might even want
20 -- just want to hold off a minute. We might have -- in fact,
21 you might want to hold off, because we're going to have a
22 continued hearing, probably, just to at least know -- I'm going
23 to go around the table as to what my fellow Board Members might
24 be interested in. I guess, Mr. Sullivan, I'd like to go ahead
25 -- I mean, I appreciate what Mr. Rameshni said and how, you know,

1 this is, kind of like, the next chain of this, and you know,
2 maybe you can -- at least, Mr. Sullivan, you can work with Mr.
3 Brown and, in particular, Dr. Lea to see if there's any kind of
4 way to get some of these issues addressed and just see how far
5 you get.

6 Let's see, Dr. Rameshni -- not doctor. Mr. Rameshni,
7 I guess, I'm also, you know, aware -- and I know that several of
8 my Board Members are aware that people buy properties according
9 to what they say they can do, right. Like zoning allows for what
10 zoning allows, and that's why you buy the properties that you buy
11 the properties. And we, the Board, want to be as consistent as
12 possible, because we don't want people to buy things thinking
13 they can't do what they were going to do. Right.

14 At the same time, I think that a lot of things have
15 been brought up concerning adverse impact and some ways that we
16 might be able to mitigate some of these. I don't know where my
17 fellow Board Members are with this, but I don't think I'm sending
18 it down the wrong hole, but if I am, I don't know where they are.
19 Right.

20 I know, however, that I would like to see -- and I'm
21 looking at Mr. Sullivan, again, something -- I don't know how
22 -- I don't know what you can provide the Board, and maybe Mr.
23 Rice, our attorney, can help. I don't know. I don't know what
24 construction stuff goes on. I mean, this one's a little
25 different, meaning, I usually punt everything and say, "Oh, DCRA

1 will deal with that, permitting will deal with that." I've never
2 been in a situation where it literally is the same house, almost.
3 Right.

4 So if you can, kind of -- and Dr. Lea, I guess, also,
5 you know, this might be an opportunity for you to get more
6 comfortable with whatever they're trying to say. Right. Like,
7 how can they do this and make you feel comfortable with how your
8 property will be treated. Right. You know, that's one thing
9 that you might be able to get out of this discussion. Right.

10 Mr. -- I have the photograph. It's the last piece in
11 the Office of Planning's report, actually, has the photo, Mr.
12 Sullivan, that I was looking for that shows the driveway and the
13 parking lot and all that stuff. And Mr. Brown, I mean, it's a
14 giant parking lot that's over there. Right. I mean, there's
15 tons of asphalt. And so I don't know what, Mr. Sullivan, you
16 know, when you're talking to Mr. Brown, maybe, in terms of sharing
17 that -- I mean, I'd just like for there to be some kind of a
18 discussion of all these points, Mr. Sullivan, and at least
19 something talked about. Like, you know, how are you going to
20 share the cost of that drain that's \$1,000, whatever. I don't
21 know.

22 You all talk, and if you all come back at the same
23 place where everybody is just this, kind of -- it seems a little
24 too convoluted right now in terms of all of the different
25 concerns. And it would be better, Mr. Sullivan, if you have an

1 opportunity to talk to the two parties and see where you might
2 be able to get, to quote Mr. -- Chairman Hood, the "good neighbor"
3 policy, right, talking to everybody. Like that deck that Ms.
4 -- that Dr. Lea's concerned about, maybe there's a higher fence
5 that you can build that keeps people from looking over into Dr.
6 Lea's backyard. I don't know. Right.

7 And I know that a lot of these things don't pertain,
8 necessarily, to the zoning that is in front of us, but some of
9 it does. Right. And so I'm just trying to get -- and Mr.
10 Sullivan, you come before us all the time, so I'm just trying to
11 tidy this up in a way that I can understand it. Right.

12 And again, to Mr. -- to the traffic issues -- and then
13 I'll stop, and I'll go around the horn beginning with Chairman
14 Hood. To this whole two-way traffic and all that stuff again, I
15 don't know. I mean, it's two additional cars as I can tell.
16 Right. Okay. And it's even, maybe one additional car. And if
17 you all want to talk about it and get them, the Applicant, to
18 cut down to one additional car and then they won't have to turn
19 around, you know. I don't know, right. But that's a big parking
20 lot back there, Mr. Brown, as I've now mentioned before, and I
21 don't think the one additional car, the two additional cars to
22 the -- I'm not looking for a response -- to the 35 cars that are
23 already parking back there.

24 And the other thing -- and I'm glad that Mr. Rameshni
25 did talk about that Student Aid Association. I do know that

1 neighborhood, and there are signs like that. You are correct.
2 There are signs like that. It's not that weird. But -- and I
3 know that there's a bunch of -- it's an RA-1 Zone. There's a
4 bunch of little apartment buildings all around there. Right.
5 So, you know, it's not that odd for this development to be there.
6 Right.

7 So that's, kind of, my little spiel, and I guess, Mr.
8 Sullivan, at the end, after everybody gives their wish list, one
9 of which is Mr. Smith's shadow study, then, I guess we'll see
10 where we get.

11 Chairman Hood, may I get your opinion?

12 MR. HOOD: Chairman Hill, I just want to say to you
13 -- I want to thank you capturing all that, because if all that's
14 done, then we can go to -- start at that point, and then I can
15 work on the zoning issues. So thank you, Mr. Chairman. I concur
16 with exactly, word for word, what you just said. Thank you.

17 CHAIRPERSON HILL: Okay. All right. Well, I feel --
18 I got a gold star for Chairman Hill right there today.

19 Mr. Smith, is there anything else you want?

20 BOARD MEMBER SMITH: I just want to go on the record
21 -- so Mr. Kirschenbaum noted that -- what he had stated was that
22 we were only supposed to look at Section F, 5201.4(c) for the
23 development standard that triggered the special exception. So
24 in this particular case, yards. I don't agree with that
25 provision. I believe that because they are required to get relief

1 on the yard requirements under Section F, 5201.1, that it, in
2 turn, triggers a review of the entire addition in the context of
3 the original building as -- and we would look to the same as to
4 5201.4(c), in evaluating further adverse impact. So I do believe
5 that we are -- that we can look at the entire addition.

6 So that's the reason why I want -- requested a shadow
7 study to ensure that there aren't any adverse impacts on the
8 surrounding properties, not only Ms. Lea's property, but the
9 other properties.

10 So -- and he's also saying that -- and I spoke to this
11 earlier with Mr. Kirschenbaum, (c). I recognize that there are
12 other apartment buildings of this particular nature along the
13 block, but I don't want a window survey analysis of that. I
14 mean, I feel like that's what I got from the Office of Planning,
15 a window survey analysis of that. I think there is enough data
16 out there, or OP can request the data from the Applicant, on how,
17 based on the height, based on the size of this building, that
18 what is being proposed is in character with the block.

19 So I would request that information from OP, and also
20 from the Applicant, to ensure that this project meets all the
21 criteria as stated in 5201.4, (a) though (d), because currently,
22 as presented for this case, I am not there. So help me out.

23 CHAIRPERSON HILL: Okay. So what do you want, Mr.
24 Smith from the Office of Planning?

25 BOARD MEMBER SMITH: If they can conduct this analysis,

1 they can do a -- look at the heights and setbacks of the adjacent
2 properties, I would say, along that block or within the square,
3 as we define.

4 CHAIRPERSON HILL: Okay. Mr. Kirschenbaum, can you
5 hear me?

6 MR. KIRSCHENBAUM: Yes, I can hear you.

7 CHAIRPERSON HILL: Are you following along with Mr.
8 Smith and what he wants?

9 MR. KIRSCHENBAUM: I understand that he wants, you
10 know, it's not typically something we do for 5201, but, you know,
11 we'll -- whatever the Board wants us to do, we can try to do it.

12 CHAIRPERSON HILL: Okay. Even though Mr. Smith is
13 actually with NCPC, I'm going to humor him. Okay. Right. And
14 we can go ahead and, like, you know -- I know he's smiling over
15 there, go ahead, and if you can, Mr. Kirschenbaum, provide a
16 supplemental which outlines what Mr. Smith is looking for,
17 and/or, Mr. Smith, if you want to call Mr. Kirschenbaum, if he's
18 unclear, and then I can get that by the next time we're together.
19 Is that okay?

20 BOARD MEMBER SMITH: Sounds good to me.

21 MR. KIRSCHENBAUM: Then only thing I'm concerned about,
22 again, is that the height is not a right. So, you know, no height
23 is being exceeded above what would be allowed.

24 CHAIRPERSON HILL: I guess Mr. Smith is asking to see
25 the other buildings in the area.

1 MR. KIRSCHENBAUM: Pardon me?

2 BOARD MEMBER SMITH: I'm not debating that. I recognize
3 that, but I do want to -- regardless of the height, I do want to
4 see what is the context along the block.

5 MR. KIRSCHENBAUM: I'm sorry. What is the what along
6 the block?

7 BOARD MEMBER SMITH: Context along the block.

8 CHAIRPERSON HILL: Okay. Mr. Kirschenbaum, do you
9 understand?

10 MR. KIRSCHENBAUM: We will do our best.

11 CHAIRPERSON HILL: Okay. All right. Okay. Mr. Smith,
12 is there anything else?

13 BOARD MEMBER SMITH: (No audible response.)

14 CHAIRPERSON HILL: Okay. Ms. John, do you want
15 anything?

16 VICE CHAIR JOHN: (No audible response.)

17 CHAIRPERSON HILL: I can't hear you, Ms. John. Sorry.
18 You're on mute.

19 VICE CHAIR JOHN: Yes. I was looking at the regulation
20 for -- the driveway regulation, and I just wonder if it complies
21 with -- if the proposed driveway complies with the regulation.
22 But I can review that. So I have nothing.

23 CHAIRPERSON HILL: Okay. Mr. Blake, do you have
24 anything more?

25 BOARD MEMBER BLAKE: I have a ton, but no, I don't have

1 anything -- additional questions right now.

2 CHAIRPERSON HILL: Okay. All right. So Mr. Sullivan,
3 I guess what, maybe, I'll do is try to figure out how much time
4 you need to talk to everybody and, kind of, address their issues
5 and see if anything can, kind of, be resolved. Do you have a
6 time line for yourself?

7 MR. SULLIVAN: (No audible response.)

8 CHAIRPERSON HILL: Any -- I'm looking at your calendar.
9 You need shadow study, so that's something that's going take
10 something, right? And then how much time you think you need to
11 talk to everybody?

12 MR. SULLIVAN: Well, I'm just -- I'm trying to think
13 of -- I don't know, first of all, you know, I'm off the next
14 week, and a lot of times, the rubber doesn't hit the road until
15 after the first hearing, and then I think there's meat on the
16 bone, and there's lot of things we can address. Some of those
17 things that may or may not related to a BZA issue might take some
18 more time. Like, if we want to get a hold of a structural
19 engineer and get some more detail on -- like, for instance, if
20 the building's one -- if it's one building, then it's not up to
21 code, and something needs to be done right away anyway, 'cause
22 there's not supposed to be any openings between lot lines.

23 If -- regarding the easements and access, if the Board
24 wants to get into the self-certified issue, and again, I -- you
25 know, I struggle with this, because it -- but like -- and I think

1 that this --

2 CHAIRPERSON HILL: I'll give you (indiscernible).

3 MR. SULLIVAN: Well, I --

4 CHAIRPERSON HILL: I don't --

5 MR. SULLIVAN: Well, (indiscernible) the answers, I
6 don't know -- what date could we get, and then I can --

7 CHAIRPERSON HILL: Okay.

8 MR. SULLIVAN: -- work back from that --

9 CHAIRPERSON HILL: I got you.

10 MR. SULLIVAN: -- because maybe you tell me I've got
11 to wait two, three months anyway, and I would say that's plenty
12 of time.

13 CHAIRPERSON HILL: Right. Well, that's what -- I mean,
14 that's -- yeah. I mean, to be quite honest, like, I'm just trying
15 to figure it out a little bit. Like I don't think that easement
16 thing is something we need to get into, right, unless the Board
17 -- I mean, I don't -- it's not in our purview to decide whether
18 that easement is there or not, but you're saying it's there.
19 You're saying you're going to be able to use it. If you can't
20 use it, then that's whole other thing, right?

21 MR. SULLIVAN: That would be --

22 CHAIRPERSON HILL: You'd have to come back --

23 MR. SULLIVAN: -- (indiscernible).

24 CHAIRPERSON HILL: You'd be back to us. You'd be back
25 to us again without -- okay. Right.

1 MR. BROWN: Mr. Chairman, could I interject?

2 CHAIRPERSON HILL: Sure, Mr. Brown.

3 MR. BROWN: And I understand the point you're making
4 about a validity existence of the easement, but I think the
5 process would benefit from the Applicant providing a drawing
6 showing where the 10-foot easement driveway from MacArthur is in
7 relationship to the properties, and also showing the 12-foot
8 right of way, at least, across Dr. Lea's property. And then
9 providing some sort of turning movements.

10 CHAIRPERSON HILL: Right. Okay, Mr. Brown. I got you.
11 That sounds like something that you guys can discuss amongst your
12 selves, meaning if that's how they somehow get your signoff, is
13 like, you know, they won't turn around. I mean, again, what I'm
14 trying to get at, Mr. Brown, is this is self-certified, and if
15 they can't do what they say they're going to do, they have to
16 come back before us. So I don't want to go down the easement
17 railroad as to whether or not -- unless my fellow Board Members
18 want to raise their hand and, you know, they need something about
19 that. Chairman Hood.

20 MR. HOOD: I don't necessarily need a whole lot about
21 the easement, but I still think that's germane to
22 (indiscernible). I understand what you all are saying, but I
23 -- either way, I know that this is self-certified, but that wasn't
24 why I raised my hand. I raised my hand, because I had an
25 opportunity to ask for a perspective of the circumstances now,

1 and I would like to see what's being proposed to be dropped down
2 in the circumstances now. And Mr. Sullivan, you know what I'm
3 asking for. I'm asking for a rendering. And if you could point
4 me to one that represents what I'm asking for, I'll be fine with
5 it, but right now I don't see one in the file. But you all can
6 go back to the easement, but I figured I would just inject that
7 at this point. Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Mr. Sullivan, can you provide a
9 perspective?

10 MR. SULLIVAN: Sure.

11 CHAIRPERSON HILL: Okay.

12 MR. SULLIVAN: And I was just going to add, too, you
13 know, this is a long process. We're not in any great hurry. So
14 if it's July -- and then make sure -- and make sure we don't have
15 to come back. It's up to --

16 CHAIRPERSON HILL: No, that's fine. I mean, I'll tell
17 you what, Mr. Moy? Mr. Moy?

18 MR. MOY: (No audible response.)

19 CHAIRPERSON HILL: Yeah. You're not mute, Mr. Moy.

20 MR. MOY: Can you hear me?

21 CHAIRPERSON HILL: Yes, I can hear you now. Mr. Hood,
22 we're actually getting close to that 5:30 mark. I didn't think
23 our hearing would get anywhere near it.

24 MR. HOOD: We're on -- you're good. You're doing good.

25 CHAIRPERSON HILL: I'm good, but still, I didn't know.

1 It's a little -- it's a lot closer than I thought. Let's see.

2 Mr. Moy, you're -- we're jammed up forever, right?

3 Like, when's -- when are you scheduling now out in the future?

4 MR. MOY: At -- well, I'm only scheduling new cases,
5 actually, in September. But of course, as you know, Mr. Chairman,
6 we could always add more to a hearing docket.

7 CHAIRPERSON HILL: Okay. When's our last hearing date?
8 It's the 28th of July?

9 MR. MOY: Yes, it's -- that's correct.

10 CHAIRPERSON HILL: May, June, July. I'll tell you
11 what, Mr. Sullivan, how about we come back on the last day before
12 the recess, the 28th of July.

13 MR. SULLIVAN: Sure. That works.

14 CHAIRPERSON HILL: I mean, the only -- and the only
15 reason why I'm trying to say maybe that's -- like, what about
16 -- I want to make sure you got enough time. I don't know, you
17 might have to ask us to push back after the recess, which is
18 possible, and we might schedule now, I guess, like, 'cause if we
19 did a continued hearing on the 14th, we might still need new
20 stuff from you, so it might still not be the 28th. And currently,
21 I don't even know if you got the votes. So I don't know, right.
22 And I -- so mean, if you do the 14th, then maybe you could come
23 back on the 28th and then be done before the recess. Okay. All
24 right.

25 MR. SULLIVAN: (Indiscernible.)

1 CHAIRPERSON HILL: So come back on the 14th -- so come
2 back on the 14th, Mr. Moy. How many you got on the 14th? You
3 don't have an appeal, right? July 14th. You're on mute, Mr.
4 Moy.

5 MR. MOY: Yeah. The 14th is -- this would be the 10th
6 case for the 14th. Yeah. I know. I only have two dockets that
7 were, like, 9 cases, and I think --

8 CHAIRPERSON HILL: How many are --

9 MR. MOY: -- (indiscernible).

10 CHAIRPERSON HILL: How many is the 21st?

11 MR. MOY: All right. Just a second. The 21st is
12 better. We do have one appeal that day, but, you know --

13 CHAIRPERSON HILL: How many cases and the appeal?

14 MR. MOY: It's six plus one.

15 CHAIRPERSON HILL: Seven cases and an appeal?

16 MR. MOY: Well, it's six plus the appeal, and the one
17 case is a (indiscernible) review.

18 CHAIRPERSON HILL: What about July 7th?

19 MR. MOY: July 7th?

20 CHAIRPERSON HILL: Yeah. We don't have a hearing then.

21 MR. MOY: Yeah, that's because it's --

22 CHAIRPERSON HILL: The Fourth of July.

23 MR. MOY: -- yeah, the Fourth of July.

24 CHAIRPERSON HILL: Okay. Let's go ahead and put it on
25 the 14th. Let's do it on the 14th. What is it -- unless the

1 Board -- if somebody raise their hand, we'll go ahead and do 10
2 cases on the 14th, and hopefully, this one can go fast.

3 MR. MOY: Sure.

4 CHAIRPERSON HILL: Okay. All right. So if you do it
5 on the 14th, that means we need filings by the -- you tell me,
6 Mr. Moy.

7 MR. MOY: Well, I'm -- okay. Well, if the Applicant
8 -- assuming that you're going to provide responses from all the
9 parties, then we have two submissions, the Applicant -- okay,
10 working backwards, let's say responses from all the parties by,
11 let's say, July the 7th. And then provide parties to respond to
12 the filing form the Applicant, then the Applicant would need to
13 make their filing by, let's say, June the 23rd, or Friday, June
14 the 25th.

15 CHAIRPERSON HILL: So the Applicant would have to
16 provide their filings by June the 25th. That means all parties
17 could give their responses by July 7th; that's what you're saying?

18 MR. MOY: Yes.

19 CHAIRPERSON HILL: Okay. Mr. Sullivan, you got that?

20 MR. SULLIVAN: (No audible response.)

21 CHAIRPERSON HILL: Okay. And then -- yeah. I mean, I
22 don't know if you want to --

23 MR. MOY: And the last one, of course, is the -- you
24 had asked for a special supplemental from the Office of Planning.
25 And I suppose the Office of Planning can submit the same time

1 with the responses, July 7th, as well?

2 CHAIRPERSON HILL: Does that work with you, Mr.
3 Kirschenbaum?

4 MR. KIRSCHENBAUM: That is no problem.

5 CHAIRPERSON HILL: Okay.

6 MR. BROWN: Mr. Chair, wouldn't it be helpful for the
7 parties to have benefit of the OP's report prior to their filing?

8 CHAIRPERSON HILL: Yes, I was thinking that, too, Mr.
9 Brown. I mean, Mr. Kirschenbaum, can you give me your report by
10 the 23rd of June?

11 MR. KIRSCHENBAUM: Yes, we can get it to you.

12 CHAIRPERSON HILL: Okay. So OP is going to file by the
13 23rd of June, the Applicant's going to file by the 25th, and then
14 all parties will give responses by the 7th of July. Okay.

15 And so now, Mr. Brown, did you have a question?

16 MR. BROWN: Could we go to the 9th -- the Friday of
17 the 9th of July, because we have -- I know I'm going to lose some
18 time as a result of Fourth of July.

19 CHAIRPERSON HILL: Sure. Well, you're getting the
20 report -- you're getting the stuff back on the 25th of June. The
21 only reason why I can't give you the 9th is that's when I get
22 reports from OAG. So OAG has to have time to look at your stuff.

23 MR. BROWN: Okay. Very good.

24 CHAIRPERSON HILL: You know.

25 MR. BROWN: I'll make it work.

1 CHAIRPERSON HILL: Okay. Okay. So that means now, Mr.
2 Sullivan, I'm just going to put the burden on you, to a certain
3 extent, which is to get organized with Dr. Lea and Mr. Brown and
4 try to see where you all get. Okay.

5 MR. SULLIVAN: (Indiscernible.)

6 CHAIRPERSON HILL: And then we'll see what happens on
7 the 14th of July.

8 MR. MOY: Okay. And the 14th of July is a continued
9 hearing, correct, sir?

10 CHAIRPERSON HILL: Yes, please.

11 MR. MOY: Okay. That's what we had (indiscernible).
12 All right. Okay.

13 CHAIRPERSON HILL: All right. Okay. Well, I'm going
14 to excuse everybody.

15 (A chorus of thank yous.)

16 CHAIRPERSON HILL: Bye-bye. Oh, yeah. Hold on, hold
17 on. ANC Commissioner? Shoot. Where'd the Commissioner go? Is
18 he still there? Commissioner Szymkowicz?

19 MR. SZYMKOWICZ: (No audible response.)

20 CHAIRPERSON HILL: Commissioner, can you hear me?

21 MR. SZYMKOWICZ: (No audible response.)

22 MR. MOY: His name is on the screen.

23 CHAIRPERSON HILL: Yes. Okay. That's all right.
24 Commissioner, can you hear me?

25 MR. SZYMKOWICZ: (No audible response.)

1 CHAIRPERSON HILL: Mr. Young, he's still there, right?

2 MR. YOUNG: It looks like he is.

3 CHAIRPERSON HILL: Okay. All right. Well, Mr. Moy,
4 if you can reach out to the Commissioner and just let him know
5 the dates that are going on, and if, you know, if they wanted to
6 have another meeting -- if for some reason they thought it was
7 worthwhile to have the guy present again, then that would be even
8 more interesting.

9 MR. MOY: Okay.

10 CHAIRPERSON HILL: Mr. Young, you can excuse Mr.
11 Szymkowicz, then, thank you. All right. Let's see. Okay. So
12 then, Mr. -- Commissioner Hood will be back with us on that day.
13 I see July 14th, is that -- was that correct, Mr. Moy?

14 MR. MOY: Yes, sir. I'm assuming this is going to be
15 the first case of the day?

16 CHAIRPERSON HILL: Sure. And then we can do that,
17 'cause you guys got to make sure we do it fast, 'cause we've got
18 10 cases. So okay. All right. Well, Chairman Hood, you have
19 your hearing tonight, correct?

20 MR. HOOD: Thank you for leaving me 45 minutes to
21 debrief myself.

22 CHAIRPERSON HILL: Take a nap, get a massage. Do what
23 you need to do.

24 MR. HOOD: I'll probably be talking about undue
25 hardship at that hearing.

1 CHAIRPERSON HILL: Right. There you go. All right.
2 Okay. Then Mr. Moy, are we done? Okay. Nice to see everybody.
3 See you all later. Bye-bye.

4 DR. LEA: Thank you.

5 CHAIRPERSON HILL: Thank you.

6 (Whereupon, the above-entitled matter went off the
7 record at 4:42 p.m.)

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C E R T I F I C A T E

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This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 04-28-21

Place: Teleconference

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