

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 26, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice at 10:28 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL BLAKE, Board Member
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBILL, Commissioner
PETER MAY, Commissioner
ROB MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

TRACY ROSE, Secretary
PAUL YOUNG, Zoning Data Specialist

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

OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
KAREN THOMAS
BRANDICE ELLIOTT
STEVE COCHRAN
STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JOHN K. RICE, Esquire
ALEXANDRA CAIN, Esquire

The transcript constitutes the minutes from the
Regular Public Hearing held on May 26, 2021

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

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

Case No. 20447 - Application of Derrick Harris 6

Case No. 20437 - Application of Datis Properties, LLC . . . 10

Case No. 20438 - Application of David Bland & Marianne Roos

Case No. 20446 - Application of Cayre Jemal's Nick, LLC . . 40

Case No. 20445 - Application of 106 13th Street, LLC . . . 50

Case No. 20441 - Festival Center, Inc 77

Case No. 20455 - Airdome, LLC 88

1

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

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

2 (10:28 a.m.)

3 CHAIRPERSON HILL: This hearing will please come to
4 order. Good morning, ladies and gentleman. We are convened and
5 broadcasting this public hearing by video conference. This is the
6 May 26, 2021, public hearing of the Board of Zoning Adjustment,
7 District of Columbia. My name is Fred Hill, Chairperson. Joining
8 me today is Board members Carl Blake and Chrishaun Smith, and
9 representing the Zoning Commission will be Michael Turnbull.

10 Today's hearing agenda is available here on the Office
11 of Zoning website. Please be advised that this proceeding is
12 being recorded by a court report. It is also webcast live via
13 Webex and Youtube Live. The webcast video will be available on
14 the Office of Zoning's website after today's hearing. Accordingly,
15 everyone who is listening on Webex or telephone will be muted
16 during the hearing. And only persons who have signed up to
17 participate or testify will be unmuted at the appropriate time.
18 Please state your name and home address before providing oral
19 testimony or your presentation. Oral presentations should be
20 limited to a summary of your most important points. When you're
21 finished speaking please mute your audio so that your microphone
22 is no longer picking up the sound of background noise.

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

1 If you are experiencing difficulty accessing Webex or
2 with your telephone call, or if you have forgotten to sign up 24
3 hours prior to this hearing, then please call our OZ Hotline
4 number at 202-727-5471 to sign up to testify and to receive Webex
5 log in or call in instructions. All persons planning to testify
6 either in favor or in opposition should have signed up in advance.
7 You'll be called by name to testify. If this is an appeal, only
8 parties are allowed to testify. By signing up to testify all
9 participants completed the oath or affirmation as required by
10 Subtitle Y 408.7.

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

21 The order of procedures for special exceptions and
22 variances are pursuant to Y 409. The order of appeals is
23 pursuant to Y 507. At the conclusion of each case an individual

1 who is unable to testify because of technical issues may file a
2 request for leave to file a written version of the planned
3 testimony into the record within 24 hours following the conclusion
4 of the public testimony and the hearing. If additional written
5 testimony is accepted, then parties will be allowed a reasonable
6 time to respond as determined by the Board. The Board will then
7 make its decision at its next meeting, but no later than 48 hours
8 after the hearing. Moreover, the Board may request additional
9 specific information to complete the record. The Board and the
10 staff will specify at the end of the hearing exactly what is
11 expected and the date when persons must submit the evidence to the
12 Office of Zoning. No other information shall be accepted by the
13 Board.

14 The Board's agenda may include previous cases set for
15 decision. After the Board adjourns the hearing the Office of
16 Zoning, in consultation with myself, will determine whether a
17 full or summary order may be issued. A full order is required when
18 a decision it contains adverse to a party, including an affected
19 ANC. A full order may also be needed if the Board's decision
20 differs from the Office of Planning's recommendation. Although
21 the Board favors the use of summary orders whenever possible, an
22 applicant may not request the Board to issue such an order.

1 The District of Columbia Administrative Procedures Act
2 requires that the public hearing on each case be held in the open,
3 before the public. However, pursuant to 405(b)406 of the Act,
4 the Board may, consistent with its rules and procedures of the
5 Act, then turn to a closed meeting on a case for purposes of
6 seeking legal counsel on a case pursuant to DC official code
7 Section 2-575(b)4, and/or deliberating on a case pursuant to DC
8 official code section 2-575(b)13, but only after providing the
9 necessary public notice. And in the case of an emergency closed
10 meeting after taking a roll call vote.

11 Preliminary matters are those which relate to whether a
12 case will or should be heard today. Ms. Secretary, do we have any
13 preliminary matters?

14 MS. ROSE: Yes, Mr. Chairman. I would like to note the
15 cases that will not be heard today. These cases have been
16 administratively rescheduled to June 3, 2021, 20467 of Geoff
17 Anderson and Harriet Tregoning; 20468, Brigitte Rawlings; 20463,
18 application of 4524 Iowa Avenue, DC, LLC; 20471, application of
19 Ziad Demian and Merrill St. Leger; 20400, application of Green
20 Street Apartment, LLC; 20425, application of 616 Quebec Place,
21 Northwest, LLC. These cases, these three cases have been
22 administratively rescheduled to June 30, 2021; 20435, application
23 of 2015 Jackson Street 2019, LLC; 20469, application of Daniel

1 Hogenkamp; and 20470, application of 3218 Walbridge Place, LLC.
2 Any other preliminary matters we recommend that we address those
3 when we call the case.

4 CHAIRPERSON HILL: Okay, great. Thank you. All right,
5 everybody, let's go ahead and take 15 minutes. We'll come back at
6 10:45. Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record and then resumed at 10:48 a.m.)

9 CHAIRPERSON HILL: Ms. Rose, do you want to call us back
10 in and call in our first case?

11 MS. ROSE: Yes. We're coming back after a break. It's
12 10:48 a.m. or thereabout. And the first case is application
13 number 20447 of Derrick Harris. The relief as amended is for
14 modification to a theoretical lot subdivision and special
15 exception from the lot occupancy restrictions of Subtitle F,
16 Section 304.1, and the rear yard requirements of Subtitle F,
17 Section 305.1, pursuant to Subtitle C, Section 305.8, Subtitle F,
18 Section 5201, and Subtitle X, Section 901.2 to construct a one-
19 story rear deck to an existing three-story attached principal
20 dwelling unit in the RA-1 Zone at premises 1489 Howard Road,
21 Southeast, Square 5870, Lot 111.

22 CHAIRPERSON HILL: Okay, great. Thank you, Ms. Rose.

1 Mr. Morales, are you there? Mr. Morales? Mr. Harris,
2 are you there?

3 MR. HARRIS: Yes. I'm here. Yes.

4 CHAIRPERSON HILL: Mr. Harris, could you introduce
5 yourself for the record, please?

6 MR. HARRIS: Sure. Good morning. Thank you, Mr.
7 Chairman. My name is Derrick Harris. I'm the current resident
8 and owner at 1489 Howard Road, Southeast.

9 CHAIRPERSON HILL: Okay. And Mr. Harris, is Mr.
10 Morales your architect or something?

11 MR. HARRIS: Yes. He's a contractor with Long Creek
12 Construction. I don't know if he stuck around.

13 CHAIRPERSON HILL: Okay. That's all right. So, okay,
14 Mr. Harris, if you could go ahead and tell us about your project
15 and how you believe you're meeting the criteria for us to grant
16 the relief requested? And you can begin whenever you'd like.

17 MR. HARRIS: Sure. Thank you, Mr. Chairman. Good
18 morning, BZA Board members. I would like to or am proposing to
19 construct a one-story rear open deck on my property here, at 1489
20 Howard Road, Southeast. It is currently a residential property,
21 and would remain a residential property. My home is 20 feet wide.

22 The proposed construction of the one-story, open deck would be 18
23 feet wide, 10 feet long and 10 feet high. So this would allow for

1 substantial clearance on each side of -- and to ensure that there
2 is no encroachment to abutting homes. Also, this will ensure that
3 there is approximately 11 feet of clearance on the end of the
4 deck, constructed deck, to the property line.

5 Also, I would like to note that the proposed one-story
6 deck is consistent as in width, depth and the height, and in
7 harmony with many decks here in the community. An example of that
8 would be lot 113, which was previously approved by the BZA and the
9 Board.

10 Let's see, I've ensured that the neighboring property
11 owners, that the proposed addition, the one-story deck would be --
12 would not negatively affect/impact their properties light and/or
13 air, encroach on their property lines, damage existing vegetation,
14 pollute environment, block traffic, (indiscernible), and impede on
15 their sight line. And I have been in continued consultation with
16 Lowe's, Inc., and Long Creek Construction, who is licensed and
17 bonded in DC, to ensure that the one-story deck, which will not be
18 visible from the street, would not have a negative impact on the
19 character and scale of my home. And I have reached out to the
20 ANC, my property managers, my abutting neighbors a 1487 and 1491,
21 and there are no objections to the proposed deck, one-story deck.

22 Thank you.

1 CHAIRPERSON HILL: Great. Mr. Harris, you just said
2 property managers. Is there -- I'm just curious, is it a rental?

3 MR. HARRIS: Well, it's an HOA community. We have --
4 we have to go through a process.

5 CHAIRPERSON HILL: Oh, okay. Okay, that's great. It's
6 your home?

7 MR. HARRIS: Yes. It's my home, correct.

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

11 (No response.)

12 CHAIRPERSON HILL: No? Okay. I'm going to turn to the
13 Office of Planning.

14 MS. MYERS: Good morning. Crystal Myers with the Office
15 of Planning. The Office of Planning recommends approval of this
16 case and stands on the record of the staff report.

17 CHAIRPERSON HILL: okay, great. Does anybody have any
18 questions for the Office of Planning? And if so, please raise
19 your hand.

20 (No response.)

21 CHAIRPERSON HILL: All right. Mr. Harris, do you have
22 any questions for the Office of Planning?

23 MR. HARRIS: No. No.

1 CHAIRPERSON HILL: Mr. Young, is there anybody here
2 wishing to speak?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Okay. Mr. Harris, do you have
5 anything you'd like to add at the end?

6 MR. HARRIS: No. That's pretty much it.

7 CHAIRPERSON HILL: Okay. All right, I'm going to close
8 the hearing and the record, Mr. Harris. You have a nice day.

9 MR. HARRIS. All right, thank you.

10 CHAIRPERSON HILL: Mr. Turnbull, can I start with you so
11 I don't have to talk all the time?

12 MR. TURNBULL: Sure. Mr. Chairman, I think that Mr.
13 Harris' request meets all the requirements of the special
14 exception. I think he's gone out of his way to get all of his
15 owners' approval. I think the adding of the privacy screens on
16 either side also, that also means that there's going to be no
17 encroachment, no views onto their property. So, you know, going
18 through all of the regulations required for the special exception,
19 I think he meets all of those. And I agree with the Office of
20 Planning that we approve this. Thank you.

21 CHAIRPERSON HILL: Thank you, Commissioner Turnbull.

22 Mr. Smith?

1 MR. SMITH: I agree with Mr. Turnbull. I do believe
2 that the applicant has demonstrated that they meet all of the
3 criteria for the special exception. There are a number of rear,
4 open decks within that strip of townhouses that the applicant is
5 in. And I do believe that the proposal is in character with those
6 open decks that currently exist within that neighborhood. So I
7 would stand on the staff report, give great weight to OP's
8 analysis on this, and I will support this application.

9 CHAIRPERSON HILL: Thank you, Mr. Smith.

10 Mr. Blake?

11 MR. BLAKE: Yes. I would concur with the observations
12 made and the recommendation of the Office of Planning, and would
13 be prepared to support this as well.

14 CHAIRPERSON HILL: Okay, great. Thank you. I have
15 nothing to add. I will agree with my colleagues. I'm going to
16 make a motion to approve application number 20447 as captioned and
17 read by the secretary and ask for a second, Mr. Blake?

18 MR. BLAKE: Second.

19 CHAIRPERSON HILL: Thank you. A motion has been made
20 and seconded. Ms. John, could you -- I'm sorry. Ms. Rose, if you
21 could please take a roll call.

22 MS. ROSE: Yes. When I call your name please respond
23 with a yes, no or abstain. Mr. Turnbull?

1 MR. TURNBULL: Yes.

2 MS. ROSE: Mr. Blake?

3 MR. BLAKE: Yes.

4 MS. ROSE: Mr. Smith?

5 MR. SMITH: Yes.

6 MS. ROSE: Mr. Hill?

7 CHAIRPERSON HILL: Yes.

8 MS. ROSE: Staff would record the vote as 4 to 0 to 1.

9 This is on a motion made by the Chairman, seconded by Mr. Blake,
10 with Mr. Smith and Mr. Turnbull in support of the motion to
11 approve the application.

12 CHAIRPERSON HILL: Now, Mr. Blake, can you hear me?

13 MR. BLAKE: Yes, I can.

14 CHAIRPERSON HILL: I just realized I'm asking you to
15 second the motion. And the reason why is because NCPC normally is
16 not in line for vice chair or chair, because it's usually people
17 from the City. So that means, Mr. Blake, you're now number two.

18 MR. BLAKE: Oh, boy. Thank you.

19 CHAIRPERSON HILL: You better hope Ms. John stays
20 healthy, Mr. Blake.

21 All right. Ms. Rose, you can call the next one when you
22 get a chance.

1 MS. ROSE: The next application is 20437 of Datis
2 Properties, LLC, as amended for special exception from the
3 residential conversion requirements of Subtitle U, Section 320.2,
4 and the rear addition requirements of Subtitle E, Section 205.4,
5 pursuant to Subtitle E, Sections 205.5 and 5201, and Subtitle X,
6 Section 901.2, to construct a three-story and three-story rear
7 addition, and to convert an existing two-story detached principal
8 dwelling unit to a three-story semi-detached three-unit
9 residential building in the RF-1 Zone, at premises 1819 A Street,
10 Southeast, Square 1111, Lot 96.

11 This case was last heard on April 14, 2021. The Board
12 members participating in this case are the chairman, the vice
13 chair, who is not present today, Mr. Blake, Mr. Smith, and Zoning
14 Commissioner Turnbull. The Board continued the hearing and
15 requested a supplemental filing from the applicant and an optional
16 response from the ANC. Eight supplemental documents have been
17 filed. They are at exhibits 41 through 42B, and include from the
18 applicant an email from the zoning administrator a revised
19 certification, revised plans, and photographs. And from ANC6B
20 there is a response letter with attachments.

21 And finally, no one has signed up for the hearing to
22 speak except for the applicant's team. And that's all I have.

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

3 MR. SULLIVAN: Yes. Thank you, Mr. Chair and members
4 of the Board. Marty Sullivan with Sullivan and Barros on behalf
5 of the applicant.

6 CHAIRPERSON HILL: Okay. Thank you. Mr. Sullivan, were
7 you watching this morning?

8 MR. SULLIVAN: Yes.

9 CHAIRPERSON HILL: It was an interesting morning, right,
10 Mr. Sullivan?

11 MR. SULLIVAN: Yes. Always is.

12 CHAIRPERSON HILL: All right. Okay. Let's see, Mr.
13 Sullivan, could you please tell us what happened since the last
14 time you were here?

15 MR. SULLIVAN: So we did have further interaction with
16 the zoning administrator to clarify that relief wasn't needed for
17 architectural elements as a result of the cornice. If we had been
18 altering the cornice, relief would be required. But to build on
19 top of the cornice, there's no three-foot setback required. The
20 setback is only required for mansards and dormers, and other such
21 features, but not for the cornice. So we were able to withdraw
22 that element of the requested relief.

1 And also, in response to the Board suggestions, a third
2 window was added on the front elevation. And also, there were
3 some changes to building materials. And the architect is here and
4 can answer questions about that.

5 And we've also submitted some more information, photos
6 of some buildings in the surrounding area to show some more
7 evidence of the compatibility of the structure with the character,
8 scale and pattern of other structures in the area.

9 CHAIRPERSON HILL: Got it. Okay. And Mr. Sullivan,
10 again, forgive me, because I know we did have this. That -- the
11 cut out to get around the chimney, like -- and I know I think the
12 person who was here before, you were just unable to come to a
13 understanding with the owner about the chimney, correct?

14 MR. SULLIVAN: Yes, that's correct.

15 CHAIRPERSON HILL: And just because I'm curious, what
16 was the argument about not raising that chimney?

17 MR. SULLIVAN: Oh, it wasn't so much an argument, it
18 was -- and the owner is here and can talk about that as well. It
19 was more of a extreme difficulty in having any interaction with
20 the neighbor. There was some interaction, but then they sort of
21 went quiet. And there never was a real substantive discussion one
22 way or the other about the chimney.

1 CHAIRPERSON HILL: Okay. I just think it's -- I mean,
2 it happens every now and again. And I always find it peculiar.
3 All right.

4 Let's see, does the Board have any questions for the
5 applicant?

6 MR. SMITH: Sure. I would welcome the architect to
7 present the changes that they have done since the last hearing of
8 this case.

9 MR. CRAIN: Sure. It's probably mostly seen on exhibit
10 41C, which is the updated drawings. Let me see if I can pull
11 those up. I'm looking at page three of 12 on the pdf. This would
12 show from the perspective view of the front. And --

13 CHAIRPERSON HILL: Mr. Crain, first of all, if you can
14 go ahead and introduce yourself for the record.

15 MR. CRAIN: Sure. Adam Crain, project architect with
16 2Plys.

17 CHAIRPERSON HILL: Okay, great. Mr. Young, if you can
18 pull up 41C.

19 MR. CRAIN: We'll go to page three. And I'm kind of
20 looking at that rendering on the right-hand side. There -- we
21 added the third window. That was not previously shown, on the
22 left-hand side of the third addition, the front facade. There's a
23 bathroom there. We kind of made some modifications to that layout

1 to make that fit and match the windows below on the second floor.

2 In addition, the roof deck was pulled back several feet just to
3 kind of reduce the vertical imposition on the street. And it's a
4 little not clear on the screen share, but we did change the
5 addition siding to like a HardiePlank rather than the metal siding
6 we have previously shown.

7 CHAIRPERSON HILL: Mr. Smith, do you have more questions
8 in that area?

9 MR. SMITH: No. I don't have any additional questions.
10 Thank you.

11 CHAIRPERSON HILL: Okay. Thank you, Mr. Crain.

12 CHAIRPERSON HILL: Does anyone else have any more
13 questions of the applicant? Mr. Blake?

14 MR. BLAKE: Yeah. A quick question, Mr. Crain. I was
15 just curious, were there significant internal changes necessary to
16 facilitate the addition of the window?

17 MR. CRAIN: I wouldn't say significant. We shifted a
18 wall over in the bathroom. That's about it. MR. BLAKE:

19 Okay. Thank you.

20 CHAIRPERSON HILL: Anyone else for the applicant?

21 (No response.)

22 CHAIRPERSON HILL: Okay. Does the Office of Planning
23 have anything additional they'd like to add?

1 MS. THOMAS: Good morning, Mr. Chairman, members of the
2 Board. Karen Thomas with the Office of Planning. We have nothing
3 further to add, and we support the applicant's changes and the
4 changes made to provide that window to the front. And I'll stand
5 the record of our report. Thank you.

6 CHAIRPERSON HILL: Okay. Let's see, Mr. Smith?

7 MR. SMITH: Thank you, Mr. Chair. I just have one
8 question for the Office of Planning. Being that exhibit 41B was
9 submitted to show some additional properties along the block that
10 had these type of topless without tops on them, third-story
11 additions, the Office of Planning complete any analysis and look
12 at those particular properties in just the position with this
13 particular case?

14 MS. THOMAS: No. I didn't think that was necessary. I
15 had stated in my previous testimony that I knew of these
16 additions. I testified to them as such. And inasmuch as the ANC
17 provided those pictures and the applicant did, I saw nothing
18 further to add to it.

19 MR. SMITH: Okay. Thank you. It would have been great
20 to have some analysis on the heights of those properties. I
21 understand that this by right, it would have been great to get
22 that context, just, you know, going forward with any of these
23 cases. But thank you.

1 MS. THOMAS: Okay.

2 CHAIRPERSON HILL: Mr. Turnbull?

3 MR. TURNBULL: Thank you, Mr. Chair. Ms. Thomas, could
4 you go back over why you feel that the applicant going back 19-
5 and-a-half feet past the existing building is okay with the Office
6 of Planning?

7 MS. THOMAS: Well, the building is currently 14 feet
8 past as it exists. It's the third floor that's going 19 feet.
9 And at the third floor, the impact at that level we didn't see
10 this as significant as probably everything went back. Where the
11 19 feet comes in, in the first and second story, it's open with
12 decks. So the third floor just comes over and covers the first
13 and second floor decks. So at that level I didn't -- we didn't
14 think that the impact, that full 19 feet impact is not felt at all
15 three levels.

16 MR. TURNBULL: So would you do that, would you agree to
17 that on any residence that went back 19-and-a-half feet?

18 MS. THOMAS: Oh, it just depends on the lot or
19 orientation of the lot. We've approved additions, this Board has
20 approved additions and OP has recommended additions that are
21 granted in that.

22 MR. TURNBULL: So you don't think that this is a
23 precedent setting instance?

1 MS. THOMAS: No.

2 MR. TURNBULL: Allowing someone to go back 10-and-a-half
3 feet?

4 MS. THOMAS: No, --

5 MR. TURNBULL: It doesn't change the zoning regulations
6 or do anything to it?

7 MS. THOMAS: Yeah.

8 MR. TURNBULL: You do?

9 MS. THOMAS: In each case, no. In each case we analyze
10 each case. In this case we do not think it's going to change,
11 it's changing the zoning regulations. We've done several cases
12 where the additions are even greater than this 19 feet. And as I
13 said, the existent structure is already 14 feet past --

14 MR. TURNBULL: Well, when would you enforce the
15 regulations?

16 MS. THOMAS: On each case on its own merits.

17 MR. TURNBULL: Thank you.

18 CHAIRPERSON HILL: Mr. Smith?

19 MR. SMITH: Just a follow-up question. Because maybe I
20 missed something in the discussion. What was the analysis that
21 the Office of Planning conducted in coming to the conclusion that
22 it wouldn't have an impact? Was it completely based off of you

1 seeing this before in previous cases or was there a more thorough
2 technical analysis?

3 MS. THOMAS: No. We looked at the shadow studies, the
4 shadowing, the affect of that. And as I said, each case its own
5 merits. And we just go by what we have in our report, and that's
6 our analysis. We look at each case and its own merits.

7 MR. SMITH: So the analysis that -- the support that
8 you give for this is based off of just the shadow study?

9 MS. THOMAS: In addition to the fact that you only have
10 five feet for than what currently exists, and the addition where
11 it goes to 19 feet is at the top most level, which doesn't have a
12 significant impact on the adjacent property, the only the abutting
13 property. It's on a corner to an alley. We might have had a
14 different discussion if it were, you know, a middle lot or
15 something else like that. That would have been a different
16 discussion.

17 MR. SMITH: Okay. Thank you. I just wanted to see
18 OP's analysis. Thank you.

19 MS. THOMAS: Okay.

20 CHAIRPERSON HILL: Anyone else for Office of Planning?

21 (No response.)

22 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have any
23 questions for Office of Planning?

1 MR. SULLIVAN: No. Thank you.

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

4 MR. YOUNG: We do not. We do have the ANC on, Mr.
5 Holman.

6 CHAIRPERSON HILL: Oh, Commissioner Holman, are you
7 there?

8 MR. HOLMAN: I am. I apologize. I'm on my phone. My
9 power is out right now.

10 CHAIRPERSON HILL: That's all right. Let's see, did you
11 have something you'd like to add?

12 MR. HOLMAN: Yeah, I do, briefly. I don't have much
13 more to add necessarily germane to this case. I think we continue
14 to support the project and believe the design changes are good.

15 I do want to just take 45 seconds. The ANC's, the
16 community organizations understand that memberships and decisions,
17 and where the Board goes changes over time, but we simply have no
18 guidance on the fundamental questions of when design review will
19 occur, which portions will be reviewed, and on what standards
20 project will be reviewed. A cursory story in ANC that could bring
21 a hypothetical. Could we have conditioned our support on exact
22 design changes? For example, as we said, our support requires a
23 structural brick on all sides, no veneer, no siding no metal

1 paneling, one over one windows and paint and the applicant didn't
2 agree, would that require a full order? If you can make those
3 requirements I the application I see no reason why the ANC cannot
4 do the same. I doesn't feel right that the ANCs would have more
5 power over design review at this Board than we do at HPRB, a Board
6 that exists solely for design review.

7 We struggled a bit with the earlier hearing. I just
8 wanted to bring up these issues in hypothetical that can give and
9 sort of tilt the design review for lever, little too -- I can't
10 even think of a term -- I'm saying, please don't give us that much
11 power because it doesn't give us -- we are not -- we don't -- we
12 don't have the capacity, capability or guidance from your Board to
13 have that power.

14 So, anyway, I just wanted to highlight the issues that
15 we would have given the design review of this project for
16 additional projects. And I know it's easy to beat up on this
17 applicant, but not every case involves this applicant. So thank
18 you.

19 CHAIRPERSON HILL: No, Commissioner, thank you. I mean,
20 and we read your letter and questions in there. And I think
21 they're well founded and it can get confusing. I mean, I'll give
22 my perspective on certain things. You know, often times we say
23 that each case is judged on, you know, the merits of this case.

1 Right. Each ANC, there are so many ANCs, and they all kind of --
2 I also sometimes get confused by the different types of opinions
3 that the ANCs have. Right. So the only thing I can do is really
4 send you probably to the Office of Planning and, you know, the ZC
5 to get clarification on the answers. And I don't know from the
6 Zoning Commission standpoint, Commissioner, if you have any
7 additional things to add. But I would ask that maybe, you know,
8 Ms. Rose, if you could reach out to the Commissioner and try to
9 help him get some questions answered from the Office of Planning,
10 that might be helpful for him to take back to his ANC. That might
11 be helpful. But I don't know if, Commissioner Turnbull, if you
12 have anything to add?

13 MR. TURNBULL: Well, I have lots to add, but I don't
14 think we have time for it. No, Commissioner, I appreciate your
15 concern and your frustration. Believe me, the Zoning Commission
16 wrestles with this all the time. We ask, we have tried to work to
17 get the BZA more say in these issues from the standpoint of what's
18 going on architecturally. So I don't know where it's going to go,
19 but we struggle with it all the time.

20 Just for your own purposes, we had a, just a sort of
21 supplement to this hearing. But about two weeks ago or three
22 weeks ago we had a Webex meeting with the ZA, basically on the
23 same issue of this cornice. Because that had been raised by

1 Commissioner Eichenwald. And Mr. Eichenwald had a concern on a
2 same case that the ZA had just dismissed his concern about the
3 cornice. Because the ZA bases this whole thing upon the top of
4 the roof. If it has anything to do with the roof, then he will
5 not approve it. But he says a cornice is not approval, that you
6 can do whatever you want. We don't agree with that. And we
7 thought that they were supposed to have follow up meetings with
8 the ZA regarding this architectural about elements on the facade
9 of a building. But apparently that's gone by the wayside. So we
10 will be meeting with the Office of Planning and the ZA, if he
11 wishes to be a part of it, and talk about how we define all of
12 these elements on the facade of a building and how they relate to
13 the, or as it relates to the rest of the buildings on the street,
14 primarily row houses.

15 So it's frustrating. We run into this all the time.
16 We're still trying to work it out with the ZA, on how he
17 interprets things, if it's his own personal feeling on what he
18 does, or if there is a sound rationale for why he's doing it. We
19 think that there are instances, just as what Commissioner
20 Eichenwald brought up, that are very serious and need to be looked
21 at carefully, more than just what the ZA has got on his website.

22 Anyways, it's frustrating. But I would agree with
23 Chairman Hill. You might want to present your concerns to Ms.

1 Steingass at the Office of Planning and see if there's a way that
2 we can get this resolved better for you guys. I know you're
3 struggling with this. I think the BZA struggles with it too. I
4 know. But thank you for coming here and expressing your concerns.

5 MR. HOLMAN: And if we can schedule the supplied area
6 grievances on the ZA, that would be a cathartic for all of us.

7 MR. TURNBULL: I would agree. I would agree. Thank you
8 very much.

9 CHAIRPERSON HILL: Commissioner, I didn't hear the last
10 comment.

11 Mr. Holman: If we can have a city-wide area of
12 grievances on some of the decisions from the ZA, I think it would
13 (audio interference) for all of us.

14 CHAIRPERSON HILL: Yeah. And just to be clear,
15 Commissioner. I don't know, I mean, I guess -- I mean, Ms. Rose,
16 again, you can help the Commissioner get in touch with Ms.
17 Steingas or whoever he think, or whoever you think might be
18 helpful for him to get his questions answered. I mean, what I got
19 from the Commissioner Holman, Commissioner Turnbull, is that I
20 don't know if they want that much authority, you know. And so,
21 meaning design changes. I don't know where -- at least that's
22 what I got from the question, Commissioner Holman.

1 MR. HOLMAN: Right. We don't, you know, there's no
2 parties at HPRB, but we can certainly, and have extensive,
3 extensive design comments that are reviewed by the Board. And
4 that works, doesn't always work out for us. But if we have the
5 ability to say you must make these changes, otherwise, your
6 project gets delayed 16 to 18 months, that's a whole different
7 world, you know, if we were in opposition here. So that's my
8 concern.

9 CHAIRPERSON HILL: No, no, no. That's all right.

10 MR. TURNBULL: I would agree with you, Chairman Hill.
11 My thing, my main thing is that the Board itself should have a
12 little bit greater say on some of these issues. I think we're --
13 I always feel that we're kind of hamstrung on certain things that
14 we get into here. So I'm only saying that there could be some,
15 maybe some minor tweaks to what the Board can say or do on some of
16 these things.

17 CHAIRPERSON HILL: Okay. All right. Thank you,
18 Commissioner.

19 Let's see, does anybody have any questions for the
20 Commissioner?

21 (No response.)

1 CHAIRPERSON HILL: No? Okay. All right. Thank you,
2 Commissioner. You can stay there. I just -- I didn't realize you
3 were there. Sorry.

4 MR. HOLMAN: I'll see you later.

5 CHAIRPERSON HILL: Okay. Let's see, Mr. Sullivan, do
6 you have anything you'd like to add at the end?

7 MR. SULLIVAN: Thank you. ON the -- just to clarify on
8 the cornice. We definitely cannot touch the cornice. It is
9 definitely an architectural element that is protected under the
10 regulations. The only question is when you do an addition on a
11 level above a cornice do you need to set back three feet from
12 that? Now, the three-foot setback is an unwritten rule to begin
13 with. And that unwritten rule only applies to -- it does not
14 apply to a cornice, as you would expect. Because why would you
15 have to be set back from a cornice? So we had initially asked for
16 relief for that, just out of an abundance of caution. And then
17 when we were able to get clarification on it, we withdrew that.
18 But we definitely -- cornice is definitely an architectural
19 element that we can't touch. And on the side and on the front.

20 And then, second, on the shadow study and the evaluation
21 of the length of the building. We've done a lot of these cases,
22 and the Board has done many cases since 2015, and it's -- the
23 Board has been really consistent over the last few years, but

1 there's not a set number of length. Many factors are considered.
2 I'd say the most obvious factor is the relative configuration of
3 the building in relation to neighboring buildings. And when we
4 have a building that is to the west of the neighboring adjacent
5 building -- or, I'm sorry, east. So we have a potential property
6 being affected to the west, that's a case where the length of the
7 addition potentially has the most impact. And in those cases,
8 maybe 13, 14, 15 feet sometimes has deep discussion and
9 consideration of potential impact of that.

10 Then the most obvious case where there's not an impact
11 is if the building with the addition is to the north, directly to
12 the north of the adjacent building. Last week the BZA approved 23
13 feet without a problem because the neighboring building was to the
14 south. And so there was no impact from the shadow studies.

15 In this case the applicant's building is to the west.
16 And so that blunts the impact a little bit. But more importantly
17 than that is, there's an alley to the west and then a really large
18 apartment building to the west of that, a tall, almost 100 percent
19 lot occupancy apartment building, which has a significant impact
20 on the existing shadow and so limits the affect of any additional
21 length on the shadow in the afternoon to the property to the east.

22 So I think there's several factors to consider in the
23 shadow study, it's not just the length. And in this case, those

1 factors I think argue for that there's very minimal impact and not
2 undue impact on neighboring properties as a result of the
3 additional distance.

4 And that's all I have. I guess I, I won't get into
5 defending the zoning administrator. He has the hardest job in the
6 City. So -- and I know he's doing the best he can. Thank you.

7 CHAIRPERSON HILL: Okay. All right, Mr. Sullivan.
8 Yeah, I mean, thank you for everything you said. I'm just going
9 to push back on one little thing that you said. That last week we
10 did 23 feet without a problem. It's never without a problem. We
11 really think hard about that. I'm just saying that again for you
12 and your clients that are coming forward, like going beyond the 10
13 feet, particularly for Ms. John, I know is something that, you
14 know, we really struggle with. So just to be clear.

15 Okay. Anybody else got anything for Mr. Sullivan, for
16 the applicant?

17 (No response.)

18 CHAIRPERSON HILL: No? All right. I'm going to close
19 the hearing. Mr. Sullivan, thank you.

20 Let's see, it seems to me that there is more here to
21 discuss than I had originally intended or thought. However, I am
22 going to keep my comments brief, which is that I am going to agree
23 with the analysis that have been provided by the Office of

1 Planning, as well as that of the ANC. I know that there has been
2 discussion about the cornice and the three-foot setback. But I
3 guess that might get cleared up over at the Zoning Commission.
4 And even, you know, our ability to make design changes, that
5 might be something more that, we might get more flexibility later
6 from the Zoning Commission. I still do think that that third
7 window, it was, it was more just -- I did think there was, you
8 know, an adverse impact of sorts for that design and the way it
9 was. And I can, you know, argue that a little bit more if I
10 needed to. But I think it's a better design with the third
11 window. And I will be voting to approve. Commissioner Turnbull?

12 MR. TURNBULL: Yeah. Well, I'm not going to get into
13 the cornice issue. That's a separate issue now. It's become moot
14 with the ZA's letter, which just tosses that out the window. But
15 I will be giving my Ms. John vote and say I will vote opposed to
16 this because of this going back an extra nine-and-a-half feet, for
17 a total of 19-and-a-half feet beyond the existing building. So I
18 will be voting no.

19 CHAIRPERSON HILL: All right. Mr. Smith?

20 MR. SMITH: I'll try not to be as long winded. Just
21 to, you know, address some of the comments that I had. I think
22 the ANC Commission brought this up today and after the hearing
23 last time we were here. I think my concerns are more so not

1 directly design related. It was more so a question about bulk and
2 size as it relates to E52014C addition with the original building
3 doesn't visually intrude on character, scale and pattern as it
4 (indiscernible). So that was more so my concerns that I raised.
5 And that was the reason why I had asked for some context along the
6 block, which the applicant did provide (audio interference) the
7 different pop-ups within the neighborhood.

8 What I am more still concerned about is the analysis of
9 OP. It would have been great to get a more thorough analysis.
10 And I would be -- it seems like to me I got more of an analysis on
11 how this particular project didn't have adverse impacts from the
12 applicant more than I got from the Office of Planning. And that's
13 a major concern for me. So it would have been great to get more
14 analysis from the Office of Planning on how this particular
15 project as measured from the finish grade to the height the height
16 that we measure from zoning and to the rear, as Mr. Turnbull has
17 alluded to. And I think that's the reason why he's voting against
18 this, on why this particular proposal as submitted, based on the
19 bulk, is in keeping with the special exception criteria. I
20 believe that in our (audio interference) from the Office of
21 Planning. But in saying that, I do believe that based on the
22 culmination of the OP analysis, the analysis presented by the
23 applicant, and also in me looking through the record, I do support

1 | this application for these special exceptions. And I will be
2 | voting in approval for that. It would be great to get a better
3 | analysis from the Office of Planning for these projects and other
4 | project going forward.

5 | CHAIRPERSON HILL: Okay. Mr. Blake?

6 | MR. BLAKE: Yes. I would argue certainly that the
7 | applicant's changes have made for a better design. I've looked at
8 | all the buildings along the street from the pictures provided by
9 | the applicant. And it's a hodgepodge of different things. So
10 | consistency of design is certainly should be a factor that we
11 | consider, or certainly everyone should consider in these projects.
12 | But I don't think the project will unduly affect or compromise the
13 | light, air, or privacy of the adjacent properties. And giving
14 | substantial weight to the Office of Planning's recommendation,
15 | ANC's support, DDOT having no objection, I'm prepared to support
16 | the relief requested

17 | CHAIRPERSON HILL: Okay. So Mr. Smith, I'm going to go
18 | ahead and -- let's just make a note of that to OP. Like, we'll
19 | just make sure -- and Ms. Cain, if you could make sure that we
20 | reach out to OP and ask for more specific analysis when we're
21 | speaking of these cases that are going back beyond the 10 feet. I
22 | think that's what Mr. Smith was speaking towards. And the reason
23 | why I don't want to kind of hold this up a little bit, Mr. Smith,

1 is that this thing was back with us -- I don't know when we first
2 heard this thing, but it was like, it was way back. And we heard
3 it because, you know, we had to postpone all of this because of
4 the posting notices that we had, ourselves, kind of put at odds.
5 And so if it's all right, I'd just rather go ahead and make OP
6 aware of this and then we'll go ahead and move forward on this.
7 You seem to be nodding your head in agreement.

8 MR. SMITH: I completely agree with you. I didn't want
9 to hold this up. I would vote to support it just based off of
10 culmination of analysis. But I just wanted to make that known for
11 the record.

12 CHAIRPERSON HILL: Okay. All right. I'm going to go
13 ahead and make a motion then to approve application number 20437
14 as captioned and read by the secretary and ask for a second, Mr.
15 Blake?

16 MR. BLAKE: Second.

17 CHAIRPERSON HILL: Ms. Rose, the motion has been made
18 and seconded. Could you take a roll call vote?

19 MS. ROSE: Yes. When I call your name please respond
20 with yes, no or abstain.

21 Mr. Turnbull?

22 MR. TURNBULL: No.

23 MS. ROSE: Mr. Blake?

1 MR. BLAKE: Yes.

2 MS. ROSE: Mr. Smith?

3 MR. SMITH: Yes.

4 MS. ROSE: Mr. Hill?

5 CHAIRPERSON HILL: Yes.

6 MS. ROSE: And staff will record the vote as 4 to 0 to
7 1. This is on a motion made by Mr. Hill, seconded by Mr. Blake,
8 with Mr. Smith -- I'm sorry. I'm going to have to change that.
9 That would be 3 to 1 to 1. On a motion by Mr. Hill, seconded by
10 Mr. Blake, with Mr. Smith in support of the motion, Mr. Turnbull
11 opposed, and Ms. John not present, not voting.

12 CHAIRPERSON HILL: Okay.

13 MS. ROSE: Which will approve the application.

14 CHAIRPERSON HILL: Okay. Thank you, Ms. Rose. All
15 right. I'm trying to think what to do here. All right. Well,
16 let's see. So just to be clear in terms of the order with
17 everyone here today. We've still got 20438, then 20446, then
18 20445, then 20441, then 20455. Okay. Now, what I've been told
19 by staff is that there's a lot of people here to testify with
20 20445. And so what I would suggest is we'll go ahead and do the
21 next two cases, then take lunch, and then come back for 20445.
22 And I mention that so that people that are listening kind of know

1 when we might be at 20445. Okay. Does that sound fair? And if
2 not, somebody raise their hand.

3 (No response.)

4 CHAIRPERSON HILL: Okay. All right. Okay, let's see,
5 Ms. Rose, you can go ahead and call our next case when you get a
6 chance.

7 MS. ROSE: Yes. The next application is 20438 of David
8 Bland and Marianne Roos, on area variance from lot occupancy
9 restrictions of Subtitle D, Section 1204, pursuant to Subtitle X,
10 Section 1002 to construct a second-story addition to an existing
11 two-story nonconforming semi-detached principal dwelling unit in
12 the R-20 Zone at premises 3216 Reservoir Road, Northwest, Square
13 1280, Lot 929. And in this case, as a preliminary matter, the
14 applicant would need waivers to allow the PowerPoint presentation
15 into the record.

16 CHAIRPERSON HILL: Okay. Great. Thank you. Mr.
17 DeBear, could you introduce yourself, please?

18 MR. DEBEAR: Yes. My name is Eric DeBear. I am land
19 use counsel for the homeowner, David Bland and Marianne Roos, from
20 Cozen O'Connor

21 CHAIRPERSON HILL: Okay, great. Thank you, Mr. DeBear.
22 Let's see, is -- Mr. DeBear, who's with you here today?

1 MR. DEBEAR: David Bland, who is the homeowner, is
2 here, as well as Mark Cross, who is on the design and build team.

3 CHAIRPERSON HILL: Got it. Mr. Cross, can you hear me?

4 MR. CROSS: Yes. I've just been unmuted. I can.

5 CHAIRPERSON HILL: Great. Great. Can you introduce
6 yourself for the record, please?

7 MR. CROSS: Hello.

8 CHAIRPERSON HILL: Yes. Can you hear me? Mr. Cross?

9 MR. CROSS: There we go. I've just been unmuted and
10 video. Yes, I can.

11 CHAIRPERSON HILL: Can you please introduce yourself for
12 the record?

13 MR. CROSS: Yes. It's Mark Cross. I'm with a company
14 called MJCI, Inc., out in Fairfax. We're the contractor.

15 CHAIRPERSON HILL: Okay, great. Thank you. Mr. Bland,
16 could you introduce yourself for the record, please?

17 MR. BLAND: Yes. I'm David Bland. I'm the homeowner at
18 3216 Reservoir Road, and the applicant, along with my wife,
19 Marianne Roos.

20 CHAIRPERSON HILL: Okay, great. Mr. DeBear, in terms of
21 the wavier for the PowerPoint, I don't have any issues with
22 waiving and allowing the PowerPoint in there. It also seems like

1 | there's a resume from Mr. Cross; is that correct? You added that
2 | after that?

3 | MR. DEBEAR: That was -- yes, that was timely filed,
4 | Chair Hill, the resume from Mr. Cross. We also timely filed the
5 | PowerPoint. We just updated it yesterday. So that is what Ms.
6 | Rose is alluding to. We had some minor discrepancies we just
7 | wanted to fix for the record.

8 | CHAIRPERSON HILL: Got it. And are you trying to admit
9 | Mr. Cross as expert then; is that why you're saying that?

10 | MR. DEBEAR: Yes. Just in case he does need to assist
11 | in today's hearing.

12 | CHAIRPERSON HILL: Got it.

13 | MR. TURNBULL: As an expert in what?

14 | MR. DEBEAR: An expert in, I guess contracting and
15 | building.

16 | CHAIRPERSON HILL: Okay. Well, let's -- we'll see if we
17 | need to get to any questions with Mr. Cross. And if so, then
18 | we'll have the expert witness discussion. Okay.

19 | All right. So, Mr. DeBear, you can go ahead and give us
20 | your presentation as to why you feel that your client is meeting
21 | the criteria for us to grant the relief requested. I'm going to
22 | put 15 minutes on the clock just so I know where we are. And you
23 | can begin whenever you'd like.

1 MR. DEBEAR: Great. If Mr. Young can pull up the
2 updated PowerPoint that I sent to him yesterday. Thank you.

3 And so this is an application of the homeowners, David
4 Bland and Marianne Roos for their property at 3216 Reservoir Road,
5 Northwest. This is just a view of the front of their residential
6 property. Next slide, please.

7 The property is located in the R-20 Zone, right off
8 Wisconsin Avenue, but in a residential area. Next slide, please.

9 The proposal is to -- is really a small renovation to
10 the Bland and Roos home to address a stormwater issue that I'll
11 get to in a little bit, and expand their livable space on the
12 first and second levels. What they are proposing is to fill in a
13 portion of the internal alley on the first level, a court on the
14 second level, and then to cover approximately 20 square foot
15 internal court at the roof level. And importantly, this does not
16 involve any structural expansion beyond the existing building
17 envelope. Next slide, please.

18 In terms of community outreach, they have a letter
19 offering enthusiastic support from their only adjacent neighbor.
20 Again, as Mr. Bland will testify to, the adjacent neighbors also
21 experienced stormwater, the flooding issues that result from this
22 court and alley, and we'll get into that. ANC2E is in unanimous
23 support, Office of Planning recommends approval, and we also

1 obtained approval from the Old Georgetown Board. Next slide,
2 please.

3 And I will briefly walk through the existing conditions.
4 As the Board can see, this internal, the unique, internal alley
5 is on the left-hand side of the applicant's property. And you can
6 see, at the end of that alley it opens (audio interference) to the
7 light sort of filtering in there. Next slide, please.

8 On the second level we have this court that you can see
9 out of a window. That's actually an internal window. And, again,
10 that would be something they'd be filling in. Next slide.

11 And then at the roof, that's the genesis of, again, the
12 stormwater issue and with the open court. And you can see in the
13 roof area there. Next slide.

14 So now I'm going to just turn it over to Mr. Bland to
15 talk a little about the issues they face.

16 MR. BLAND: Thanks, Eric. Thanks to the Chairman and
17 the Board for hearing us today. Our house may not be unique, but
18 it certainly is anomalous. And as an inexplicable condition,
19 which is that the alley that runs basically the length of our
20 house north to south is covered, approximately 80 to 90 percent of
21 that alley is covered with a roof, leaving a six or seven-foot
22 expanse that is open to the sky, allowing stormwater and debris to
23 collect at the bottom of the alley. And there's no place for that

1 water to go except into the, our basement or the neighbors
2 basement, both of which -- both of us have installed French drains
3 to alleviate the water problem. But we don't -- that water has
4 got to go somewhere and we don't know where it's going to go and
5 how it's going to happen when storms increase in frequency or
6 intensity.

7 Currently water and debris clog the single drain that is
8 there, and then water stagnates. So what we want to do is put a
9 cover on that that no one can see, that has no affect in any other
10 capacity other than to save us from a nightmarish situation. That
11 will allow us then to convert that window, that looks out into an
12 open brick wall, into an internal closet. And on the first level
13 we'd be able to kick out the living space and add about three feet
14 of additional space, the length of our what is currently our
15 dining room and kitchen.

16 MR. DEBEAR: Next Slide, please. David, you want to
17 walk through the --

18 MR. BLAND: I'm sorry. Yes. Let me just add that that
19 would be -- we would add the extension to the kitchen. And it
20 will also provide us the opportunity to put a powder room on the
21 first level. Currently my wife's mother, who is 97 years old,
22 can't visit us because she's in a wheelchair and we can't -- we
23 can't go without a powder room on the first level. And she can't

1 go upstairs or go into the basement. So this would allow us to
2 put a powder room on the first level as well as expand what is a
3 very small kitchen.

4 MR. DEBEAR: Next slide, please.

5 MR. BLAND: And there's the closet we would add where
6 that window you saw in the first, one of the first slides. It's
7 just simply a window that looks into a blank wall. With a cap on
8 that, we could then convert that window into a door and add a
9 closet.

10 MR. DEBEAR: Next slide, please.

11 MR. BLAND: Is this the --

12 MR. DEBEAR: This is just the new roof, David.

13 MR. BLAND: Yeah. I think I prefer to let Mark Cross
14 to speak to that, if that's okay. Or maybe, Eric, you could do
15 it.

16 MR. DEBEAR: Yeah, I can talk to it. Thanks, David.
17 This is just where we'd be filling in essentially the existing
18 roof, opening the court that I spoke of before and reviewed
19 earlier. The HVAC would be just moved back to cover that, but the
20 crux of the project is, again, is just to fill in that roof level
21 there. And that's approximately 20 square feet. Next slide,
22 please.

1 And so we are seeking area variance relief. What is
2 permitted in the R-20 one is 40 percent. By special exception we
3 need 50 percent. However, the existing home is at, is already at
4 51.4 percent. So even though this is entirely an internal
5 addition, by covering that roof court we are going up to 52.7. So
6 that would be in the territory of an area variance. Next slide,
7 please.

8 And so as the Board is familiar with, there are, you
9 know, several, certainly many Court of Appeals cases that talk
10 about what the variance standard requires. And just to highlight
11 some of them, to support a variance the difficulties or hardships
12 must be due to unique circumstances that are peculiar to the
13 applicant's property and not to general conditions in the
14 neighborhood. The BZA also has the flexibility to consider a
15 number of factors, including weight of burden or strict
16 compliance, the severity of the variance requested, included
17 whether it's de minimis and the affect on the proposed variance on
18 the overall zone plan. Next slide, please.

19 In terms of the three-prong variance test. We do
20 believe there are three exceptional conditions. First being and
21 foremost, being that internal court that we've spoken about, we do
22 believe that it's a unique feature in this neighborhood. And
23 really throughout the City don't see that often with row homes.

1 The triangular shaped property, most properties in the row home
2 neighborhoods are square and larger than this one. And the
3 diagonal lot line that creates the triangular shape really results
4 in just a smaller buildable area for this project. And that's why
5 we are in the variance category. And then the building
6 restriction line, we also feel like that is, you know, one of the
7 compliments of the factors in that there is a two-foot building
8 restriction line along the alleyway that keeps this property from
9 being semi-detached. And why that is important is, a semi-
10 detached property in the R-20 -- or, I'm sorry, an attached
11 property in the R-20 Zone can have up to 60 percent lot occupancy.
12 So for most row homes in the R-20 Zone, they get 60 percent lot
13 occupancy. But because of this BRL, it cannot possibly be an
14 attached row home. And we have 40 percent. Next slide, please.

15 In terms of what these unique conditions create in terms
16 of practical difficulty. Again, the existing home is a
17 nonconforming, a sole opportunity. So really any addition
18 requires variance relief. And we do feel as though this is a very
19 modest internal addition that just so happens to expand the lot
20 occupancy, even though there is no structural expansion. And
21 then as Mr. Bland testified, they have dealt with ongoing basement
22 flooding that has been quite costly to remedy. They did install a
23 French drain but, again, that only alleviates the flooding. It

1 does not stop it from occurring in the first place. And in order
2 to really rectify that condition, they need to cover the court so
3 that water drains from the roof, not into their internal alley,
4 but rather off the property or into their yards. Next slide,
5 please.

6 And then in terms of no detriment to the public good or
7 the zone plan, again, it's a modest internal addition. It's
8 entirely within the building envelope. It cannot be seen from the
9 exterior of the home. The adjoining neighbors, and only adjoining
10 neighbors are enthusiastically in support and have a letter in
11 the record. There will be no impact to light, air or privacy.
12 Office of Planning is in support of this variance, and we also
13 have OGB support. Next slide.

14 And how we'd be happy to answer any questions that the
15 Board might have.

16 CHAIRPERSON HILL: Thank you, Mr. DeBear. Does the
17 Board have any questions for the applicant, and if so please raise
18 your hand. Mr. Turnbull, Commissioner?

19 MR. TURNBULL: Yeah. Thank you, Mr. Chair. You
20 mentioned that you had been, you got approval from the OGB. But
21 is there anything in the record, did you submit anything that
22 shows the approval?

1 MR. DEBEAR: I do not believe there's anything in the
2 record. We were on their consent agenda at the beginning of this
3 month.

4 MR. TURNBULL: You're on the consent, but have you --

5 MR. DEBEAR: We were on their consent agenda.

6 MR. TURNBULL: So you have it, but you have approval?

7 MR. DEBEAR: Yes.

8 MR. TURNBULL: Okay. It would have been good to at
9 least have that in the in the record, just for us to know that you
10 know that you had actually been there. I've got a
11 question. You referred to an alley. This is really a private,
12 internal alley?

13 MR. DEBEAR: Correct.

14 MR. TURNBULL: On the property. Now, there is a --
15 there's an existing window and a vent on the property next door,
16 in this alley, on the building; what's going to happen to that?

17 MR. BLAND: I'm sorry, say it again.

18 MR. TURNBULL: There -- on your drawings, drawing number
19 one, it shows that there is a, after the beam wall it says window
20 with vent above on the property next door, belonging to your
21 neighbor. What's going to happen with that? Is your -- aren't
22 you -- you're closing that in?

1 MR. DEBEAR: Can you bring up the slide, Paul, please,
2 just so we can all look at it?

3 MR. TURNBULL: Paul, it's drawing one. Paul, go back
4 one.

5 MR. DEBEAR: To five.

6 MR. TURNBULL: Yeah. There's -- on that bottom, toward
7 the bottom of the red square it says window with vent above, and
8 it shows like that's going to the house next door. Are you --
9 what's going to happen there?

10 MR. BLAND: There is a window in that gap, and it's been
11 closed off on the inside by the basement, from a basement wall for
12 the adjoining owner. And the vent is an unused dryer vent that
13 they closed off.

14 MR. TURNBULL: All right. So that's been totally closed
15 off?

16 MR. BLAND: Yes.

17 MR. TURNBULL: And bricked in, apparently?

18 MR. BLAND: Yes. Well, it's either bricked or drywall.
19 I don't know.

20 MR. TURNBULL: Okay. All right. Thank you. Those are
21 my questions, Mr. Chair.

22 CHAIRPERSON HILL: Thank you, Commissioner Turnbull.
23 Anyone else?

1 (No response.)

2 CHAIRPERSON HILL: All right. I'm going to turn to the
3 Office of Planning.

4 MS. ELLIOTT: Good morning, Mr. Chairman, members of the
5 Board. I'm Brandice Elliott representing the Office of Planning
6 for BZA case 20438. The Office of Planning is recommending
7 approval of the area variance that's been requested for lot
8 occupancy. It would allow the applicant to enclose an existing
9 court that's about 20 square feet in area. It would increase the
10 lot occupancy about 1.3 percent above the existing condition.

11 In this case the existing court is a unique design
12 feature that results in practical difficulties. The applicant has
13 already gone through a lot of photos to show us some of the water
14 issues that they've been dealing with with their basement. They
15 have tried to pursue other mitigation options like waterproofing
16 the basement and installing the French drain. But obviously those
17 don't stop the issue from happening to begin with. So closing the
18 court is their option in order to mitigate or finally resolve
19 their stormwater issues.

20 The Office of Planning does not find that the increased
21 lot occupancy would have a substantial detriment to the public
22 good. The extension of the roof would not be visible from the
23 public right of way. The applicant is not proposing any changes

1 to the building facade. And there would not be any impact to
2 light and air to adjacent properties, because it's of a court.

3 We also find that there would be no substantial
4 impairment to the intent, purpose and integrity of the Zoning
5 Regulations.

6 The purpose of the lot, or the intent of the lot
7 occupancy regulation is to control the total volume of buildings
8 on the lot. And in this case the increased lot occupancy does not
9 result in any additional volume or mass to the building, and it
10 doesn't remove any functional open space or recreational space.
11 And so we find that it meets the variance test.

12 So I will conclude my testimony with that. But I'm
13 happy to answer any questions that you have.

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

16 (No response.)

17 CHAIRPERSON HILL: Okay. Ms. Elliott, do you know,
18 historically, is it just like a doorway? I mean, people just
19 wanted access to their back yard. Do you know why that was there,
20 those things are there?

21 MS. ELLIOTT: I honestly could not say in this case why
22 the alley exists. I don't.

1 CHAIRPERSON HILL: Okay. All right. Let's see, Mr.
2 DeBear, do you have any questions for the Office of Planning?

3 MR. DEBEAR: I do not.

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

6 MR. YOUNG: We do not.

7 CHAIRPERSON HILL: Mr. DeBear, do you have anything
8 you'd like to add at the end?

9 MR. DEBEAR: I do not.

10 CHAIRPERSON HILL: Okay. All right. I'm going to go
11 ahead and close the hearing and the record. Mr. Young, if you
12 could please excuse everyone. Commissioner Turnbull, since I'm
13 going to take a break, do you mind starting?

14 MR. TURNBULL: I would agree with the Office of Planning
15 analysis. I think that there is a, that the relief they're asking
16 for is de minimis. I think that the lot area -- no one will ever
17 know about this. I think that -- and it does, there is a
18 practical element here that is with the drainage and water, and
19 everything else. So I think all of the things that the Office of
20 Planning does state in their variance relief analysis is correct,
21 and I would totally agree with it, and think that, again, it is a
22 de minimis relief that they want. And I would be voting in favor
23 of this.

1 CHAIRPERSON HILL: Mr. Smith?

2 MR. SMITH: I agree with Mr. Turnbull. I do believe
3 that this relief is de minimis. And I agree with the Office of
4 Planning's analysis in the various variance prongs. I do believe
5 it meets every variance, every prong of the variance test for a
6 variance. So with that, I would support the area variance for
7 this case.

8 CHAIRPERSON HILL: Okay. Mr. Blake?

9 MR. BLAKE: Yeah. I too agree that the prongs of the
10 area variance test have been met, and I've given substantial
11 weight to the analysis by the Office of Planning. I would be
12 prepared to support this as well.

13 CHAIRPERSON HILL: Okay. Thank you. I don't have
14 anything to add that my colleagues haven't already said. So I'm
15 going to go ahead and make a motion to approve application number
16 20438 as captioned and read by the secretary, and ask for a
17 second, Mr. Blake?

18 MR. BLAKE: Second.

19 CHAIRPERSON HILL: Ms. Rose, the motion has been made
20 and seconded. If you don't mind taking a roll call vote.

21 MS. ROSE: Yes. When I call your name please indicate
22 with a yes, no or abstain.

23 Mr. Turnbull?

1 MR. TURNBULL: Yes.

2 MS. ROSE: Mr. Blake?

3 MR. BLAKE: Yes.

4 MS. ROSE: Mr. Smith?

5 MR. SMITH: Yes.

6 MS. ROSE: Mr. Hill?

7 CHAIRPERSON HILL: Yes.

8 MS. ROSE: Staff would record the vote as 4 to 0 to 1.

9 This is on a motion by Chairman Hill, seconded by Mr. Blake. In
10 support of the motion is Mr. Turnbull and Mr. Smith. And Ms. John
11 is not present, not voting. And this is to approve the
12 application.

13 CHAIRPERSON HILL: Okay, great. Thank you. You guys,
14 so what I -- my plan was, and this is for those listening, is
15 we'll go ahead and do 20446 and then take lunch, and then come
16 back and do 20445. Because I know, as I mentioned, there's a lot
17 of witnesses that want to testify. If it's all right with the
18 Board, if we could just take a three-minute break real quick, and
19 I'll come right back. Just a quick five-minute break. Thank you.

20 (Whereupon, the above-entitled matter went off the
21 record and then resumed at approximately 12:00 noon.)

22 CHAIRPERSON HILL: Ms. Rose, could you please go ahead
23 and call our next case?

1 MS. ROSE: That would be application number 20446 of
2 Cayre Jemal's Nick, LLC, for a special exception under the
3 penthouse requirements of Subtitle C, Section 1500.3©), pursuant
4 to the Subtitle X, Section 901.2, to permit a bar/restaurant use
5 within the penthouse of a proposed residential building,
6 constructed on an existing parking lot in the D-5 Zone, at New
7 York Avenue and 1st Street, Northwest, Square 699, Lot 855; Square
8 670, Lots 1 through 9, 13 through 28, 53 through 62, 64 through
9 70, 801, and 811.

10 As a preliminary matter, a waiver is needed to allow the
11 applicants PowerPoint presentation into the record.

12 CHAIRPERSON HILL: Okay. Ms. Bloomfield, could you
13 introduce yourself for the record, please?

14 MS. BLOOMFIELD: Good morning. Jessica Bloomfield with
15 the law firm of Holland and Knight. And if William Hellmuth has
16 not been admitted yet, could he please be admitted. He's our
17 architect, Mr. Young.

18 CHAIRPERSON HILL: Okay. I see him. All right. Mr.
19 Turner, can you hear me?

20 MR. TURNER: Yes, I can hear you. Can you all hear me?
21 This is Drew Turner with Douglas Development.

22 CHAIRPERSON HILL: Okay, great. Let's see, Mr.
23 Hellmuth, can you hear me?

1 MR. HELLMUTH: I can hear you. Can you hear me?

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

4 MR. HELLMUTH: I'm William Hellmuth with HOK
5 Architects.

6 CHAIRPERSON HILL: Okay. Mr. Hiyu, can you hear me?

7 MS. HIYU: I can hear you.

8 CHAIRPERSON HILL: Oh, it's Ms. Hiyu. I'm sorry. Can
9 you introduce yourself for the record, please?

10 MS. HIYU: I'm Chloe Hiyu from HOK Architects.

11 CHAIRPERSON HILL: Okay, great. So Ms. Hiyu and Mr.
12 Hellmuth, I guess we need to address whether or not they're
13 witnesses. I'm sorry, whether they are -- wait. Yeah, whether
14 they're experts in the field of architecture. Before we do that
15 I'm first going to go to the waiver issue concerning the
16 PowerPoint. Unless the Board has any issues, I'd like to go ahead
17 and waive the time limit for that because I'd like to have the
18 PowerPoint into the record. And if somebody has an issue with it,
19 please raise your hand.

20 (No response.)

21 CHAIRPERSON HILL: Okay. That's number one. Another
22 one I guess is the applicant's response to DDOT, there needs to be
23 a waiver for that. I guess is that also correct, Ms. Bloomfield?

1 MS. BLOOMFIELD: That's correct. Yes.

2 CHAIRPERSON HILL: Okay. So I don't have any issues
3 with the waiver to allow the applicant's response to get that into
4 the record, unless someone else does. Please raise your hand.

5 (No response.)

6 CHAIRPERSON HILL: Okay. And then, finally, in terms of
7 the witnesses and architects, I've looked at the resumes and I am
8 comfortable with them being experts in architecture. However, we
9 do have an architect on the Board today. And so I don't know if
10 he has any questions or if anybody else does, before we allow them
11 into the record as experts. Mr. Turnbull, do you have questions?

12 MR. TURNBULL: Not really, Mr. Chairman. Mr. Hellmuth
13 has been before the Zoning Commission multiple times. I have no
14 question with him. I just don't know why we need two architects
15 to talk about a bar. So --

16 MS. BLOOMFIELD: Mr. Turnbull, we don't. We didn't --
17 we don't -- we're not going to have Chloe testify. She's just
18 part of our team. But thank, you.

19 MR. TURNBULL: All right. Thank you.

20 CHAIRPERSON HILL: Well, Mr. Turnbull, we don't get such big
21 projects all the time. Every now and again we like to be
22 considered some of the big boys on the block. Okay. So I think -
23 - you don't need --

1 MR. TURNBULL: Mr. Hellmuth is one of the big boys.

2 CHAIRPERSON HILL: Maybe we -- well, I kind of can tell
3 by the project that he's probably one of the big boys, right. And
4 I do know the development company. So nonetheless, all right.

5 So unless anybody has any problems, we're going to allow
6 both into the record as experts in architecture. Given the fact
7 that Ms. Hiyu ever is before us again, we don't have to do this
8 again.

9 So, all right, so that being the case, Ms. Bloomfield,
10 if you want to go ahead -- and Mr. Young, if you can pull up the
11 PowerPoint presentation. I'm going to put 15 minutes on the clock
12 so I know where we care. If you can tell us why you believe your
13 applicant, your client is meeting the standard for which we can
14 grant the relief requested. And you can begin whenever you'd
15 like.

16 MS. BLOOMFIELD: Fantastic. Thank you. Again, Jessica
17 Bloomfield of Holland and Knight for the record. I'm just going
18 to do a very brief summary of the zoning relief requested, and
19 then I'm going to turn it over to the rest of our team to go
20 through a short presentation.

21 The application requests special exception relief to
22 permit a bar and restaurant use in the penthouse of a proposed
23 multi-family building located on New York Avenue, Northeast,

1 between North Capitol to the west and 1st Street, Northeast to the
2 east. The property is currently vacant and used as surface
3 parking.

4 The proposed bar and restaurant use is permitted as a
5 matter of right in the sites underlying zone, but is permitted in
6 the penthouse only as a special exception. And the documents that
7 we filed in the case very clearly lay out evidence as to how the
8 application meets the special exception standard of review.

9 We are pleased in this case to have full support from
10 the Office of Planning, DDOT, and the ANC. The Office of
11 Planning's report indicated no concerns or conditions with the
12 application. The DDOT report did state two conditions, and we
13 agree to both of those. The first was to implement the TDM plan
14 which was listed in their report at pages two. And the second was
15 that we revise the site plan that was submitted with our pre-
16 hearing submission to show that a vehicular connection to either
17 1st Street or New York Avenue to the east of the site would not be
18 provided. And we did provide that site plan. That's at exhibit
19 39A in the case record, and we'll also go through it in our
20 PowerPoint if you have questions.

21 Finally, we are pleased to have support from ANC5E, our
22 respected ANC. They voted in March, at their public meeting, to
23 support the application.

1 And with that, I would wrap up, reiterate the
2 application support from OP, DDOT, and the ANC, that we have met
3 the special exception standard of review. And I will turn it over
4 to Drew Turner. Thank you.

5 MR. TURNER: Thank you, Jessica. If we can jump to the
6 next slide.

7 My name is Drew Turner. Once again, I'm with Compass
8 Development. And thank you to all the Commissioners for having us
9 here today. We -- what you see here on the site plan is the area
10 in red is the lot that we are talking about. As we go further,
11 you'll see we are not no filling up the entire lot, the area in
12 red, with the building itself. As Jessica already mentioned, the
13 building is a mixed use development. It will have, roughly 520
14 apartments, 10,000 square feet of retail, two levels below grade
15 of parking, around 265 spots, and then a 5,000 square foot
16 penthouse/bar use.

17 The site is (audio interference) for many year now.
18 We're really excited about having it in a state where we've
19 finally got a plan, moving forward with it. We're just excited to
20 really take a lot of the momentum and activity that's happened and
21 market and bring that north of New York Avenue.

22 Some unique aspects of the site, not so germane to the
23 case, but the O Street right of way was closed back in 2000. We

1 will be reestablishing the O Street right of way. We'll be
2 bringing it back to its original 90-foot right of way. And that -
3 - those improvements will be part of this project. The bar and
4 penthouse use is something that we're really, with residential
5 apartment communities we're seeing more and more hospitality
6 aspects come into these residential communities. And a rooftop
7 bar is no different. You know, you think of many of the
8 successful hotels have that. And we look at that as a great
9 amenity for the residents as well as for the surrounding
10 community. It will be open to the public. As far as hours of
11 operations go, you know, most of our amenities in residential
12 buildings close between 10 and 11. And this will be similar. So
13 we don't expect this to be a huge noise issue, even though there
14 are not many residential buildings or single family homes directly
15 adjacent to us. We're just really more concerned about the
16 residents that will be living in the building directly below this.

17 As Jessica mentioned, DDOT does have plans for Dave
18 Thomas Circle. We are fully up to speed on those plans, and we
19 are very excited about them improving the traffic that everyone
20 knows as you're coming in and out of New York Avenue. You know,
21 they will be closing off our access to O Street as part of that.
22 But it's going to be great park space. And we will be working
23 with DDOT for access off of New York Avenue to the west of the

1 area that's shown in red right here. Can we jump to the next
2 slide.

3 It just shows the lot. You can go to the next slide.

4 And I'll pass it off to Bill Hellmuth. Thank you.

5 MR. HELLMUTH: Great. Thanks, Drew. So I just was
6 going to go quickly through the, how the building lays out and how
7 it's all working. You can see that the private street, which is O
8 Street essentially, that's where the major drop off to the
9 building is, vehicular drop off as well as entering the garage
10 from there. And the loading dock also occurs off of that street
11 on the north. Go to the next slide, please.

12 Given the size of the building and so forth, it's a
13 524,000 square foot building. We're breaking up the mass and
14 really articulating it to sort of create a more human scale on
15 what we think is a pretty terrific site right there on New York
16 Avenue. The -- to the -- further to the east is articulated with
17 bay windows and then an embellishment at the very corner, which
18 follows all the embellishment rules. It's a percent of the facade
19 of each facade of that and so forth. And then there is a south
20 facing court where the center section is. And that's really sort
21 of almost in the shape of an "I". So there's also a north facing
22 court, which is where the vehicular drop off occurs. And then the

1 remainder of the building sort of beyond that. Next slide,
2 please.

3 So on the ground floor you can see from the private
4 street where the vehicular drop off is, and you drop off and then
5 go on down into the garage. And then just a bit beyond that is
6 the loading dock entrance. People who are coming to the
7 apartment, to go to their apartments use the elevator core on the
8 left or the one on the right. People going to the restaurant and
9 bar will use the one on right, where you can see the four
10 elevators, two larger elevators and then two more passenger sized
11 elevators. Along New York Avenue we have units in retail and then
12 really along sort of a western edge we have retail along in there.
13 Go to the next slide, please.

14 There is a terrace, really for the occupants of the
15 building on the second floor, which allows a lot of the amenities
16 and so forth. And you can see the two courts, the double court
17 building, given the size and length supporters. Go ahead to the
18 next slide, please.

19 Difficult floor here. And next slide, please.

20 And next slide.

21 And next slide.

22 And then up at the roof there is a pool deck, an
23 infinity pool. And it's set back so it meets all the regulations

1 of penthouse and so forth. The restaurant and bar is on the east
2 side of it. You can see that in purple. And there is, on that
3 section of building is also a communal rooftop recreational space
4 for the building. So you get your -- as you come out of one of
5 those four elevators to go to the restaurant and bar, which will
6 have pretty spectacular views, sort of from that vantage point.
7 The bar most likely will be on the south side. So you will get
8 those views and the restaurant in there. There is some roof deck
9 with outdoor seating, which can sit right there at the prow of the
10 building. And anyone who has ever been to those kind of prow type
11 roof top bars -- and I am an architect that does like to talk
12 about bars -- this will be a pretty terrific location. Next
13 slide, please.

14 And the pool deck. Next slide, please.

15 Below are two levels of parking. There are 265 cars in
16 the parking level. The elevators come down and serve down into
17 the parking. And there's also 120 unit of bike storage. Go
18 ahead.

19 And go ahead, please.

20 You can see the facades, how we've broken it down in the
21 elevations. Go ahead, please.

22 View coming in New York Avenue. And you can sense the
23 articulation of the building there. Go ahead.

1 And go ahead.

2 And go ahead.

3 Largely masonry with the window openings and so forth.

4 And that concludes my presentation.

5 MS. BLOOMFIELD: Thank you, Bill. That concludes our
6 entire presentation. And our team is here to answer any questions
7 that you may have. Thank you.

8 MR. SMITH: You're on mute, Mr. Chair.

9 CHAIRPERSON HILL: Thank you. I said does the Board have
10 any questions for the applicant and if so, please raise your hand.

11 Mr. Turnbull?

12 MR. TURNBULL: Thank you, Mr. Chair. I just had a
13 couple -- I should -- I need to disclose at first that Mr.
14 Hellmuth's firm has worked for the architect of the
15 (indiscernible). So I just wanted to put that out there. It will
16 not influence how I look at the case though. Thank you.

17 CHAIRPERSON HILL: Thank you.

18 MR. TURNBULL: Thank you for your presentation. That's
19 a presentation that really looks to be a very exciting building
20 and a welcome add to the skyline of the City.

21 My question is, you've got a lot of drawings on the
22 building but the drawings of the bar are kind of very small. And

1 I do have some questions on that. What is the occupancy of the
2 bar; how many people are going to be up here?

3 MR. HELLMUTH: I'm going to put that one to either
4 Chloe or Drew, which is one of the reasons we've got Chloe in
5 here. She's --

6 MS. HIYU: We have an occupancy, based on the floor
7 area, of about 300. And this includes staff and outdoor seating.

8 MR. TURNBULL: Okay. Now, there --

9 MS. BLOOMFIELD: Drew, do you want to address how many
10 --

11 MR. TURNER: I was going to say we'll likely limit the
12 capacity well below whatever code allows for occupancy in terms of
13 the assembly loads for a bar or restaurant. Given that it's
14 within a residential building, I'm sure we would likely cap it at,
15 you know, maybe 100. Maybe if it's a private party, if it's
16 rented out, maybe it's a little bit larger. But it would likely
17 be below whatever code allows.

18 MR. TURNBULL: Okay. Now, the bar is open to residents
19 and the public; is that correct?

20 MS. BLOOMFIELD: Yeah, that's correct.

21 MR. TURNBULL: When the public comes in they go to one
22 elevator is specifically for the bar?

23 MR. TURNER: That's correct.

1 MR. TURNBULL: And it would lock out for the public not
2 to be able to be able to go to any tenant floors, right?

3 MR. TURNER: That's correct. Yeah, it would be
4 programmed where the only floor you could get to -- if you had
5 credentials or lived in the building you could get to whatever
6 floor you have access to. But if you're a guest or if you are
7 just in the public, going up to the restaurant, you would only be
8 able to go to the penthouse level.

9 MR. TURNBULL: Gotcha. Parking. Is there parking
10 provided for the bar or is that just for the residents, or retail,
11 or what?

12 MR. TURNER: At the parking count that we have, you
13 know, we would -- as much as we all like to think no one has cars
14 anymore, they do still drive. I would think the likelihood is
15 that the majority of the parking will be split between the
16 residential and the retail alone. The majority of it going to the
17 residential. The likelihood is that this bar, you know, you'd be
18 coming by either Uber or bike, scooter, multiple different ways,
19 unlikely that people would be driving.

20 MR. TURNBULL: Got it.

21 MR. HELLMUTH: Uber is a much safer way to get to a
22 bar.

1 MR. TURNBULL: Is -- on the bar is there any big screen
2 TVs, large screen TVs going to be out there?

3 MR. TURNER: We haven't gotten into like the nitty
4 gritty details of exactly how the bar is going to lay out and
5 function. But, yeah, we will very likely have some screens.
6 Maybe not outside, but certainly inside.

7 MR. TURNBULL: The main concern is outside that you've
8 got cars still down below that people looking up, it could be a
9 nuisance or a distraction to drivers or whatever on the streets
10 below. So that's always an issue for us. Is there going to be
11 like a fire pit outside or --

12 MR. TURNER: We, once again, haven't done all the
13 detailing on it. I would think we would. We are doing that. A
14 lot of residential rooftop amenities that aren't necessarily
15 considered, they're not a bar, they're just for residents. I
16 think we would need to get some, you know, the cooler months
17 they'll get use out of the outdoor space. And likely, you know,
18 as it relates to sound out there, I think we would, you know, as
19 we go through the process with ABRA and licensing and everything,
20 we would likely try to have some sound, some music out there.
21 But, obviously, the very low decibel, noting, you know, too loud
22 that's going down to the street level or going to other
23 properties.

1 MR. TURNBULL: Yeah. You mentioned that the bar would be
2 open until like 10 or 11 at night. But when would you open, like
3 at like lunch or what --

4 MR. TURNER: I would think on the weekends probably
5 around then. But then during the week probably not until happy
6 hour.

7 MR. TURNBULL: Five o'clock?

8 MR. TURNER: Somewhere around there. Yeah.

9 MR. TURNBULL: Can you walk -- it looks like there is
10 also a terrace that goes around the building. Can you walk out of
11 the bar and go down by the units on the other end?

12 MR. TURNER: No. We would put in -- these are all
13 great questions that we, you know, don't have fully detailed the
14 design yet. But we would definitely put in some kind of secure
15 access that allows, you know, if you're -- once again, if you're
16 a resident, yes. You want to go to the pool, you can go through a
17 gate. Though I do believe that a address requirement requires to
18 get over there. So in the event of an emergency the gate would
19 unlock so that you could get to the adjacent there on the other
20 tower.

21 MR. TURNBULL: Okay. Lighting. Mainly down lighting up
22 here? I mean, I'm assuming you're going to go for like gold or
23 something?

1 MR. TURNER: Yes. No. I mean, we'll be meeting TP's
2 energy code requirement, which I think is almost more stringent
3 than gold at this point. So that is something we'll be pursuing.
4 And as it relates to the lighting, I think it's going to be very
5 ambient, nothing super bright. But, once again, not a detail that
6 is fully --

7 MR. TURNBULL: I got you. Okay. Separate question and
8 nothing to do with the bar. I assume you're meeting all the IZ
9 requirements?

10 MR. TURNER: That is correct.

11 MR. TURNBULL: And you're allowing for the penthouse
12 number of square footage for the penthouse to be included too?
13 (Audio interference) space to be included in the IZ requirement?

14 MR. TURNER: We'll be making a contribution to the
15 Housing Trust Fund for the penthouse.

16 MR. TURNBULL: Okay.

17 MR. TURNER: And that's roughly, I don't know if they
18 have an exact number or not, but I know it's in like the 300,000
19 range.

20 MR. TURNBULL: Okay. All right. Mr. Chairman, those
21 are my questions.

22 CHAIRPERSON HILL: Okay. I guess a lot of these, Ms.
23 Bloomfield, you know, for the applicant I guess, are the things

1 that we're talking about again for the bar? I mean, the building,
2 obviously, is, you know, not something that's before us. And
3 we're talking about some of the things about how this area, since
4 the other building, the other residential building haven't
5 necessarily been built yet, we don't know how they're necessarily
6 going to be affected by this amenity. And so that's why we're
7 kind of talking through some of this. And I don't know -- I'm not
8 in favor of time limits, at least in this particular case. But I
9 would maybe want to hear a little bit more about, you know, what -
10 - it sounds like the developer already has a rough idea as to what
11 they normally would do anyway in term of the bar. Like capacity,
12 time, you know, all some things that really, you know, that we're
13 talking about in terms of the bar. But I'm just kind of throwing
14 all this out right now for discussion so that the Office of
15 Planning, so they go through anybody who might be here to testify.

16 Does the other Board members have any questions for the
17 applicant?

18 (No response.)

19 CHAIRPERSON HILL: No? Okay. Can I turn to the Office
20 of Planning, please.

21 MR. COCHRAN: Thanks, Mr. Chair. Steve Cochran for the
22 Office of Planning on case 20446. Just to update us since we
23 filed our report. The applicant has responded positively to the

1 DDOT recommendations for conditions. Those conditions relate much
2 more to the building itself, not to the requested bar and
3 restaurant. But the applicant has agreed to comply with those.
4 Other than that, OP is happy to stand on the record and answer any
5 questions.

6 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
7 Cochran. Does the Board have any questions for the Office of
8 Planning?

9 (No response.)

10 CHAIRPERSON HILL: No? All right. Ms. Bloomfield, do
11 you have any questions for the Office of Planning?

12 MS. BLOOMFIELD: No. Thank you.

13 CHAIRPERSON HILL: Okay. Let's see, is there anybody
14 here wishing to testify, Mr. Young?

15 MR. YOUNG: We do not.

16 CHAIRPERSON HILL: Okay. All right. So it goes back to
17 this then. So does the Board -- and I'm just kind of looking at
18 my fellow Board members. I mean, you know, we have kind of
19 thought about how this amenity might affect kind of the
20 neighboring surrounding areas once they kind of fill out. And I
21 don't know if the Board has any issues with anything. Because I
22 don't want to -- I want to address this time limit thing, if this
23 is something that the Board is concerned about, in a possible way

1 | which might be, there could be a list of things that the developer
2 | thinks that they, you know, would be able to put forth in
3 | conditions in terms of the amenity, in terms of like number of
4 | people, number of hours, you know, whatever you all might think is
5 | necessary or not, or if there is kind of like this time limit,
6 | and/or if there is any concerns at all. I'm kind of on the fence
7 | about it. So I'm just kind of lead with the applicant. This is
8 | kind of a weird way we're doing this, because I don't want to
9 | bring him back in.

10 | But Mr. Smith, do you have any thoughts or anything?

11 | MR. SMITH: No. I'm with you. I'm not in favor of any
12 | type of time restriction in this particular instance. Especially
13 | in light of, you know, yes, it's not developed, but I don't want
14 | to hold the applicant hostage in essence to some type of time
15 | restriction on something that we don't know will occur within this
16 | Board. I do believe that the way that they have placed this
17 | restaurant, I think it is in the best location, it's situated in
18 | the best location on the roof of the building to account for any
19 | noise issues that may occur. The majority of the residential that
20 | exists along that corridor is close to Capitol Street, North
21 | Capitol Street. And they're placing this restaurant to the east,
22 | facing Dave Thomas Circle, which is predominantly commercial. And
23 | to the south of the intersection you have the large facility there

1 that isn't going anywhere. The way it's designed, it's very self
2 contained. So I'm not in favor of any type of time restriction on
3 this or any condition as of right now. But I welcome any comments
4 that the rest of our Board members have.

5 CHAIRPERSON HILL: Okay. Well, after hearing from Mr.
6 Smith a little bit, I also thought that -- I mean, I know that
7 area as well. I mean, it's like, you know, it's a pretty dense
8 area. And I think that, again, you know, when this concern about
9 whether or not this -- you know, I don't think there's going to be
10 any noise issues necessarily. I was just kind of talking through
11 whether there's any timing or capacity concerns that we had. But
12 I agree that we don't know whether anybody is going to build
13 anything there anyway or not. Right. You don't know what's going
14 to happen. So I'm also fine with there not being any kind of
15 discussion.

16 I definitely don't -- I'm definitely not interested in a
17 time limit. So whether or not, that's where I'm just kind of
18 talking about.

19 Mr. Blake, do you have any thoughts?

20 MR. BLAKE: Yeah. I would agree with the comments that
21 Board member Smith made with regard to that, the area and with you
22 as well in terms of the prospect of what might be there. I don't

1 think that necessarily a time limit would aid in the that. So I'm
2 comfortable with --

3 CHAIRPERSON HILL: Okay. Mr. Turnbull, do you have
4 anything to add?

5 MR. TURNBULL: Not really, Mr. Chair. I think the
6 developer is well known and fairly consistent and conscientious
7 with what they do. So I don't think we'd be necessarily having to
8 have any time limits or anything restricting. I think just on the
9 development and from the questions I asked, I feel very good about
10 what the answers were. So I think that this project is going in
11 the right direction. So they've still got to go before ABRA and
12 everything else. So I'm really not worried about the bar up
13 there.

14 CHAIRPERSON HILL: Okay. Okay. All right. Ms.
15 Bloomfield, do you have anything you'd like to add at the end?

16 MS. BLOOMFIELD: No. We would thank you for your
17 thoughtful comments and questions. We would just end there.
18 Thank you very much.

19 CHAIRPERSON HILL: Okay, great. Thank you. All right,
20 go ahead and close the hearing. Thank you, everyone. Mr. Young,
21 if you could please close the hearing and the record. Mr. Young,
22 if you could please excuse everyone.

1 Okay. I can start. I mean, I think that, you know, I
2 was -- we were just kind of talking through. I know there had to
3 have been some thoughts about hours of operation, or capacity, and
4 time limits. And, you know, we had a little bit of discussion
5 about it. And I also don't have any issues with any of it. I
6 think that, you know, the developer is, again, well known in the
7 City and also wants to take care of their residents in terms of,
8 you know, any noise that might be coming from that. And also, as
9 Mr. Turnbull just mentioned, they still have to go through ABRA.

10 The TDM plan has been supplied as per DDOTs request, as
11 well as revising the site plan for vehicular connection not being
12 provided. And then also, I would agree with the analysis that the
13 Office of Planning has provided, as well as that of the ANC. I
14 mean, they're here basically -- they're here for the
15 penthouse/bar. I mean, it's great they showed us the whole
16 building, and it was wonderful to see it. It really was. I mean,
17 it's just going to be, you know, hopefully a beautiful building.
18 And I think that, you know, as far as what they're here for, you
19 know, they went ahead and as for the regulations are paying for
20 the Housing Trust Fund to have the penthouse occupied at 300 plus.
21 So they're doing what they're supposed to do. And I think it's a,
22 you know, a good project that everyone is behind. And I'm
23 comfortable voting in support.

1 Mr. Turnbull?

2 MR. TURNBULL: I would echo your approval of this
3 project, Mr. Chair. I tried to ask as many operational questions
4 that came into my head. Didn't get total answers, but I got
5 enough. The answers that I got were sufficient enough to make me
6 feel reasonably assured that this project was going in the right
7 direction and meeting the special exception rights.

8 So I, as I say, the developer is well known for doing
9 consistently well projects in the City. And I think you're right
10 that since the bar, since it's a residential building for the most
11 part, they're going to be concerned about noise and the
12 operability and try to maintain a low profile for the bar. And I
13 like the idea that they're, you know, it's all low lighting. And
14 I think they meet the special exception criteria. And I will be
15 voting in favor of this.

16 CHAIRPERSON HILL: Thank you, Commissioner Turnbull.

17 Mr. Smith?

18 MR. SMITH: I agree with Mr. Turnbull, his analysis on
19 how this restaurant is potentially operated up there. As Mr.
20 Turnbull stated, this is a well known developer that has a large
21 number of projects across the District, and I'm sure that they,
22 you know, based on their reputation, are concerned about -- would
23 be, you know, the future, if ever there is a development along

1 | this corridor, adjacent to this property, they will be concerned
2 | about being a good neighbor. And also, this is a residential
3 | building. This is an apartment building. They will be concerned
4 | about their own residents when it comes down to the impacts of
5 | that noise impact, and undue, just in general, undue impacts as it
6 | relates to that restaurant and its own penthouse. So I'm fairly
7 | comfortable with not conditioning the operation of the restaurant.

8 | As far as the special exception, I am comfortable with
9 | what was presented before me today, that the applicant has met the
10 | proof and demonstrating that they meet the criteria of us being
11 | able to grant the special exception. I give great weight to OP's
12 | staff report, and I will recommend approval with the conditions as
13 | outlined and the applicant agreed to confirm under DDOT.

14 | CHAIRPERSON HILL: Okay. Thank you. Mr. Blake?

15 | MR. BLAKE: I too would agree with the Office of
16 | Planning's analysis and recommendation. I feel that all the
17 | conditions of the special exception have been met, and the
18 | analysis provided, and the input from the other Board members has
19 | been more than sufficient on this matter. Thank you.

20 | CHAIRPERSON HILL: Okay. Thank you. All right. Then
21 | I'm going to go ahead and make a motion to approve application
22 | number 20446 as captioned and read by the secretary, including the
23 | condition that DDOT was interested in terms of the TDM plan.

1 They already have submitted the revised site plan, so that's not
2 necessary that the TDM plan is conditioned. And ask for a
3 second, Mr. Smith?

4 MR. SMITH: Second.

5 CHAIRPERSON HILL: Sorry, Mr. Blake?

6 MR. BLAKE: Second.

7 CHAIRPERSON HILL: I'm sorry. Ms. Rose, the motion has
8 been made and seconded. Could you please take a roll call vote?

9 MS. ROSE: Yes. When I call your name please respond
10 with a yes, no or abstain.

11 Mr. Turnbull?

12 MR. TURNBULL: Yes.

13 MS. ROSE: Mr. Blake?

14 MR. BLAKE: Yes.

15 MS. ROSE: Mr. Smith

16 MR. SMITH: Yes.

17 MS. ROSE: Mr. Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. ROSE: The staff will record the vote as 4 to 0 to 1
20 to approve the application. This is on a motion by Mr. Hill,
21 seconded by Mr. Blake, with Mr. Smith and Mr. Turnbull in support
22 of the motion to approve.

23 CHAIRPERSON HILL: Okay, great. Thank you. All right,

1 say, let's try to 1:15. Okay.

2 We'll have lunch, come back at 1:15. Thank you all.

3 (Whereupon, the above-entitled matter went off the
4 record and then resumed at approximately 1:28 p.m.)

5 CHAIRPERSON HILL: If you can go ahead and call the next
6 case.

7 MS. ROSE: The next case will be application number
8 20445 of 106 13th Street, LLC, for a use variance from the use
9 restrictions of Subtitle U, Section 301, pursuant to Subtitle X,
10 Section 1002 to expand an existing, nonconforming restaurant use
11 to the cellar and second story of a semi-detached two-story with
12 cellar commercial building in the RF-1 Zone, at premises 106 13th
13 Street, Southeast, Square 1036, Lot 60.

14 And as a preliminary matter, a waiver is needed to allow
15 the applicant's PowerPoint presentation into the record.

16 CHAIRPERSON HILL: Okay. Thank you. Is it in the
17 record yet? I don't see it.

18 MS. ROSE: It -- I don't think it is yet.

19 CHAIRPERSON HILL: Okay. Mr. Sullivan, could you
20 introduce yourself for the record, please?

21 MR. SULLIVAN: Thank you, Mr. Chair, members of the
22 Board. Marty Sullivan on behalf of the applicant.

1 CHAIRPERSON HILL: Okay. Mr. Sullivan, is it just the
2 PowerPoint that you're trying to get in?

3 MR. SULLIVAN: Yes, it's just the PowerPoint. We had
4 some technological difficulties. And so we got it in late
5 yesterday.

6 CHAIRPERSON HILL: Okay. Unless the Board has any
7 issue, I'd like to go ahead and allow that into the record. And
8 if you have an issue just raise your hand.

9 (No response.)

10 CHAIRPERSON HILL: Okay. Ms. Myers, are you there?

11 (No response.)

12 CHAIRPERSON HILL: No. Okay. In that case, I'm going
13 to continue. Go ahead, if you could, Ms. Rose, if you could have
14 staff put that in the record, in the PowerPoint. And since we're
15 waiting on the Office of Planning, and I think they're going to be
16 needed, I'd rather just see if we can linger a little bit longer.
17 So why don't we just hang out here a second and see, and wait
18 until the PowerPoint gets uploaded. At least that's something.
19 Maybe, Ms. Rose, if you could let me know when that's been
20 uploaded, okay?

21 MS. ROSE: Yes. I'm getting the word that it is done.

22 CHAIRPERSON HILL: Ms. Rose, we don't know anything
23 about the Office of Planning's meeting?

1 MS. ROSE: No. This was my first time hearing of it at
2 1:22 or 1:18.

3 CHAIRPERSON HILL: Okay. I'm not exactly sure what to
4 do. I guess we can kind of go ahead through this. I mean, I kind
5 of wanted to see, I wanted the Office of Planning to hear the
6 presentation.

7 MR. RICE: Mr. Chair.

8 CHAIRPERSON HILL: Yeah.

9 MR. RICE: So you're aware, Crystal is monitoring the
10 meeting and she said she will be available when the time comes.

11 CHAIRPERSON HILL: Oh, okay. All right, great. Okay.
12 All right, in that case, okay, Mr. Sullivan, who else do you have
13 here with you?

14 MR. SULLIVAN: The project architect, Mr. Gronning is
15 with us, and the property owner and restaurant owner, Mr.
16 Gioldasis.

17 CHAIRPERSON HILL: Okay. And then who is Mr. Holman?

18 MR. SULLIVAN: ANC Commissioner.

19 CHAIRPERSON HILL: Oh, great. And then Sterchi, Jessie
20 Sterchi?

21 MS. STERCHI: Yes. Sorry. I'm -- I registered for the
22 wrong one. I'm interested in 20455. Apologies.

1 CHAIRPERSON HILL: That's okay. So, Mr. Young, I guess
2 Ms. Sterchi is here for 20455. Okay. Mr. Gronning, could you
3 introduce yourself for the record?

4 MR. GRONNING: Yes. I'm Eric Gronning. I'm the project
5 architect for 106 13th Street.

6 CHAIRPERSON HILL: Okay. Mr. Gioldasis, I'm sorry if
7 I'm mispronouncing that, could you introduce yourself for the
8 record?

9 (No response.)

10 CHAIRPERSON HILL: Mr. Gioldasis?

11 (No response.)

12 CHAIRPERSON HILL: Okay. Commissioner Holman, could you
13 introduce yourself for the record?

14 MR. HOLMAN: Hi. Commissioner Corey Holman representing
15 ANC6B. Thank you.

16 CHAIRPERSON HILL: Commissioner, were you with us here
17 today, or before?

18 MR. HOLMAN: I was, yes. But my power is back on, so
19 I'm in a different location.

20 CHAIRPERSON HILL: No, that's okay. It's the angle.
21 I'm confused. From your phone you look one way. All right.
22 Okay, Mr. Spiro -- I'm sorry, Mr. Gioldasis, can you hear me?

23 (No response.)

1 CHAIRPERSON HILL: Okay. We'll see what happens, Mr.
2 Sullivan. Okay. Mr. Sullivan, I'm going to go ahead and, you
3 know, put 15 minutes on the clock. If you can go ahead and, Mr.
4 Young, if you could bring up Mr. Sullivan's presentation. And
5 then if you can walk us through. I mean, unfortunately, Mr.
6 Sullivan, I think you're going to have to make a pretty good
7 argument in terms of the extraordinary condition, I think is
8 really something that we're going to have to be looking at in
9 terms of the prongs. And then, but you know better than I. So go
10 ahead and do your presentation --

11 MR. GIOLDASIS: Hello.

12 CHAIRPERSON HILL: -- and we'll see where we go.

13 CHAIRPERSON HILL: Yes, Mr. Gioldasis?

14 MR. GIOLDASIS: Yes. Okay, now yes. I got my computer
15 fixed.

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

18 MR. GIOLDASIS: Yes. Spiro Gioldasis, the owner of the
19 property and the restaurant.

20 CHAIRPERSON HILL: Okay, great. You own the property
21 and the restaurant?

22 MR. GIOLDASIS: Yes, that is correct.

23 CHAIRPERSON HILL: Okay, great. Thank you, sir.

1 MR. GIOLDASIS: Thank you.

2 CHAIRPERSON HILL: Mr. Sullivan?

3 MR. SULLIVAN: Thank you, Mr. Chair and members of the
4 Board. If we could have the PowerPoint. Thank you.

5 An overview, if we could go to page two, please. This
6 application is seeking use variance relief. Currently there is a
7 certificate of occupancy for restaurant use on the first floor.
8 That certificate of occupancy does not include the use of the
9 basement level, nor does it include the use of the second floor.
10 So this application is requesting the expanded use thereof. The
11 first floor currently does have that C of O. That's one of the
12 exceptional conditions that it is partially approved as an
13 existing, legally non-conforming use. And the second floor was,
14 at one point, used as a deli and subsequently converted to a
15 residence for the restaurant owner. So the C of O lapsed for that
16 portion. The basement is vacant as of now and cannot be used for
17 residential purposes, and the architect can speak to that more,
18 because of building code requirements. And I think I'm getting
19 some feedback. If maybe Mr. Gioldasis and Mr. Gronning too, if
20 you could mute. Next slide, please.

21 Here is a photo of the property. It's the property on
22 the right, on the bottom photo. You see the subject property and
23 then seen an overview. And this is the side of the property from

1 the alley. See that it takes up 100 percent of the lot occupancy.

2 Next slide, please.

3 This is a diagram showing the community support for the
4 project. We're hopeful that some of these people will show up
5 today to speak in support. Next slide, please.

6 On Mr. Gioldasis, he owns and operates Pacci's
7 Trattoria, an Italian restaurant in Silver Spring, and he's
8 proposing to open the second location here. Apparently, the C of
9 O permits 50 seats. The applicant is proposing to have up to 130
10 seats with 30 in the cellar, 40 on the first floor, and 60 on the
11 second floor. So currently it's limited to just 40 seats under
12 what is currently approved. See the proposed hours of operation,
13 11:30 to 2:30 and 4:30 to 9:30. And the applicant anticipates
14 maximum of 22 employees. Next slide, please.

15 If the Board is interested in any information on the
16 interior configuration, the architect can answer any questions on
17 that. I'll go through these slides just briefly without any
18 explanation.

19 CHAIRPERSON HILL: Mr. Sullivan, that's okay. You can
20 go back to them, if you'd like, with the architect. I am curious
21 about the cellar in how that's going to be configured.

22 MR. SULLIVAN: Okay. Next slide, please.

1 So here are the three floor plans. I'll turn it over to
2 Mr. Gronning to talk about these plans and to talk about the
3 cellar space.

4 MR. GRONNING: Good afternoon, Mr. Chairman and Board
5 members. Again, my name is Eric Gronning. I'm the project
6 architect. For this project, 106 13th, if you could go to the
7 next slide, please.

8 The cellar is on the left hand side of your screen. And
9 you can see towards the bottom of the sheet there's a stair that
10 connects the upstairs, the first floor to the cellar. There are
11 28 seats just in the front part of that. And the remainder of
12 that floor is going to back of house stuff. There's a couple of
13 restrooms, and dishwashing area, and storage, and cold
14 refrigeration. And then at the very top of that floor you'll see
15 a second stair which is a required egress stair from the cellar.

16 If it's time now, I can elaborate on why the cellar
17 cannot be used as a residence, a residential use.

18 CHAIRPERSON HILL: Yeah, that would be great.

19 MR. GRONNING: Yeah. If you could please go back to
20 page six, there is a site plan. Great. Okay. So on the screen
21 is a site plan. 106 13th Street is a semi-detached, commercial
22 row building. It abuts an alley to the north, on the right hand
23 side here, and it abuts a neighboring property to the -- I'm

1 | sorry. To the south is the alley, to the north is a neighboring
2 | property. And it extends fully to the rear and abuts to the
3 | sidewalk in front. In order to put a residence, a legal, code
4 | compliant residential unit in the basement we would need windows
5 | to start. For obvious reasons, light air, but also for the
6 | purpose of emergency egress. And every bathroom that's in a
7 | residential unit in a cellar would require this emergency rescue
8 | opening. And in this case it's, you know, practically not
9 | possible due to, you know, not being able to be, to put a light
10 | well anywhere. We abut an alley, we abut the sidewalk, we're
11 | bound to the north and to the rear. And so there's really no
12 | place to comply with code. Also, the cellar is completely below
13 | grade, as the first floor aligns with the sidewalk at the front of
14 | the building. Hopefully that clarifies it. And I can answer any
15 | other questions you might have.

16 | CHAIRPERSON HILL: I'm okay, Mr. Gronning. Unless
17 | anybody wants to stop you right now, please continue.

18 | (No response.)

19 | MR. GRONNING: I think that's the end of my
20 | presentation. Marty, Mr. Sullivan, if he wants to take over from
21 | there and I can jump in anytime I need to fill in.

22 | CHAIRPERSON HILL: Well, I guess before we -- since I'm
23 | having trouble with the slides. Does the Board -- and I just

1 can't see everybody. That's the problem. But does the Board have
2 any questions for the architect while the slides are up?

3 MR. SMITH: I don't currently have any questions, Mr.
4 Chair.

5 CHAIRPERSON HILL: Mr. Turnbull?

6 MR. TURNBULL: No, Mr. Chair. I'm good.

7 CHAIRPERSON HILL: Mr. Blake?

8 MR. BLAKE: Yeah, I have one quick question. With
9 regard to emergency egress and the lack of windows, would that be
10 an issue with having a restaurant guest dining in that area?

11 MR. GRONNING: No, it's not. It's not a requirement for
12 a commercial use, since we have two stairs, one in the front and
13 one in the back. And that's the reason that we're adding a stair.
14 But for residential use you would be required to have that
15 emergency escape.

16 CHAIRPERSON HILL: Okay. Thank you. Mr. Sullivan?

17 MR. SULLIVAN: If there's no other questions, I'll move
18 to page 12 of the PowerPoint, please. And Mr. Chair, and you may
19 have figured this out already, at some point, I might as well do
20 it now, I do want to ask to bifurcate consideration of this one.
21 Because, as you might expect, the arguments and the conditions for
22 the second floor and for the basement are completely separate
23 arguments. And I think they can be considered separately. And if

1 the Board were to wish to approve one and not the other, we'd
2 certainly like that opportunity. So --

3 CHAIRPERSON HILL: Okay. Why don't you go ahead and
4 argue it. Why don't you go ahead and argue it the way you have it
5 right now. And let's see what happens. Okay.

6 MR. SULLIVAN: Okay. So to go over the legal
7 standards and the Board regulations. The Board is authorized to
8 grant use variance relief where it finds that three conditions
9 exist. The property is affected by an exceptional size, shape or
10 topographer or other extraordinary or exceptional situation or
11 conditions; the owner would encounter an undue hardship if the
12 zoning regulations were strictly applied as a result of those
13 extraordinary conditions; and the variance would not cause
14 substantial detriment to the public good and would not
15 substantially impair the intent, purpose and integrity of the
16 zoning plan. Next slide, please.

17 In this case the phrase "other extraordinary or
18 exceptional situation or conditions" in the above-quoted variance
19 test applies not only to the land, but also to the existence and
20 configuration of the building on the land. Moreover, the unique
21 or exceptional situation or condition may arise from a confluence
22 of factors which affect a single property. This property is faced
23 with several exceptional conditions relating, first of all, to the

1 fact that it is approved for restaurant use on the first floor
2 because of its historic use of such a restaurant. And the --
3 another extraordinary condition is the history of that failed
4 restaurant, not only a failed restaurant use, but the failed
5 residential use of that restaurant use based on the very small
6 size of the property. Next slide, please.

7 So as stated in the ANC report and many of the support
8 letters, this building has a long history of failed enterprises
9 which evidence that the historic interior layout is insufficient
10 in creating a successful restaurant. You'll see the seating is
11 extremely limited on the first floor. And over the last ten years
12 at least four restaurants have started and failed in this
13 building, and only able to make use of the first floor. The
14 second floor residential unit has been vacant for years, but most
15 recently occupied by the owner out of necessity. So essentially,
16 you have two permitted uses here that cannot coexist together or
17 have extreme difficulty coexisting in the same space. Next slide,
18 please.

19 Again, to go over the exceptional conditions. It's
20 unique to have the space already approved. That's where this is
21 different from a lot of use variance cases where we have where the
22 entire property could be -- is being requested to be converted to
23 the commercial use. In this case a portion of the property

1 already is, and that impacts the variance argument in this case,
2 and it is an exceptional condition in and of itself. The long
3 history of failed restaurant use, and the failure to have a
4 residential use upstairs, and so -- and I have -- there is another
5 witness, I just remembered, that's going to speak. They must not
6 have signed up correctly, but if Paul could let in Mr. Benjamin
7 Wilson. I'm going to have him talk at the end of this
8 presentation.

9 The cellar space is currently configured as space that's
10 associated with the restaurant use, but there is no C of O
11 covering that, or the C of O does not also cover the basement
12 space, which would be required, of course, in order to officially
13 use that basement space for the restaurant. And the exceptional
14 condition and practical -- or undue hardship with the basement
15 space is the fact that as exists, it cannot be used for
16 residential. And it is unreasonably difficult to possibly convert
17 it to residential because you can't get light and you can't get an
18 egress window, as you heard the architect testify to. Next slide,
19 please.

20 For the Palmer case, an owner is presented with an undue
21 hardship when their property cannot be put to any zoning compliant
22 use for which it can reasonably be adapted. And the Court of
23 Appeals also upheld this Board's approval of the use variance and

1 | noted that economic harm to an owner in converting a portion of
2 | their property into a zoning compliant use, coupled with
3 | significant limitations on the utility of a building constitute
4 | undue hardship necessary to satisfy the second prong for the use
5 | variance test. And we think this case here is quite applicable to
6 | this situation. Next slide, please.

7 | Cellar use. Mr. Gronning talked about this slide. Next
8 | slide, please.

9 | The second floor has not been consistently rented, and
10 | has been periodically vacant. Because the first floor can legally
11 | be used for restaurant use only, and it would be unfeasible to
12 | convert it to residential use. But on the flip side, the use as a
13 | restaurant prevents the marketability of the space above.
14 | Essentially, these two uses compete and create difficulties for
15 | each other. There is a letter from Mr. Wilson, and he can speak
16 | about that some more, exhibit 33, testifying very specifically to
17 | this condition and the hardship related to that condition. One
18 | similar BZA case I'll point out is 944 Florida Avenue, where the
19 | BZA did approve a second story based on the difficulty in using
20 | that second story for residential use in a case considering what
21 | was on the first floor. And in that case I'll point out that 944
22 | Florida, that was a use variance request for two stories as well.
23 | It wasn't already permitted to have commercial use on the lower

1 level. It was actually a change from a bar use to a salon use.
2 Next slide, please.

3 No substantial detriment to the public good. We have
4 substantial support for this application from the neighborhood.
5 And it already was an existing use on the first floor. Next
6 slide, please.

7 These are comments from the community. I suspect some
8 of these people have signed up to testify, so I won't re-read
9 these comments. Next slide, please.

10 I think the importance of these comments, these support
11 letters we have are not just of the variety that said that they
12 want a restaurant and they think it would be good for the
13 community, but they speak specifically to some of the
14 extraordinary conditions and hardships as well with the use of the
15 property. And next slide, please.

16 We also believe there's no substantial impairment to the
17 intent, purpose and integrity of the zoning regulations. We
18 believe there is a confluence of factors here that separates this
19 case from a standard use variance case. And that being the
20 existing use already, and the size of the property, and the
21 history of the property, showing difficulty in having the
22 residential use together with the commercial use. Next slide,
23 please.

1 So that's it for the presentation. I would like to have
2 Mr. Wilson speak if he is on, or if he can be let in.

3 MR. WILSON: Yeah. Can everybody hear me okay?

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

6 MR. WILSON: Certainly. My name is Ben Wilson. I'm
7 managing director over at Gray Steel Commercial Real Estate
8 Services.

9 CHAIRPERSON HILL: Okay, Mr. Wilson, go ahead.

10 MR. WILSON: Awesome. I think I'm going to just read
11 the better part of my letter. And then if, you know, if there's
12 any questions I'd be happy to address them.

13 Good afternoon Chairman and Board members. My name is
14 Benjamin Wilson, and I am managing director with Gray Steel
15 Commercial Real Estate Services. I lead a team of commercial real
16 estate brokers and marketing and sale of mixed use buildings like
17 106 13th Street, Southeast, in Washington, DC.

18 I'm very familiar with this building, as my team was
19 hired in the fall of 2017 by the previous owner to represent them
20 in the marketing and sale of the building. Nearly a year later we
21 closed on the sale of 106 13th Street to Mr. Gioldasis. Sorry.
22 This building is a difficult building to operate a business out of
23 or to successfully lease out as an investment. This is evidenced

1 by long periods of vacancy and the rapid succession of previous
2 owners, some of which have been foreclosed on.

3 I believe one reason that previous owners and operators
4 have had such a difficult time making the building successful is
5 its mixed use nature. The owners of the building have
6 historically tried to operate the building as a restaurant on the
7 ground floor and lower level with apartments above. For a
8 relatively small building in an expensive neighborhood, that can
9 be very difficult.

10 This sub market of Capitol Hill surrounding Lincoln Park
11 is one of the most desirable neighborhoods in Capitol Hill and
12 possibly wider DC. For a variety of reasons the homes close to
13 and especially those with views of Lincoln Park demand premium
14 rental rates, and prices when they do sell. Residential tenants
15 interested in this neighborhood and price range are often not
16 willing to live above a restaurant unless the space is
17 substantially discounted. Common reasons for not wanting to live
18 above a restaurant can be things like noise, high foot traffic,
19 possible cooking odors, and just the general inconvenience. These
20 conflicts can be magnified in older buildings and smaller
21 buildings. Modern new construction goes to great lengths to
22 minimize these conflicts in things like separate entrances,

1 extensive soundproofing, and separation between the spaces, et
2 cetera.

3 In order to attract residential tenants, buildings like
4 this typically need to discount their rents in order to find
5 residential tenants. In less expensive neighborhoods this
6 discount is less noticeable, but in more expensive neighborhoods
7 like this, it can be a significant mismatch between the value of
8 the building and the cost to pay the mortgage and the rent the
9 apartment generates. When we sold this building both units were
10 vacant, both residential units were vacant.

11 Another challenge in operating a sit-down restaurant in
12 an expensive neighborhood, and in a small building, in a
13 neighborhood like this, where rental rates are relatively high, a
14 restaurant operator must be able to offset the cost of the high
15 rent. In the case of Mr. Gioldasis is the mortgage as opposed to
16 the rent. The most practical way to offset these high costs is by
17 operating a larger dining room and accommodating more customers,
18 as a fixed cost of the lease or mortgage can be offset by the
19 larger dining room operation.

20 For this particular building the best way to solve both
21 of these challenges would be to convert the second floor
22 residential space into additional commercial restaurant space.

1 This would eliminate the difficult lease of the residential space
2 and expand the income generating dining room space.

3 Hopefully this information is helpful in understanding
4 the different elements of the building and why a conversion to
5 full commercial is a practical solution. So thank you.

6 MR. SULLIVAN: Thank you, Ben.

7 MR. WILSON: Any questions or -- yeah.

8 MR. SULLIVAN: Yeah. If the Board has any questions
9 for any of us, including Mr. Gioldasis, he doesn't have any
10 specific testimony, but he's available for questions.

11 CHAIRPERSON HILL: Okay. Thank you. Does the Board
12 have any questions? I mean, you're not done yet, Mr. Sullivan,
13 correct?

14 MR. SULLIVAN: I mean, I'll have rebuttal and closing
15 of course.

16 CHAIRPERSON HILL: That's fine.

17 MR. SULLIVAN: We're done with the presentation. I
18 just leave with an overview of, I think the critical difference
19 here is the fact of the existence of the permitted use already on
20 the first floor. And that impacts the use on the second floor.
21 And so -- and, again, the request for the bifurcation. When it
22 comes to the basement, it's virtually impossible to have a
23 residential use, legal residential use in the basement space. As

1 to the second floor, it's a different argument, and it relates to
2 the existence of the restaurant downstairs and the difficulty and
3 the hardship of using the space upstairs of that existing
4 restaurant space because of the size of the property and the
5 existence of that use already, and, as shown by the history of
6 that use or lack thereof in that space.

7 CHAIRPERSON HILL: Okay. Does the Board have any
8 questions of the applicant at this point? Mr. Blake?

9 MR. BLAKE: Yeah, Mr. Sullivan, did the applicant look
10 at any other potential uses that were permitted within the area
11 for that second floor?

12 MR. SULLIVAN: Maybe Mr. Gronning could -- I don't
13 think so. I mean, because this -- they're a restaurant operator,
14 and they purchased the property for that. I mean, other permitted
15 uses besides residential would be I guess medical care. I think
16 those uses would have the same difficulties that a restaurant or
17 that a residential use would have in that same space.

18 CHAIRPERSON HILL: Anyone else for Mr. Sullivan?

19 (No response.)

20 CHAIRPERSON HILL: Okay. Let's see, I'm going to turn
21 to Ms. Myers. Ms. Myers, could you give us your report, please?

22 MS. MYERS: Hello. Crystal Myers for the Office of
23 Planning. I should start by saying I'm sorry for the confusion

1 earlier. We were monitoring the meeting earlier, but I was sort
2 of in between two meetings. But I was listening. So anyway, you
3 all know that we're recommending denial. We look at this as a
4 denial of the whole application. But I will note that we are not
5 opposed to the restaurant use in the basement. We understand
6 those arguments. But since this came in as one complete
7 application, we're recommending denial of the whole thing. But
8 our primary issue was with the second floor. And with that, I'll
9 stay on the record.

10 CHAIRPERSON HILL: Okay. Ms. Myers, I know that there is
11 a bunch of people that are going to be here speaking in support.
12 And so just to kind of like have them have an opportunity to hear
13 your analysis concerning that second floor, could you please do
14 so?

15 MS. MYERS: Certainly. Our issue is that there are two
16 existing units on the second floor. And our understanding is that
17 those units were actually occupied for quite a while. I know the
18 applicant has noted that I guess at the time of sale they were
19 vacant, but my understanding is that the previous owner was
20 occupying those units and a staff member. So it has been occupied
21 before, and is a functional -- those are functional units
22 upstairs.

1 As for the argument about, concerns about nuisances
2 between the two uses, the residential use on the top floor and the
3 restaurant use, those could be mitigated. Certain construction
4 measures can be taken to mitigate those issues, so that we do not
5 consider a argument to really say there's an exceptional situation
6 resulting in a practical difficulty. You could still operate a
7 restaurant and a residential use on the top floor. And that's
8 been done before. You know, we have plenty of examples of that in
9 the District. So that was our rationale. There's already
10 existing restaurant on the main floor, so they can do that without
11 a variance. They already have the permission to do that. And, you
12 know, losing two completely functional residential units in this
13 building would be a substantial impairment to the zoning
14 regulations because this zone is for residential development. So
15 losing a residential unit that that are perfectly functional would
16 be quite a substantial detriment to the regulation.

17 And, again, with that, you know, I'm here for any
18 questions. And, again, we agree with the arguments for the
19 cellar. So those arguments that the applicant has mentioned, I
20 believe we even said in our report, we don't disagree with those
21 arguments.

22 CHAIRPERSON HILL: Got it. Okay. Does the Board have
23 any questions for the Office of Planning? Mr. Turnbull?

1 MR. TURNBULL: Ms. Myers, thank you for being here. So
2 basically what you're saying is that you have no issue with the
3 basement being used as a restaurant use, but that the second floor
4 is part of the housing element, and (indiscernible) in the area,
5 and that basically throughout the City we have multiple, numerous
6 cases where you have residential over a restaurant?

7 MS. MYERS: Exactly.

8 MR. TURNBULL: Thank you.

9 CHAIRPERSON HILL: Mr. Smith?

10 MR. SMITH: Yeah. Just for clarification. Ms. Myers,
11 what arguments do you have with what the cellar staying?

12 MS. MYERS: Yeah. So with the cellar area, it does
13 have the issue of poor access when it comes to -- because it
14 doesn't have a window. And when it comes to making that a
15 habitable unit, it doesn't meet building code standards. So we
16 agree that, you know, it's not a problem for it to be a restaurant
17 use. And I believe, you know, unofficially it has been sort of
18 used as a support area for the restaurant use currently. So we're
19 -- we're not -- we don't oppose that, you know, them getting the
20 permit to make it official restaurant space for the cellar.

21 MR. SMITH: Is there any form of a CO for that cellar
22 that's on the record?

1 MS. MYERS: I'm not aware of any. I know the applicant
2 said that they don't have a C of O covering that space. So we're
3 not opposing them getting special -- or getting variance relief in
4 order to be able to get a C of O for that space.

5 MR. SMITH: Okay. Thank you. That's all I have, Mr.
6 Chair.

7 CHAIRPERSON HILL: Okay. Anyone else?

8 (No response.)

9 CHAIRPERSON HILL: Mr. Sullivan, do you have any
10 questions for the Office of Planning?

11 MR. SULLIVAN: No. Thank you.

12 CHAIRPERSON HILL: Okay. Mr. Young, you said how many
13 people do we have to testify?

14 MR. YOUNG: We have about seven to 10 maybe.

15 CHAIRPERSON HILL: Okay. Before everyone comes in, I'm
16 just stating for the record -- and I didn't think about it until
17 right now, and this will not prejudice my opinion. It actually
18 just gives me a little bit of insight. I live above a restaurant.
19 And so just saying that. And I wanted to say it before the
20 witnesses come in. Okay. All right. Let's see, -- okay, Mr.
21 Young, why don't you go -- let them in I guess five at a time if
22 you've got them. Yeah. And let me just see who I've got. Okay,
23 Mr. Young, maybe you can tell me who you're letting in. You have

1 a whole cast of names. It looks like Jay Arman (phonetic). I'll
2 get to you in one second. But I've got Mr. Moffett, and then --

3 MR. YOUNG: You have Jessica Tollestrup.

4 CHAIRPERSON HILL: Okay. Thank you. Who else?

5 MR. YOUNG: Lina Niak.

6 CHAIRPERSON HILL: Right. Great. Who else?

7 MR. YOUNG: And those are four that I've brought in so
8 far.

9 CHAIRPERSON HILL: Okay. And just give us four now.
10 And then we'll do another four or five, depending on what you've
11 got, or three. I don't know if you have seven or eight. Okay.
12 Let's see, --

13 MR. HOLMAN: Chairperson Hill, I don't want to
14 interrupt. The ANC should go next.

15 CHAIRPERSON HILL: Oh, I'm sorry. I'm sorry,
16 Commissioner.

17 MR. HOLMAN: It's fine.

18 CHAIRPERSON HILL: It's okay. There's just -- there's a
19 lot of pictures on the screen, Commissioner.

20 MR. HOLMAN: I understand.

21 CHAIRPERSON HILL: Right. So okay. The witnesses are
22 in the room. Just please keep your microphone off because this is
23 not public testimony right now. So Commissioner Holman, if you

1 | could, and I should have -- and I apologize, Commissioner, did you
2 | have any questions for the Office of Planning?

3 | MR. HOLMAN: I did not. I would have interjected had I
4 | had them.

5 | CHAIRPERSON HILL: Okay. Do you have any questions for
6 | anybody else before you give your presentation?

7 | MR. HOLMAN: We do not. No.

8 | CHAIRPERSON HILL: Okay. All right. So, Commissioner,
9 | please feel free to give your presentation. And, again, I
10 | apologize.

11 | MR. HOLMAN: Great. Thank you. And Mr. Young, if you
12 | can bring up Peter Wright from 6008. He happens to be for this
13 | area. I'll be presenting the testimony, but he wanted to be here
14 | to answer questions as well.

15 | You have or report in the record, but I will sort of
16 | briefly review that. ANC 6B enthusiastically supports this
17 | application and recommends approval for the use variance relief
18 | for both the cellar and the second floor. We believe there is a
19 | complex of factors which lead to the application meeting all three
20 | prongs of the variance test.

21 | When it comes to cases like this variance, especially
22 | use variances, the ANC wants to ensure that the Board is aware of
23 | the neighborhood level factors which we believe help the

1 application meet, especially prong two and three of the variance
2 test. Our report goes into more detail. And I'm sure the Board
3 will give the great weight it's due, but I want to quickly
4 highlight a couple of items.

5 To really refocus the discussion on the community and
6 the use, we not only believe the variance does no substantial
7 detriment to the public good, we believe that it's a successful,
8 safe and acceptable restaurant use here, provides a good to the
9 neighborhood. And that second floor is necessary for this project
10 to create this good.

11 Given the location adjacent to Lincoln Park, the lack of
12 nearby restaurants, and the long, long string of failed businesses
13 at this location, the existing vacant building today is a huge
14 detriment to our community. The public sentiment is clear from
15 the record, it's clear from the neighbors who have joined. At our
16 ANC we only heard one person in opposition out of a dozen for, and
17 that opposition was focused mostly on parking.

18 Regarding that, DDOT is not in opposition, as is in the
19 record. And from our indication of constituents and neighbors,
20 parking was very rarely mentioned as a concern. And I think you
21 all know, when parking is not a concern for neighbors, that's a
22 pretty major endorsement of a project.

1 Regarding prong three, we urge you to find this
2 application has no substantial impairment to the intent, purpose
3 and integrity of the zoning regulations. Our letter lays out
4 the relatively intense nonresidential use up and down East Capitol
5 Street since basically the founding of the City. These uses
6 concentrated at corners and around Lincoln Park, including this
7 building. These nonresidential uses are cherished parts of our
8 community, but further, nonresidential uses are clearly
9 anticipated in the RF-1 Zone. In the introduction to the RF-1
10 chapter, it calls for limited compatibility of non -- or
11 compatible nonresidential uses. Commercial use at a historic
12 building, with historic commercial use, along with major
13 pedestrian, cyclist and transit routes, adjacent to a heavily used
14 park, this site is undoubtedly one of those limited compatible
15 uses in the RF-1 Zone.

16 So the question becomes whether the second floor expansion is an
17 impairment to the intent, purpose and integrity of the zoning
18 regulations. And we contend that it's not.

19 The applicant has presented evidence that the second
20 floor residential is for the life of the building a relatively new
21 use, as well as very difficult to lease in the modern residential
22 market. ANC -- I'm sorry. You know, this building is not a
23 successful residential building that is being taken offline. It

1 is a, as the applicant testified earlier, it's very low value
2 units that are hard to fill that would be taken offline and
3 replaced with a functional business. Every building and every
4 history is different along East Capitol, but adding a second story
5 commercial use here returns it to a prior historic lease, and
6 quite frankly, the integrity of the zoning regulations will not be
7 harmed.

8 Circling back to prong one. And I think Mr. Sullivan
9 focused on this. Everyone in the community sort of has a
10 different name for this building, but they all circle back to the
11 underlying question of how could that building ever be vacant?
12 It's location, it's adjacent to Lincoln Park, it's location with
13 no competition should have a thriving restaurant. It doesn't seem
14 hard. But because of the -- from the outside. But from the
15 inside it's clear that the applicant has shown that there is not a
16 successful, accessible and safe business use without the second
17 floor.

18 I quote from our report. "A restaurant here would not
19 be a detriment to the public good. In fact, ANC 6B believes that
20 expanding the restaurant use here would be a benefit to the
21 community. Limited nonresidential uses are hallmark of
22 residential Capitol Hill. And expanding the restaurant use here

1 simply will not dramatically impact the situated building with a
2 long history of nonresidential use.”

3 Thank you for considering the views of our ANC. And
4 you’ll indulge me for 10 more seconds, I just want to say thank
5 you. It’s my first time in front of Mr. Blake. Mr. Blake, thank
6 you for your service to the City. We understand how thankless
7 tasks can be as an ANC Commissioner, so thank you for doing this.
8 With that, I can take questions or my colleague, Commissioner
9 Peter Wright can as well. Thank you.

10 CHAIRPERSON HILL: Okay, great. Thank you, Commissioner.
11 Let’s see, right. So Commissioner, I guess, what do you guys
12 think about -- you know that CHRS is opposed, right? And they
13 cite the parking. Like, you just don’t think that they are --
14 they don’t -- you -- what are your thoughts about their
15 opposition?

16 MR. HOLMAN: You know, I think that variances are hard.
17 Variances are complicated. The -- in this case the detriment to
18 the public good I don’t think is a relevant consideration, given
19 the substantial support. Again, I circle back to residents of a
20 row house neighborhood have a expanding business use next to them
21 and they’re not complaining about parking is a monumental
22 achievement. And you see this all the time, and nobody is

1 complaining. So I think on the ground there's just an issue with
2 parking. And --

3 CHAIRPERSON HILL: Okay.

4 MR. HOLMAN: I'll point out real quick. Restaurants in
5 Capitol Hill, especially a neighborhood serving restaurant will
6 have mostly foot traffic. We walk half a mile to restaurants
7 every -- well, we used to. Walk a half a mile to restaurants
8 every weekend. There's dense residential around it. From our
9 interpretations who do not drive, an untenable parking situation.

10 CHAIRPERSON HILL: Okay. Give me one second. We're
11 not done with testimony just yet. The -- is SMD here? Is that --
12 Commissioner Wright.

13 MR. WRIGHT: Yeah, I'm here.

14 CHAIRPERSON HILL: Oh, Mr. Wright, Commissioner Wright.
15 Yeah. I'm sorry, you had your hand up. Do you want to add
16 something?

17 MR. WRIGHT: Yeah. I just -- I wanted to add as well,
18 as far as what the proposed use is and the type of business that
19 Mr. Gioldasis is proposing is not something -- you know, this is
20 what Commissioner Holman was kind of touching on. It's not a
21 business that's intended to, you know, it's -- they're not seeking
22 a Michelin star in trying to draw people from all over town. It's
23 intended to be a community restaurant that serves the neighbors.

1 And I would anticipate that the vast majority is those customers
2 at the restaurant would be walking distance, neighbors in that
3 community.

4 CHAIRPERSON HILL: Okay. Ms. Rose, do you have
5 something you wanted to mention?

6 MS. ROSE: Yes. I would inform that the gentleman need
7 to be read the oath.

8 CHAIRPERSON HILL: Oh, okay.

9 MS. ROSE: They need to take the oath.

10 CHAIRPERSON HILL: The Commissioner?

11 MS. ROSE: Yes.

12 CHAIRPERSON HILL: Okay. Commissioner, Commissioner
13 Wright, if you just take the oath that's going to be administered
14 by Ms. Rose.

15 MS. ROSE: Would you raise your right hand.

16 MR. WRIGHT: (Hand raises.)

17 Whereupon,

18 PETER WRIGHT,

19 a witness, was duly sworn, and was examined and testified as
20 follows:

21 CHAIRPERSON HILL: Commissioner Wright, everything you
22 just said was true, correct?

23 MR. WRIGHT: That's correct.

1 CHAIRPERSON HILL: Okay. All right. Okay, let's see
2 now. Commissioner Holman, so I mean, I understand what -- I'm
3 going to get back to you later. So does anybody have any more
4 questions for Commissioner Holman or Commissioner Wright?

5 (No response.)

6 CHAIRPERSON HILL: Okay, great. All right, thanks.

7 Okay. Now we're going to go through public testimony.
8 So what -- just so everybody knows who's listening, everyone will
9 get three minutes to present their testimony. And there's a clock
10 there on the screen. We're going to start with a Mr. Jayaaraman.
11 And I'm going to get pronunciation correct in a second. Then
12 Moffett, Tollestrup and then Niak.

13 So, sir, if you can please introduce yourself so I can
14 also hear how you pronounce your name.

15 MR. JAYAARAMAN: Sure. It's quite simple. Last name is
16 spelled two syllables, Jay Raman. First name is Chandler.

17 CHAIRPERSON HILL: Okay, great. Mr. Jayaaraman, --

18 MR. JAYAARAMAN: My name is Chandler Jayaaraman, and
19 thank you.

20 CHAIRPERSON HILL: Please, go ahead.

21 MR. JAYAARAMAN: Thank you very much. Again, my name is
22 Chandler Jayaaraman. Prior to Commissioner Peter Wright, who
23 started this year, I served as the ANC Commissioner for the past

1 eight years for 6B08. And I've watched over those eight years as
2 one business after another have come in, attempted to be
3 successful. And what they have found is that they've had to raise
4 their prices and make it extraordinarily expensive, and eventually
5 they folded up and they left. So I think it is an extraordinary
6 situation, and I think this particular building has a history of
7 restaurant use. And it is clear to me that no restaurant will
8 ever be successful, even if you add in the few seats in the
9 basement, without allowing for the upstairs to be used in total as
10 a restaurant.

11 I take objections with the Office of Planning, Office of
12 Zoning, which claims that there are two useable units upstairs.
13 I'm an expert in fire safety, and I do emergency preparedness
14 planning. If you put in that rear stairwell there is not going to
15 be enough space for two units. And if you don't put in the
16 stairwell, then you have an issue with egress, and you only have
17 one exit for the two units upstairs, which would not meet current
18 fire code regulations as adopted by DC as of March of last year,
19 which is a 2015 International Fire Code. And it requires two
20 means of egress.

21 What the applicant is proposing to do is not only
22 convert it, but also make it overall safer for anybody who goes up
23 there. And so it is an extraordinary situation that we have. The

1 issue, the challenge posed by parking and I think Commissioner
2 Holman has said that, and so has Commissioner Wright, which is
3 that if you know the area at all you will know that Lincoln Park
4 is the place for people to go to get fresh air. And there's two
5 playgrounds right across from this applicant's location where
6 children play. This is a perfect location for a family
7 restaurant, which is exactly what Mr. Spiro is attempting to do.
8 And it is unconscionable that the Office of Planning would come up
9 with these reasons which are actually quite minimal, and that they
10 would have an impact on zoning regulations overall. And I take
11 objection to that. And I think the Zoning Board should approve
12 the request for a variance for the entire building. And with
13 that, I will use up the rest of my time. Thank you.

14 CHAIRPERSON HILL: Okay. Thank you, sir. I'm going to
15 let every speak and then I'll let the Board, if they have any
16 questions, go.

17 Mr. Moffett, are you next? Can you hear me?

18 MR. MOFFETT: Yeah. Colin Moffett. Is that who you're
19 calling?

20 CHAIRPERSON HILL: Moffett, yes. Please, Moffett.

21 MR. MOFFETT: Yes. No worries. Thank you, Mr.
22 Chairman. And just as way of background, my wife and I and my
23 family have lived -- you saw our house in the diagrams. We are

1 across the alley from the restaurant and have lived there for 17
2 years. So we're actually probably the people with the most line
3 of sight and history in terms of seeing all of these things you're
4 hearing about play out.

5 So let me take a minute and just sort of, you know,
6 verify sort of what you're hearing. But before I do that, I do
7 want to just state that I, you know, as a community we understand
8 that this is a big ask that we're making. But we do implore you
9 to take it seriously because, as you can tell from the number of
10 people who are lined up, there is a lot of energy and excitement
11 around this. So we do want to make sure that, you know, you're
12 taking all of this into account as you think about it.

13 The biggest thing is, you know, like I said, we've lived
14 next to it for 17 years. We've also lived next to it for the last
15 three years as an abandoned building. And I can tell you, even as
16 a poorly functioning restaurant, that's better to have next door
17 than an abandoned building, but can also verify that the failed
18 restaurants are real. It was rarely used as apartments that were
19 for rent. They were often used by the restaurant owners. There
20 are also, just so you know, two apartment buildings next door. So
21 we are not taking apartments offline by moving that to restaurant
22 seating. There are plenty of apartments on the corner, in those
23 two buildings. But really what we want to see more than anything

1 else is a viable restaurant. We want to see family friendly.
2 Parking only becomes an issue if it isn't a family friendly
3 restaurant that is more of a destination restaurant which, you
4 know, with a very small first floor it would need to be. And so,
5 you know, as a community behind us, I can't tell you, people stop
6 and ask me every day, when we're standing in front of our house,
7 why isn't this open yet? Why isn't this open yet? People want
8 this restaurant. They want it to be there. They want it to be
9 family friendly. Mr. Spiro has put a lot of money into taking a
10 derelict building down to the studs, which had to be done. And we
11 are happy he's done that. He's listened to the community and put
12 a lot of time and money into not only creating a viable business,
13 but something the community wants.

14 So we really understand this is a hard decision, but
15 want to, you know, just verify everything you've heard. We've
16 seen it. I'm happy to answer questions about it. You know, we've
17 had a front row seat for the last 17 years and, you know, seen it
18 as a struggling restaurant. We would like it to succeed. So
19 thank you. And I just used my time.

20 CHAIRPERSON HILL: Thank you. Thank you for your
21 testimony.

22 The next is Ms. Tollestrup.

23 MS. TOLLESTRUP: Yes, that's right. Can you hear me?

1 CHAIRPERSON HILL: Yes.

2 MS. TOLLESTRUP: Hi.

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

5 MS. TOLLESTRUP: Yes. So I'm Jessica Tollestrup. I
6 live on -- we own a home on 13th and Mass Ave, on the southeast
7 corner of 13th and Mass Ave. So we're about kitty-corner from
8 where the restaurant would be. We've lived in the neighborhood
9 for 11 years. We've owned this home for four years. And
10 honestly, when we bought we were really excited to be on the park,
11 and particularly close to, at that time there was a restaurant
12 there. And since we've lived in this neighborhood I would
13 absolutely echo what Colin said.

14 We've seen restaurants come and go. It's been pretty
15 obvious the problem is a capacity issue. And we've been pretty
16 concerned about that. So from our perspective, being able to
17 have, you know, be all three floors would give something like this
18 business a good chance of success in the neighborhood.

19 Like Colin also said, during the pandemic this has been
20 a constant topic of conversation amongst the neighbors when this
21 would open, a lot of excitement about the vision for the
22 restaurant, about it being a family destination. I have no
23 concerns about it being, about there being traffic because of it.

1 I would agree that this is something that people will walk and
2 will bring their families to. And so I don't have a lot more to
3 say other than that. But we are very -- living close to it as
4 well would be very excited to see this open in accordance to its
5 full vision. Thank you.

6 CHAIRPERSON HILL: Thank you, Ms. Tollestrup.

7 Last on is Ms. Niak.

8 MS. NIAK: Good afternoon.

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

11 MS. NIAK: Good afternoon. This is Lina Niak. I am a
12 Capitol Hill -- I've been a Capitol Hill restaurant from --
13 resident for over seven years. And I was a resident a block away
14 from Lincoln Park. I'm very active on the Capitol Hill social
15 media pages, such as Facebook, (indiscernible) Group, Nextdoor.
16 And I want to echo what other residents have said. When the local
17 community first heard about the opening of this restaurant at
18 Lincoln Park there was enthusiasm across the Board. And years
19 later, after seeing how much money and time the restaurant owner
20 has put into this, residents are left scratching their head on
21 wondering why this resident has not -- this restaurant has not
22 opened.

1 I should also mention I'm a landlord and have been a
2 tenant. On the issue of the second floor residential unit, I have
3 been inside the building at the second floor. I have walked into
4 the property. This is not a property I would consider living in
5 or renting. This is not a property that my friends that live in
6 Capitol Hill would consider living in or renting. It's -- there
7 are safety issues. And as Colin mentioned, the stairwell and
8 exist issues as well.

9 I also want to note that the former owner and his
10 girlfriend were living on the second floor of the building because
11 it was not functional as a rental property. And it was foreclosed
12 on. So this just supports the applicant's argument that this
13 restaurant needs additional capacity on the third floor. And the
14 Office of Zoning and Planning should defer to the restaurant
15 (audio interference) about how to help the restaurant succeed.

16 I do question how much ground research and fact finding
17 Office of Planning and Zoning did in this case. And I do want to
18 spend a few minutes reading some of the social media supporters of
19 this restaurant. "Really, really excited about this. I've been
20 dying to make this restaurant in this location my local spot for
21 20 years." "So happy this is happening. We randomly ran into the
22 owner last October and he was having issues with the City
23 providing permits. Then with the pandemic I was afraid it

1 wouldn't happen." "This just needs a good smudging and lots of
2 cash." "We used to go to the Silver Spring location regularly and
3 were so excited to see a Pacci's coming in. What is taking so
4 long?" And as noted above, the Office of Zoning and Planning -- I
5 would be -- I am interested in hearing their ideas about the
6 capacity issues, about the restaurant group's business position,
7 and why they think that the capacity issue is not a problem for
8 the restaurant to succeed. Thank you. And thanks for considering
9 my view.

10 CHAIRPERSON HILL: Thank you. Thank you for your
11 testimony. Thank you all for your testimony. Does the Board have
12 any questions for the witnesses?

13 (No response.)

14 CHAIRPERSON HILL: No? Commissioner, Holman, are you
15 there?

16 MR. HOLMAN: Yes, sir.

17 CHAIRPERSON HILL: Do you have any questions for
18 anybody?

19 MR. HOLMAN: No, I don't.

20 CHAIRPERSON HILL: Mr. Sullivan, do you have any
21 questions for anybody?

22 MR. SULLIVAN: No, I don't.

1 CHAIRPERSON HILL: Okay. All right, thank you all for
2 your testimony. We'll go ahead and excuse you. And Mr. Young, if
3 you could tell me who you're bringing into the room again.

4 MR. YOUNG: So I just brought in three witnesses, and
5 we have one more that is calling in by phone. If you want to do
6 them last, and I'll unmute them when you're ready.

7 CHAIRPERSON HILL: Okay. I see Cushman, Webber and is
8 it Wilson?

9 MR. YOUNG: No. Cushman, Webber and Khanna.

10 CHAIRPERSON HILL: Okay. Okay. Okay. Mr. Cushman, can
11 you hear me?

12 MR. CUSHMAN: Yes, I can. Can you hear me?

13 CHAIRPERSON HILL: Yes. If you could please introduce
14 yourself. And then you'll have three minutes for your testimony.

15 MR. CUSHMAN: My name is Michael Cushman. I'm a
16 neighbor. I live at 1364 East Capitol Street. I'm in 6A. I
17 think one of the problems we have here is that 6A and 6B are
18 separate ANC single member districts, and they meet at different,
19 different ANCs. And so the picture that you're getting is not
20 quite as accurate as you might otherwise get.

21 I have been living at 1364 East Capitol Street for 38
22 years. And I know the history of the former Lincoln Park fruit
23 basket, which had a C of O to prepare fruit baskets for

1 distribution. Until -- from the time I moved in in 1983 until
2 1995 that building was vacant. Now, I know that there's a C of O
3 for a deli, but there was never a deli there. That building was
4 always been land banked, and it's always been an investment
5 property.

6 My issue is that there's a severe -- there's currently a
7 lack of parking. And there will be a severe lack of parking if a
8 proposal that's currently on the table for discussion by ANC 6A
9 comes to fruition, which is to turn the 1300 block of North
10 Carolina Avenue to one way traffic and add bike lanes. If this
11 goes through the neighborhood will lose 30 to 35 more parking
12 spaces. And again, as I said, this is complicated by ANC
13 boundaries because 6A is north of East Capitol and 6B is south of
14 East Capitol. So when Peter Wright, a single member district
15 member of ANC 6B discusses this when talking to his neighbors
16 south are not aware of proposals to restrict parking.

17 There is an ANC letter in support of this includes a
18 barber shop two blocks to the east. This barber shop has now been
19 renovated into a restaurant Chandler Jayaaraman is a consultant to
20 that, and they're proposing to put in seating for 140 people.
21 This, however, is a MU-4 commercial zone. So it's not -- it
22 doesn't have the same problems that a building in an RF-1 has.

23 An RF-1 Zoning is incompatible with a restaurant of this

1 size. It's parking, parking, parking. Now, everybody says, oh,
2 it's a neighborhood restaurant. Yeah. Half the people may walk.
3 They're going to meet people, it's going to rain. There are
4 going to be times when people need to drive to this restaurant,
5 and there will not be parking.

6 Corey Holman asked how could this -- how could this
7 restaurant have been vacant or how could there have been so many
8 restaurants that failed there? Point of fact, there was one owner
9 who ran three restaurants, and then he was the owner who helped
10 run the fourth restaurant into his (indiscernible). So Pacci's
11 restaurant could almost certainly be successful because Spiro is a
12 knowledgeable restaurateur. He knows how to make money doing
13 this. But the second floor, first floor and cellar is just too
14 damn big.

15 The letters of support are almost all generic in that
16 they want a neighborhood restaurant, they want a successful place
17 here. I --

18 CHAIRPERSON HILL: Mr. Cushman, --

19 MR. CUSHMAN: Yeah.

20 CHAIRPERSON HILL: Yeah, I mean, I want you to continue
21 going. I just letting you to know you ran out of time. So go
22 ahead and finish.

1 MR. CUSHMAN: Okay. Thank you. Mr. Holman asked how
2 this property could be vacant so long. And there's an easy
3 answer. Mr. (Indiscernible) okay, he has been a lifeline of the
4 neighborhood for years. He's got another house --

5 CHAIRPERSON HILL: Mr. Cushman?

6 MR. CUSHMAN: Yeah.

7 CHAIRPERSON HILL: Did you just say somebody's name?

8 MR. CUSHMAN: I did.

9 CHAIRPERSON HILL: That's all right. We don't need to
10 talk about people and things like that.

11 MR. CUSHMAN: Fine. This restaurant originally had a
12 seat of over 50 seats. When it got converted into the last, the
13 kitchen and wine bar, it turned to from 50 seats to a maximum load
14 of 50 people. Now, 50 people -- the propose is to triple the size
15 of this restaurant. I don't believe that that is required to make
16 money, and I don't believe that Spiro thought that. Because as
17 Corey Holman said in his Twitter feed, if he is depending on the
18 use variance to make this successful, he would have made the
19 purchase of the building contingent on getting the use variance.

20 CHAIRPERSON HILL: Okay. All right, Mr. Cushman.
21 Okay, well, thank you very much. I understand everything you're
22 speaking to.

23 MR. CUSHMAN: One more -- one more thing if I could.

1 CHAIRPERSON HILL: Sure.

2 MR. CUSHMAN: I did actually take a look through other C
3 of O's. Seventh Hill Pizza, 38 seats, (indiscernible) 109
4 occupant -

5 CHAIRPERSON HILL: That's not relevant here.

6 MR. CUSHMAN: But hardship --

7 CHAIRPERSON HILL: Okay. I don't know --

8 MR. CUSHMAN: Hardship is --

9 CHAIRPERSON HILL: Mr. Cushman, you're giving testimony.
10 That's fine. So go ahead. I think you've gone over your time.

11 MR. CUSHMAN: Okay. Thank you.

12 CHAIRPERSON HILL: the next person is Mr. Webber.

13 MR. WEBBER: Yes, sir. My name is Nicholas Webber. I
14 have lived in Capitol Hill for two years now. And in my time here
15 it's been under construction the entire time. I'm in favor of the
16 restaurant, whatever it needs to be successful within reason. I'm
17 close enough that I don't see myself needing to drive there so,
18 you know, my perspective is a little biased in that regard. I
19 don't have to consider parking or anything like that. I think
20 that's probably all I have to say. I haven't really done all the
21 research that the other people testifying have. Thank you.

22 CHAIRPERSON HILL: Okay. Thank you, Mr. Webber.

23 Mr. Khanna, can you hear me?

1 MR. KHANNA: I can. Can you hear me?

2 CHAIRPERSON HILL: Yes. Could you please go ahead and
3 introduce yourself for the record.

4 MR. KHANNA: Sure. My name is Ravi Khanna. I was a
5 resident of Capitol Hill. We bought back in 2013. I want to
6 share just my perspective as a resident, as a landlord and very
7 transparently as a friend of the restaurant owner.

8 When we moved there in 2013 that restaurant I want to
9 say went through at least two changes of ownership if not three.
10 It was a dilapidated building. When we'd walk by we'd see maybe
11 25 percent occupied. Many prices were ridiculous. In 2013 I think
12 a (indiscernible) was like \$23.

13 As a landlord I've worked to invest whatever spare money
14 I have buying a condo, renting it out. And I can tell you that I
15 have seen both of those units in that building before the, before
16 Spiro Gioldasis took over. There is no way I would ever rent
17 those units. Let me point out that that landlord had actually
18 upgraded all the appliances and with fancy counter tops in. They
19 were very small. It did not feel safe. And you could hear even
20 the handful of people below through that, through the floor. It
21 is not something I would ever consider living in safely, and I
22 would never put my money into being a landlord for units above
23 there.

1 The last thing I want to say is as a friend of Spiro
2 Gioldasis, there is a -- Mr. Cushman said it very well. He is a
3 restaurateur. He is an operator. I have a business degree. I
4 actually looked at Spiro's business as a sample project. He was
5 kind enough to walk me through how it is to be an operator of the
6 business. And he makes a very good point, Mr. Cushman did. He
7 knows how to run a business. Part of his business model is
8 creating affordable dishes. At the hearing that Mr. Gioldasis set
9 up he went over his prices in Forest Glen. He spent a lot of time
10 making sure that this is a family affordable business model. It's
11 a family restaurant. It's the same business model that has the
12 success as Forest Glen. The last time we spoke I asked Mr.
13 Cushman to take a look at the parking lot at the Forest Glen
14 restaurant. I don't know if that happened. But parking has never
15 been a problem there. And this is a walking restaurant. When we
16 showed Mr. Gioldasis this space this was absolutely the same
17 business model that he has shown to be successful in the Forest
18 Glen location.

19 So the last thing I want to point out is that the
20 average profit you need butts in chair, quite blatantly, to make
21 money. This is a margin business, volume business. This is not a
22 high end restaurant where you're making 200 percent profit. You
23 know, this is putting pizza in the oven, lots of labor, you're

1 | employing lots of people, lots of overheard, and you're counting
2 | on repeat business. So I would lean on relying on the
3 | restaurateur to present the business model and not a resident,
4 | very honestly, to tell us what could be successful there.

5 | So thank you for hearing me. I appreciate your time.
6 | And I agree with Ms. Niak's sentiment that we should ask the
7 | Office of Zoning and Planning to present their data. It's a very
8 | broad argument to say that people live above restaurants and it
9 | works. I'd like to understand what metrics were looked at
10 | specifically at that location, knowing that the owner and staff
11 | were living there because they could not rent those units out.
12 | That to me is a sign, a certain data point of a failed rental
13 | unit. There's no speculation needed. We've seen a business fail
14 | there. We've seen residential units fail there. And we've seen a
15 | restaurateur that's come in, put his money in, and is planning for
16 | success. Thank you for your time.

17 | CHAIRPERSON HILL: Okay. Thank you. Thank you, Mr.
18 | Khanna. All right. Does the Board have any questions for any of
19 | the witnesses?

20 | (No response.)

21 | CHAIRPERSON HILL: Okay. Mr. Young, if you could please
22 | excuse all the witnesses. On, sure, Mr. Turnbull, Commissioner?

1 MR. TURNBULL: Was there also -- I thought Mr. Young
2 said there was going to be one more on the phone.

3 CHAIRPERSON HILL: Oh, I'm sorry. Thanks. Yes. Mr. Young,
4 was there one more?

5 MR. YOUNG: There was, but it looks like he's dropped
6 off. If he comes back on in the next two minutes I'll let you
7 know.

8 CHAIRPERSON HILL: Okay. Thank you. Thank you, Mr.
9 Turnbull.

10 Let's see, Ms. Myers, are you there?

11 MS. MYERS: Yes, I am.

12 CHAIRPERSON HILL: I'm just curious, in terms of all of
13 the testimony that we've heard, and we're going to have our own
14 discussion about this, in terms of the livability of the units on
15 the second floor, you didn't hear any testimony that was
16 necessarily going to change your opinion; is that correct?

17 MS. MYERS: That's correct.

18 CHAIRPERSON HILL: Okay. All right.

19 Okay. Mr. Smith, do you have a question?

20 MR. SMITH: Can I follow up on that last comment?

21 CHAIRPERSON HILL: Sure. Ms. Myers?

22 MS. MYERS: Hello again.

1 MR. SMITH: To your knowledge are there legal C of O's
2 for the residential units on the top floor?

3 MS. MYERS: Yes. To my knowledge they are still
4 legally units that can be lived in. And they have proper, you
5 know, legal paperwork related to that.

6 MR. SMITH: Okay. That was the only question I had.
7 Thanks.

8 CHAIRPERSON HILL: Okay. Does anybody -- I have a
9 couple of questions for Mr. Sullivan. Does anybody have any more
10 questions for Ms. Myers?

11 (No response.)

12 CHAIRPERSON HILL: Okay. Mr. Sullivan, I guess you can
13 go ahead and give rebuttal, right. And then we'll have some
14 questions or whatever.

15 Sure, go ahead, Mr. Turnbull?

16 MR. TURNBULL: I just had one -- I didn't -- when we were
17 -- when Mr. -- when Mr. Gronning was talking about the plans and
18 all that. From my understanding looking at these plans, the only
19 accessible part of the restaurant is the first floor. There's no
20 elevator to the second or the basement; is that correct?

21 MR. GRONNING: That is correct, Mr. Turnbull.

1 MR. TURNBULL: As a business model, isn't that kind of
2 difficult then; you're only going to be able to have accessibility
3 on the first floor?

4 MR. GRONNING: I think there are 28 seats on the first
5 floor. Adding a elevator -- you know, the main event is on the
6 first floor, the main bar, the main, you know, people want to be
7 seated next to a window on the first floor. That is what we're
8 addressing in the ADA.

9 MR. TURNBULL: How many people could be on the second
10 floor?

11 MR. GRONNING: I would have to go back to the drawing,
12 but I believe it is spaced for 60. Whether or not it ends up
13 being that many, you know, depends on what the final permit is
14 approved for.

15 MR. TURNBULL: Just seems like an awful lot that you're
16 not allowing for. So -- all right. Thank you.

17 CHAIRPERSON HILL: And as I -- this was another question
18 I have now that we're with the architect. In terms of that
19 vestibule, like that's how you would separate the first floor --
20 I'm sorry, the second floor to a residential from the first and
21 the basement, correct?

22 MR. GRONNING: If we were to put a separate residential
23 use on the second floor, we would need to increase the size of the

1 vestibule. Currently there is none. So we would have to have two
2 separate entrances, one for the residential units above, then we'd
3 have to have another entrance for the restaurant. Probably need
4 to add a vestibule there. And further, you know, lose further
5 seats on the first floor if we did that.

6 CHAIRPERSON HILL: Why do you have to have another
7 vestibule?

8 MR. GRONNING: I believe it's code. It's an energy
9 function. You know, you'd be opening the door directly into the
10 space.

11 CHAIRPERSON HILL: Okay. All right. Well, anyway, I
12 was just curious.

13 So, okay. Back to Mr. Sullivan then. You know, I'm a
14 little stuck. I mean, the basement I've got no problem with the
15 basement. I don't think anybody has any problem with the
16 basement. It's now that the residential that you're losing on the
17 first -- I'm sorry, on the second floor. I'm not convinced that
18 you're meeting -- I mean, I'd love -- I mean, by the way, I think
19 the restaurant looks great. I'd love to live next door to it.
20 I'd love for you to have all the capacity that you have there. I
21 will mention a couple of things and then Mr. Sullivan. The
22 variance goes with the property. Right. So you might have a
23 family run pizza place right now, but next year you might have a

1 four star restaurant with tons of people, right. And Ms. Myers,
2 can I ask you a question; are you there?

3 MS. MYERS: Yes.

4 CHAIRPERSON HILL: So do you know, like that second
5 floor, could that be like a club or like a, you know, a dance
6 floor or something like that? Like, how does that -- if it got --
7 if it got -- if this were to permit as a restaurant, right, what
8 could potentially go in there?

9 MS. MYERS: I mean, I couldn't tell you. We didn't
10 look at that from that point of view. It's currently as
11 residentially zoned.

12 CHAIRPERSON HILL: I know. But they're trying to get
13 variance for a restaurant on the second floor. I was just curious
14 if you knew if they got the variance and then later on it got sold
15 to somebody else and they put a club on the second floor, would
16 that count as a restaurant? And maybe Mr. Sullivan would know
17 that off the top of the head. I don't know.

18 MR. SMITH: Or a dance floor in a restaurant?

19 CHAIRPERSON HILL: Right.

20 MR. SULLIVAN: Private clubs are no longer permitted in
21 the RF Zone. It was prior to the 2016 regs. But it would have to
22 be separate from the restaurant anyway. If it was a private club,
23 it couldn't be open to the public.

1 CHAIRPERSON HILL: Could it be a dance floor?

2 MR. SULLIVAN: I don't see -- no, I -- no. I think
3 that's even more restrictive, or a more restricted use than a --

4 CHAIRPERSON HILL: But it could be a restaurant. I just
5 don't know what qualifies as a restaurant.

6 MR. GRONNING: I can elaborate on that, if I could. To
7 have any kind of dance function or even a DJ, under a restaurant
8 ABRA would have to weigh in and present. So there would be a
9 process for the public to oppose.

10 CHAIRPERSON HILL: That doesn't necessarily mean that
11 ABRA would be opposed to it. So -- but anyway, I'm just -- what
12 I'm just trying to let everybody know, if it goes with the
13 property, right, it's not just this restaurant. And if this
14 restaurant goes away, whatever the restaurant -- so, Mr. Sullivan,
15 I'm just -- I don't know if I'm going to be able to vote on this
16 today because we might have to talk about things. You know, like
17 I'm stuck with the second floor a little bit. Because -- and I
18 was saying this not as anything other than I do have, you know, we
19 all have our personal experiences because we bring those to the
20 table. And I was sharing that I live above a restaurant, right.
21 And so it's very common place. And it's very common place in
22 these zones to have, you know, residential above it. Now, I don't
23 know if you wanted to try to go into some kind of an economic

1 | thing where to make that second floor soundproofed, or like making
2 | that -- I believe the testimony that maybe one of the people gave
3 | that the second floor was awful, right. You know, you could, you
4 | could hear anybody talking to you below it. You really couldn't
5 | be able to make it residential and actually use it. I don't know
6 | if that's a good enough case that you would be able to make for my
7 | other Board members. But, you know, I'd be I guess at least
8 | willing to listen to how expensive it would be to make that
9 | residential.

10 | It's currently all been taken down to studs; is that
11 | what's going on right now?

12 | MR. SULLIVAN: You can answer that.

13 | MR. GRONNING: That is correct. We did get a demolition
14 | permit and has been taken down to studs and structural work is
15 | being done.

16 | CHAIRPERSON HILL: Okay. So you're at, you know, you're
17 | where you need to be I guess. So, I don't know, I'm looking at my
18 | fellow Board members. I'd either want to hear more information as
19 | to how that second floor can't be converted properly into
20 | apartments, you know, rental units, so that we are keeping two
21 | housing units on there. The other thing, and everyone will get a
22 | chance to speak, the other thing is like everybody is talking
23 | about how they wouldn't live there, they wouldn't live there.

1 Maybe it would become affordable housing. Right. Maybe somebody
2 who would be able to like, you know, they can't pay as much as
3 somebody else can pay, but living above a restaurant isn't that
4 big a deal to them. Right. And so then you get somebody that can
5 actually like afford it there. You know, I don't know. So that's
6 where I'm kind of stuck on the -- but I'm good with the basement.
7 I'll just be straight up. I'm good with the basement. I'm good
8 with the first floor. But -- and even then -- and then, Mr.
9 Turnbull, I'll let you go ahead and spiel off your thoughts. Even
10 then we have to probably come back and make this thing cleaner.
11 Because this whole bifurcation thing, like it's all messy. Like,
12 I need to see what we're actually voting on, and talk about it,
13 see plans, and all this stuff.

14 So Mr. Turnbull, -- those are my initial thoughts. And
15 now we're just going to hear from the Board members.

16 Mr. Turnbull?

17 MR. TURNBULL: Just following up on your line of
18 discussion there. If -- it sounds like if they're down to the
19 bare studs now, I mean, let's say that the ground, the first floor
20 and the basement become restaurant. I think maybe we're all
21 leaning that that's not too far a stretch to do. It sounds like
22 there's going to be major, new mechanical work has to go in
23 anyway. So they're going to be picking up the floor and redoing

1 | this thing to be able to go to the roof with the new mechanical
2 | system. Probably new sprinklers. I don't know what else has to
3 | be done. So that's the time that they can fix the floor. I
4 | mean, if that's all done, I mean, it's not a big deal to try to
5 | insulate the floor for a residential unit.

6 | I mean, I think you're right. We need more information.
7 | I mean, someone needs options here on what you could do if we
8 | still make this even residential and leave it as it is. I think
9 | there's -- I think you're right. We do need some more information
10 | as to the bifurcation and how this really works. So I'm with you.
11 | I think we need more information.

12 | CHAIRPERSON HILL: Mr. Smith?

13 | MR. SMITH: I agree with you, Chairman Hill. I think I
14 | need some additional information. As this stands now, I am
15 | struggling to support it as it stands now, especially this
16 | question about undue hardship on whether the property can be
17 | (audio interference). I'm not completely convinced that apartment
18 | units above a commercial restaurant use is detrimental to the
19 | success of the restaurant. We see it all the time. Chairman
20 | Hill, you referenced that you lived above, live above a
21 | restaurant. I've lived above a restaurant on Pennsylvania Avenue
22 | at that, not too far away from this site in question. This mixed
23 | use is very common across the District. And often times the City

1 has sought to encourage that type of mixed uses within these
2 neighborhoods. So we're seeking to go to one single use with a
3 large restaurant. And it seems that they're trying to convey that
4 it's bad to have it above, but it's okay to have them to the
5 sides. And I'm not completely convinced -- not completely
6 convinced that the second prong has been satisfied. I'm not
7 convinced that the prong that (audio interference) has been
8 satisfied. This is the RF-1 Zone. The property can be used for
9 restaurant, you know, smaller than what we have been proposing
10 currently. But this is an RF-1 Zone, contemplates the use as a
11 residential property, and they can operate a restaurant within the
12 space.

13 I do believe that bifurcation is an interesting concept.
14 And I agree with you, Mr. -- Chairman Hill that this, if we go
15 there, we need additional information, if they are to go that
16 route. The basement and cellar currently functions as a part of
17 the restaurant now, so it may not be too much of a stretch for
18 that cellar space to operate as part of the restaurant. But the
19 application before you right now I'm struggling with. But I think
20 I agree, we would -- I would welcome some additional information.

21 CHAIRPERSON HILL: Okay. Mr. Blake, where are you?

22 MR. BLAKE: I share the sentiments of the other Board
23 members in that I need more time to think about this. It's a

1 challenging situation. The community obviously would love to have
2 a restaurant, and they want it. But there's some offsetting
3 factors that are very important. And it does have some issues
4 with some zoning requirements as it relates to providing losing
5 those two apartments. Above everything else, I just need some
6 time to think about this and mull it over in my head, weigh those
7 two. Helpful information for me would be with regard to the costs
8 involved and where we are now. You've kind of got it down to the
9 studs. So it's not a matter of going back to what it was,
10 uninhabitable space. It's left leg uninhabitable at this point.
11 So the question is, is it that significantly more.

12 The issues that we talked about relating to the parking
13 impact of the nearby zone is not insignificant. It is often times
14 missed out on the other part of the equation. I think I just need
15 some more time to think through this matter, to get more
16 comfortable with it.

17 I do think bifurcation does makes sense, if you can make
18 -- because at the end of the day the key is to have a restaurant
19 that is economically viable. And certainly we've heard some
20 discussions today as to why other restaurants haven't been viable
21 in this location. But you would want to have a place like this
22 exists and is capable of viably and being sustainable in that

1 position. So those factors have to be considered. I need more
2 time and more information to weigh those out.

3 CHAIRPERSON HILL: Okay. Give me a second, Mr.
4 Sullivan. So --

5 MR. YOUNG: Mr. Chairman?

6 CHAIRPERSON HILL: Yes.

7 MR. YOUNG: Sorry to interrupt. I do have the last
8 witness that was calling in.

9 CHAIRPERSON HILL: Okay, great. What's that person's
10 name?

11 MR. YOUNG: Brian Thomas. And I will unmute him now.

12 CHAIRPERSON HILL: Okay. Hello, Mr. Thomas.

13 MR. THOMAS: Yes. Can you hear me?

14 CHAIRPERSON HILL: Yes, we can. Mr. Thomas, as a member
15 of the public you'll have three minutes to give your testimony.
16 Could you please introduce yourself for the record?

17 MR. THOMAS: Yes. My name is Brian Thomas.

18 CHAIRPERSON HILL: Okay. Mr. Thomas, you can go ahead
19 and begin whenever you'd like.

20 MR. THOMAS: Sure. So, yes, I've been a resident of
21 Capitol Hill for about 10 years, and a friend of the owner, Spiro.
22 I'm in support of the proposal as the added space. And I've had
23 numerous conversations with Spiro. I actually live diagonal

1 across from the property currently. And it's been, you know,
2 vacant for about two-and-a-half years, and I watched him struggle
3 with his permitting and going back and forth. And meanwhile,
4 we've seen other restaurants on the Hill close down during the
5 pandemic. And we've talked about, you know, all the people in the
6 park. And I've heard all the discussion earlier about parking
7 situations. Mr. Spiro wants to keep this a family establishment.
8 He's hoping that, you know, closing early at night, kid friendly,
9 hoping that people will come, do a lot of take out, take it into
10 the park, Lincoln Park, which is right across the street, you
11 know, which would prohibit people driving to and from the
12 restaurant. You know, Capitol Hill is a neighborhood where for
13 the most part people walk, or Uber, or bike, or scooter, however
14 they get there. But there's not a lot of driving going on,
15 especially the location of this restaurant. There isn't a lot of
16 parking to begin with. So you'd be foolish to park, to try to
17 drive and park around the park anyway. And anyone that lives
18 around the park knows you don't drive around the park, you go as
19 far away, you know, as far away as you can from the park. You
20 never go around the park, you know, in commuting to and from
21 wherever you're going.

22 So, you know, I've heard some of the people, you know,
23 complaining about the parking situation. And I just think that

1 his added proposal is for, you know, overflow, special occasions
2 and private events, stuff like that. And I don't think he's
3 really intending to use that all the time. But, again, you know,
4 I am in support of this. And I would just like to see him succeed.
5 And I think he has a, you know, a very viable business option
6 here. And it would be nice to see it finally push through and get
7 some pizzas going around the neighborhood. Thank you.

8 CHAIRPERSON HILL: Okay. Before you go, does the Board
9 have any questions for the witness?

10 (No response.)

11 CHAIRPERSON HILL: Mr. Sullivan, do you have any
12 questions for the witness?

13 MR. SULLIVAN: No.

14 CHAIRPERSON HILL: All right. Thank you very much, sir,
15 for your testimony.

16 MR. THOMAS: Thank you. Appreciate it. Take care.
17 Take care. Bye-bye.

18 CHAIRPERSON HILL: Bye-bye. So -- well, first of all, I
19 mean, I've looked at Mr. Gioldasis; is that how you say his name,
20 Mr. Sullivan?

21 MR. SULLIVAN: Gioldasis.

22 CHAIRPERSON HILL: Oh, Gioldasis. Gioldasis. The food
23 looks delicious, Mr. Gioldasis. I'm sure it's delicious. And,

1 | you know, and for the neighborhood, in terms of somebody, in terms
2 | of a place succeeding you have to go. You go and you pay your
3 | money there. That's how it succeeds. You go there a lot.

4 | So okay. So the problem that -- I'm trying to figure
5 | this out, Mr. Sullivan, because I'm going to have to get to
6 | wherever we're going to get to as fast as we can get there.
7 | Right. And so I really don't see necessarily being a unique
8 | situation with the fact that there is residential above. If the
9 | undue hardship that you might try to get to is that it's too
10 | expensive to do it, that may be able to get me over the Office of
11 | Planning, but I don't know. Right. I don't really see any
12 | substantial detriment to the public good. But I do maybe see a
13 | substantial impairment to the zone plan. And so that's where you
14 | might not even get me there because the last one might get you.
15 | Right. Because it is residential. And it's residential above a
16 | restaurant, and that happens all the time. Right.

17 | So I'm probably a hard no on the upstairs thing, right.
18 | And I don't know where -- my other -- and I'm just trying to get
19 | to this because, you know, I don't know if my fellow Board members
20 | think if they want more information to have -- and Mr. Sullivan,
21 | that's what I'm going to do, is I'm going to take a break.
22 | Because if we were doing this back in the hearing room I'd ask you
23 | have a minute to talk to your client. Okay. So we're going to

1 take a break after this and you can talk to your client. And then
2 we're going to go to the next case and then we'll come back. So I
3 just want to know what my -- if -- if -- if the applicant could
4 actually provide more information for that second floor turning in
5 -- not being residential, is there something that you need? And
6 I'm going to start with you, Mr. Turnbull. Is there anything you
7 need or you think you don't even think you can get there?

8 MR. TURNBULL: That's a tough one, Mr. Chair. Again, I
9 think I'm like you. I'm struggling. I have no issue with the
10 basement. I don't think any of us may have an issue with the
11 basement. But I do have a trouble, I do have trouble with the
12 second floor. I think it's a high bar. I think the Capitol Hill
13 Restoration Society has made some good point, or at least one good
14 point regarding the parking. But I also think, like you say, it's
15 not an exceptional situation.

16 CHAIRPERSON HILL: Okay.

17 MR. TURNBULL: It's always been residential. I lost
18 you?

19 CHAIRPERSON HILL: No. I just want to know, Mr.
20 Turnbull. I don't want to take this to a big --

21 MR. TURNBULL: I don't need to see anything.

22 CHAIRPERSON HILL: You don't need to see anything?
23 Okay.

1 MR. TURNBULL: No.

2 CHAIRPERSON HILL: Mr. Blake, is there anything you need
3 to see if you were going to be to supplement the argument for
4 residential on the second floor?

5 MR. BLAKE: From my perspective, again, my goal would
6 be to see an economically viable property. So the economics would
7 play into that. The question for me is, is it impossible to --
8 economics would be the most helpful thing.

9 CHAIRPERSON HILL: Okay. Mr. Smith, is there anything
10 more you need for that second floor?

11 MR. SMITH: No. I agree with Mr. Blake. If you have
12 some additional financial information.

13 CHAIRPERSON HILL: Okay. All right. So Mr. Sullivan,
14 you can talk to your client. Because I don't know if the
15 financial information is going to get you there. Okay. But you
16 can talk to your client. And then if we need to, and if it goes
17 two, two, then you can get Ms. John to come in and figure out what
18 she says. Right. But I'm going to go ahead and close this portion
19 of the hearing. You can give your rebuttal at the end. Okay.
20 Right. And then why don't you talk to your client. Because what
21 I'm trying to get at is, even if this is a bifurcation thing, we
22 need new plans. Right. We need, you know, self cert, revised
23 self cert. I need -- I just need to see -- I need to know --

1 MR. SULLIVAN: Right.

2 CHAIRPERSON HILL: Right?

3 MR. SULLIVAN: Right. Well, as to the plans, it's not
4 the same as like 927N where the plans would change. You would
5 just strike the third floor, and then it just wouldn't be subject
6 to the BZA order.

7 CHAIRPERSON HILL: But not that the -- yeah, that's
8 fine. That's fine.

9 MR. SULLIVAN: But we can't easily --

10 CHAIRPERSON HILL: If that's -- if that's -- I don't --
11 I mean, I'm just used to seeing plans. But I will -- if OAG and
12 everybody says that's correct, I don't need to look at the third
13 floor.

14 MR. SULLIVAN: and we would obviously welcome the
15 opportunity to provide more detailed information. I think there's
16 two arguments. There is the bottom up argument, but the
17 restaurant doesn't survive without the second floor. And then
18 there's the top down argument that the residential doesn't survive
19 with the existing restaurant use. And I think we could provide
20 some more detailed information on that which would document some
21 of the antidotal stories that you've heard from the community as
22 well about the history of it.

1 CHAIRPERSON HILL: You can try. But I'm letting you
2 know, I don't see how that restaurant can't survive on the first
3 and the basement. Right. I mean, there's plenty of small
4 restaurants that survive just on that first floor. You know, I
5 don't know who was in the restaurant before, but there's plenty
6 of restaurants that survive on that first floor. Right. So --

7 MR. SULLIVAN: Right. So, yeah, it would be on us to
8 highlight and document some difference or critical difference in
9 that. Understood. Fair enough. CHAIRPERSON HILL: You can
10 -- does anybody need to talk to Mr. Sullivan about anything before
11 I close the hearing and let him talk to his client?

12 (No response.)

13 CHAIRPERSON HILL: No. Okay. All right. Then Mr.
14 Sullivan, we're going to go ahead and excuse you. I'm going to
15 close the hearing at this portion. We're going to hear, well,
16 we're going to hear the last two. Okay. And you come back at the
17 end of the day.

18 MR. SULLIVAN: Okay.

19 CHAIRPERSON HILL: Okay? All right. Okay. All right.
20 So, Mr. Young, if you can let them go. Did we only hear one
21 hearing after lunch? That was it, right? Oh, dear goodness. I
22 need a -- do we need a break? I kind of need a break. Let's take
23 a five-minute break. Okay. Thank you.

1 (Whereupon, The above-entitled matter went off the
2 record and then resumed at approximately 3:10 p.m.)

3 MS. ROSE: This is application number 20441 of Festival
4 Center, Inc., for an area variance from the floor area ratio
5 restriction of Subtitle G, Section 402.2, pursuant to Subtitle X,
6 Section 1002, to construct an executive meeting room and mezzanine
7 on the first and second floors and a non-residential addition to
8 the third floor in an existing three-story, semi-detached, non-
9 residential building in the MU-5-A Zone, at premises 1640 Columbia
10 Road, Northwest, Square 2579, Lot 34. This case was last heard on
11 April 13. The Board requested no supplemental information,
12 requested no other testimony. And except one affidavit of
13 maintenance there are no other filings in the record since April
14 14. No one has signed up to speak for this hearing except for the
15 applicant's agent. And on the 14th participating in this case Mr.
16 Hill, Vice Chair John, Mr. Blake, Mr. Smith and Mr. Turnbull.

17 CHAIRPERSON HILL: Okay, great. Thank you. Mr.
18 DeThomas, could you introduce yourself, please, for the record?

19 MR. DETHOMAS: Hi. Good afternoon, Board members. My
20 name is Kyle DeThomas with Ballard Spahr. And our firm represents
21 the applicant in this matter Festival Center, Inc.

22 CHAIRPERSON HILL: Okay, great. Thank you. All right,
23 Mr. DeThomas, I mean, I know the reason why we pushed you back out

1 is because of a time issue in terms of filings that we had and
2 notifications that we had. And so I don't have any additional
3 questions or information for you since the last time you were
4 here. Does the Board have any additional questions of Mr.
5 DeThomas? And if so, please raise your hand.

6 (No response.)

7 CHAIRPERSON HILL: Okay. Mr. Mordfin, are you there?

8 MR. MORDFIN: Yes, I am here.

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

11 MR. MORDFIN: Yes. I'm Stephen Mordfin with the Office
12 of Planning.

13 CHAIRPERSON HILL: Okay. Mr. Mordfin, you don't have
14 anything additional to add, do you?

15 MR. MORDFIN: No. I have nothing additional since the
16 last hearing.

17 CHAIRPERSON HILL: Okay. Does the Board have any
18 questions for the Office of Planning?

19 (No response.)

20 CHAIRPERSON HILL: Does the applicant have any questions
21 for the Office of Planning?

22 MR. DETHOMAS: No.

1 CHAIRPERSON HILL: Mr. Young, is there anyone here
2 wishing to speak?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Okay. All right. Mr. DeThomas, is
5 there anything you want to say at the end?

6 MR. DETHOMAS: No. Thank you for your time and
7 consideration, Board members and the Office of Planning.

8 CHAIRPERSON HILL: Okay, great. Thank you. All right.
9 Go ahead and close the record and the hearing and excuse everyone.

10 Mr. Turnbull, can you start? Can somebody else talk? I
11 want somebody else to talk.

12 MR. TURNBULL: All right. I'll stumble around. I'm
13 trying to remember going back what we talked about. I think there
14 was a lot of miscellaneous testimony that talked about why this
15 was a special exception. And I think someone went far field. But
16 I think that there was just -- there was, if I remember correctly,
17 the practical difficulty of trying to get their business together
18 on certain floors. And I think going to the third floor was, it
19 was supposedly residential, which was confusing to me at the time,
20 that it was originally zoned as residential, but I don't think it
21 ever was really used as residential. I don't know if any of the
22 Board members remember that. That this has always been an
23 institutional use. And I don't have any issues with this. I

1 mean, I think there's a lot of convoluted testimony, things going
2 back and forth. But I think when we get down to the bare facts,
3 that to expand their business into these other areas, I have no
4 problem with that. I mean, I think there was a lot of testimony
5 that tried to say, oh, we couldn't do this, couldn't do that. But
6 I think basically that the use that was there was never really
7 there. I think the residential part was never part of the actual
8 floor plan, the floor plate of the building. So I think going
9 into these other areas, I don't have a problem with that.

10 CHAIRPERSON HILL: Okay. Mr. Smith?

11 MR. SMITH: If I remember correctly, one of the things
12 that I was looking at was did what was -- what the applicant
13 present an institutional -- what they were presenting in its
14 totality present a institutional necessary for them to expend the
15 mission of the nonprofit? So that was the line of questions that
16 I was asking about, and I think a couple of my Board members were
17 asking about as well. And to that point, based on the testimony
18 that they presented, I do not have any major concerns with the
19 expansion of this facility. I believe that the design of the
20 proposed addition is an institute necessity in expanding the
21 mission of the nonprofit. The redesigned interior is necessary to
22 create energy efficiency for the office structure. The sizes of
23 the offices have been reduced in order to accommodate a larger

1 amount of small nonprofits and start-up businesses in the common
2 space, if necessary, to allow these nonprofits to gather.

3 So in that, I do believe that the applicant has
4 demonstrated and in OP's report that they have met all of the
5 necessary criteria for us to be able to evaluate the three prong
6 variance test. And I do believe that it meets all the
7 requirements. So I would be in support of the variance.

8 CHAIRPERSON HILL: All right. Thank you, Mr. Smith.

9 Mr. Blake?

10 MR. BLAKE: Yeah. Based on materials presented in the
11 record, I believe the applicant's request has met the three-prong
12 test of the requested variance, area variance. The structure was
13 designed and constructed in conformance with the regs, and it
14 didn't require residential use at that time. I believe the
15 applicant made a case that the expansion is an institutional
16 necessity. And the build out of the residential space on the
17 third floor to accommodate the additional office space on the
18 lower level would present exceptional practical difficulty for the
19 applicant.

20 So giving substantial weight to the analysis and
21 findings of the Office of Planning, I'm prepared to support the
22 requested relief.

1 CHAIRPERSON HILL: Thank you. Well, it's a pleasure
2 working with such smart people because I have nothing else to add.
3 And so thank you so much for your deliberation. I would agree
4 with everything that was said, and I will give -- make a motion,
5 I'm sorry, to approve application number 20441 as captioned and
6 read by the secretary and ask for a second, Mr. Blake?

7 MR. BLAKE: Second.

8 CHAIRPERSON HILL: Motion has been made and seconded.
9 Ms. Rose, could you take a roll call vote, please?

10 MS. ROSE: Yes. When I call your name would you please
11 respond with yes, no or abstain.

12 Mr. Turnbull?

13 MR. TURNBULL: Yes.

14 MS. ROSE: Mr. Blake?

15 MR. BLAKE: Yes.

16 MS. ROSE: Mr. Smith?

17 MR. SMITH: Yes.

18 MS. ROSE: Mr. Hill?

19 CHAIRPERSON HILL: Yes.

20 MS. ROSE: Staff would record the vote as 4 to 0 to 1
21 on a motion by Mr. Hill, seconded by Mr. Blake, with Mr. Smith and
22 Mr. Turnbull in support of the motion to approve the application.
23 Ms. John not present, not voting.

1 CHAIRPERSON HILL: Okay. Thank you, Ms. Rose.

2 All right. You can call our next one when you get an
3 opportunity.

4 MS. ROSE: That case is 20455 of Airdome, LLC, for
5 special exception under the new building development requirements
6 of Subtitle H, Section 910.1, and an area variance from the
7 loading berth requirements of Subtitle C, Section 901.1, pursuant
8 to Subtitle H, Section 1202, Subtitle X, Section 902.1, and
9 Subtitle X, Section 1002, to raise the existing buildings and to
10 construct a six-story mixed-use building with 53 residential units
11 and ground floor retail and service use space in the NC-17 Zone at
12 premises 1101 through 1107 H Street, Northeast, Square 982, Lot 65
13 and 70.

14 As a preliminary matter, a waiver is needed to allow the
15 applicant's filing and PowerPoint presentation into the record.

16 CHAIRPERSON HILL: Okay. Thank you, Ms. Rose. Ms.
17 Bloomfield, could you introduce yourself, please?

18 MS. BLOOMFIELD: Jessica Bloomfield with the law firm of
19 Holland and Knight.

20 CHAIRPERSON HILL: Okay. Ms. Bloomfield, is it exhibit
21 43, 44, and 45, all of those coming in late?

22 MR. BLOOMFIELD: Hang on just a sec. Forty-three --
23 no. So -- basically, yes. But 45 would -- a PowerPoint

1 presentation supersedes 43 because Office of Zoning staff had
2 requested we submit a signage plan. So essentially exhibit 45 is
3 the PowerPoint. It just includes the two signage plan. So you
4 would need to approve the waiver for 44 and 45.

5 CHAIRPERSON HILL: Okay. Right. So 44 and 45. Okay.
6 So unless the Board has any issues, I want to see what the signage
7 was -- signage was one of the things that we were kind of speaking
8 about. And I guess so, Ms. Bloomfield, who is with you here
9 today?

10 MS. BLOOMFIELD: For our direct presentation we have
11 Jessie Sterchi and Eric Colbert.

12 CHAIRPERSON HILL: Okay. Ms. Sterchi, could you
13 introduce yourself for the record, please?

14 MS. STERCHI: Yeah. Hi, I'm Jessie Sterchi with the
15 Holladay Corporation who is the developer.

16 CHAIRPERSON HILL: Okay. Mr. Colbert, could you
17 introduce yourself for the record, please?

18 MR. COLBERT: Yes. Thank you Mr. Chairman, members of
19 the Board. I'm Eric Colbert with Eric Colbert and Associates
20 Architects.

21 CHAIRPERSON HILL: Okay. Ms. Bloomfield, yeah, if you
22 could go ahead and walk us through your presentation and how you
23 believe your client is meeting the standards for which we can

1 grant the relief requested. I -- if Mr. Young could pull up your
2 presentation. I know that also kind of for me there was a little
3 bit of -- you know, when the signage was something that I was
4 interested in, as well as kind of any noise issues you think you
5 might be having. If you can kind of like speak to those during
6 your presentation, due to the project. I mean, the program that
7 is. And then you can begin whenever you like.

8 MS. BLOOMFIELD: Thank you. Just one question. Did
9 you all approve the waiver to accept exhibits 44 and 45?

10 CHAIRPERSON HILL: I'm sorry. That's what I thought I
11 did do. But if I went too fast, I'm allowing the exhibits into
12 the record. I'm approving the waiver unless anyone on the Board
13 has an issue. And if so, please raise your hand.

14 (No response.)

15 CHAIRPERSON HILL: All right. I don't see anybody
16 raising their hand, so yes, they are approved in the record.

17 MS. BLOOMFIELD: Thank you. And Mr. Young, if you
18 don't mind pulling up the PowerPoint presentation, the revised
19 one, which is exhibit 45.

20 And I will just get going. The property we're here to
21 talk about today is located at the southeast corner of 11th and H
22 Streets, Northeast. It is presently improved with two one and
23 two-story vacant retail structures. I'm going to briefly explain

1 the zoning relief requested and then turn it over to our team for
2 a very short presentation.

3 As you know, the application requests two areas of
4 zoning relief. One is a loading variance and one is a special
5 exception to permit new development on a lot that is greater than
6 6,000 square feet in land area.

7 The materials we submitted to the case record
8 demonstrate how we meet the three-prong variance test to allow for
9 loading to be provided from the existing on- street commercial
10 loading zone, located directly adjacent to the property on 11th
11 Street. And we have support for that from DDOT.

12 The materials in the record also provide a detailed
13 analysis of how we meet all of the design requirements for new
14 construction on H Street, which is required for this special
15 exception review.

16 We are pleased to have support for this project from the
17 Office of Planning, DDOT ANC 6A, as well as the Capitol Hill
18 Restoration Society. OP submitted a report with no conditions or
19 concerns raised. The DDOT report did stipulate two conditions,
20 and we agree to both of those. The first was to implement a TDM
21 plan, and the second was to implement the loading management plan.
22 And we are in full agreement with each of those items.

1 The ANC submitted a report in support. They -- that
2 report also included conditions. There were three of them, and we
3 agree to all three. The first was to implement the TDM plan, same
4 as what DDOT requested. And we are fine with doing that. The
5 second was to include residential parking permit restrictions in
6 any bylaws, documents that could be associated with the property,
7 and we are in agreement with that. And third was to provide a
8 minimum of 39 long-term bike parking spaces and eight short-term
9 bike parking spaces. And if you review the plan, we are providing
10 that or more proposed for the property.

11 So with that I would reiterate the overwhelming support
12 we have from essentially all entities that reviewed this project,
13 and turn it over to Jessie Sterchi, representative of the
14 applicant. Thank you so much.

15 MS. STERCHI: Hi there. Thank you all so much for the
16 time with us today. Again, I'm Jessie Sterchi with the Holiday
17 Corporation. We're a sole developer, but we've been developing in
18 the District for over 50 years. And I won't reiterate the
19 location because Jessie made it pretty clear, and you can see it
20 here. But we did become involved with this site in January OF
21 2019. And since then have brought together the teams that will
22 present today. Eric Colbert and Associates, Holland and Knight,

1 and then we too have a team available if there are questions from
2 traffic. All of whom we've worked with for many years.

3 What we are proposing will be 54 residential units over
4 6700 square feet retail, above a one-story parking garage. That
5 garage will have 17 parking spaces, 42 long-term bike spaces, and
6 then there will be eight short-term bike parking spaces as well.

7 As Jessie mentioned, if approved, the loading will take
8 place via the existing commercial loading zones that are on the
9 on the east side of 11th Street. And we have been in
10 conversations with the ANC since the summer of 2019. We
11 officially met with their development subcommittee twice and
12 presented to the full ANC at their March meeting where we received
13 their support. We look forward to continuing to work with the
14 (audio interference) and obviously your approval today would be a
15 critical piece to that. So we do hope we garner your approval.
16 And thanks again for your time.

17 I'll flip it over to Eric Colbert now.

18 MR. COLBERT: Good afternoon. I'm very happy to be
19 involved in this project. And my client and myself have been
20 working with the community for over a year-and-a-half to show them
21 our progress and obtain their approval. And on this first
22 document you can see that we're keeping an existing facade on the
23 left side of the building here. And also, the color of the new

1 masonry is to be, you know, warm tones that are consistent and go
2 with the existing masonry. And we're using punch windows, which
3 is kind of an overwhelming window type that you see in the
4 historic buildings that are nearby. Also, in terms of the first
5 floor, there is a requirement that the street walls be on the
6 property line, which is which we have achieved. And also that the
7 historic front is designed so that you can have entrances spaced,
8 you know, with a little flexibility. And so our plan incorporates
9 that element. Could we go to the next document, lease.

10 Here again, it's more of a straight on view from H
11 Street. You can see that on the top four floors we have bays and
12 public space that are a significant benefit for us in terms of,
13 you know, allowing people to see up and down the street. And
14 also, another architectural benefit of the bays is that in
15 Washington, because of the height limit, buildings tend to, you
16 know, if you just take the volume of the building, it becomes very
17 horizontal. But one of the advantages of the City authorizing the
18 bays is that they do have the potential to add verticality to the
19 composition, which I think is very important.

20 And then we're setting the main masonry of the building
21 back above the historic facade. Here you can see our context in
22 the upper, left-hand photo. You can see the one-story buildings
23 on the corner that are scheduled to be demolished. And then on

1 the left-hand side, on the lower left you can see the existing
2 facade. So what we're doing is, we're going to be removing -- you
3 know, a lot of these buildings that we work with, the existing
4 fabric to remain neutrally, you know, based on retail for uses
5 that have gone on over the years, they've changed the original
6 feeling of the historic front of the first floor. So using images
7 we're trying to restore that to get it as close to the original
8 look as possible.

9 And then the image on the lower right-hand side is, you
10 can see the outline of our site in red, in context. And, you
11 know, H Street is going east to west on the top and then 11th
12 Street up and down on the left-hand side of our site. Next
13 exhibit, please.

14 So this is a very important document because, well, I
15 can mention two things about the request for a loading variance.
16 One is that -- so this building has slightly more than 50 units.
17 And 50 is the cutoff for even requiring loading. And with our
18 commercial space we just have a little more than 5,000 square
19 feet, not too much more. And also, again, 5,000 is the cutoff for
20 having that requirement. But, you know, because of these, you
21 know, to make the development viable, we really needed to, you
22 know, achieve these numbers so that we could, you know, move
23 forward with the project.

1 But the issue with the loading is that at the bottom
2 right- hand portion of this document you can see our connection to
3 the alley. And with the encroachment on the adjacent buildings,
4 it provides probably more than six feet clear. So there's no way
5 that we can fit a truck in there off the existing narrow alley.
6 And as Jessie mentioned, there is a loading space already present
7 on 11th Street. So we intend to use that. And the same, I think
8 one of the guidelines mentions the necessity in the H Street
9 guidelines, not to have, you know, parking on grade. And so all
10 our parking will be below grade with access from an existing curb
11 cut on 11th Street.

12 And then the commercial space -- the residential lobby
13 on H Street is on the east side of the building. And then leaving
14 the commercial space for the remainder of that floor plate
15 together, so that we can have as much flexibility as possible
16 during leasing. Next document please.

17 So on the left-hand side you can see our parking plan.
18 Nothing too exciting, just, you know, getting as many spaces that
19 we can which, you know, we provided significantly more than the
20 one to six that are required because of the fact that we're in
21 close proximity to the trolley on H Street.

22 CHAIRPERSON HILL: Mr. Colbert?

23 MR. COLBERT: Yes.

1 CHAIRPERSON HILL: Can you, when you're going through
2 this, can you just make sure you point out where the bike parking
3 is for the long-term --

4 MR. COLBERT: Yeah. So -- yeah. In this document the
5 long-term bike parking is in -- there are two parts of it. And
6 along the west side of the plan, in the garage plan, the cellar
7 floor plan, so the upper right-hand corner and then all along the
8 right-hand side of the building. And as was mentioned earlier, we
9 added more bike parking spaces beyond. Because typically the
10 requirement is for one per three dwelling units, which would only
11 mean about 18, plus some for the commercial space outside. But we
12 have considerably more than that to help satisfy community
13 requirements. Next document, please.

14 So here is our typical floor plans. You know, this is
15 one of our smaller projects, but a very important. And we're
16 excited about this project. We've been working with the Holladay
17 Corporation for probably two, at least two decades. And, as you
18 know, we do a lot of kind of urban infill projects. This is a
19 relatively small project compared to a lot of the developments
20 that have been done along H, Street in the last seven or eight
21 years. Next document, please.

22 So as is with most of our projects, we are taking
23 advantage of the penthouse, you know, regulations that authorize

1 us to have dwelling units. And then we also have a small common
2 area that you can see, kind of at the middle. We have the court
3 there with the elevator and two fire stairs. And then there's a
4 common terrace just in kind of the, where the building turns the
5 corner on the interior side. And then the other dwelling units,
6 there are four penthouse dwelling units, will have their own
7 private terraces. They're set back from the edge of the building.
8 And then the rest of it will be green roof and a little space left
9 over for some mechanical equipment. Next document, please.

10 And this is a elevation of our building. And we're just
11 pointing out some of the different materials. One of the
12 regulations is a requirement to have at least 14 feet clear on the
13 first floor. And we've achieved more than that to a potential
14 ceiling. So the dimensions of the slab is closer to over 15 feet.
15 So it will give us plenty of room to put a suspended ceiling in
16 and still have a 14-foot clear space there for commercial use.
17 And then, as you can see, the setback portion of the building will
18 have some outdoor areas in terms of balconies, which have become
19 even more important now in the post-pandemic era. Next document,
20 please.

21 So this is a re-elevation showing the courtyard.
22 Nothing too exciting. But we will have, you know, bioretention

1 facilities in there to help with stormwater management. Next,
2 please.

3 And this is along 11th Street, showing us getting as
4 much of the facade with storefront as possible. And also, the way
5 the facade is organized to give as much flexibility in terms of
6 leasing. Next, please.

7 And this sheet is describing the different types of
8 materials, showing photographs of images, and then showing you the
9 type of brick that we're anticipating using. And then photo
10 number six shows the existing facade, and it gives you a pretty
11 good idea of the coloration and how, with our grid materials we're
12 trying to compliment that. Next, please.

13 And this is a document that was entered later, as
14 Jessica pointed out, so that we could identify where signage
15 could be located, depending on leasing. And then above the main
16 residential entrances, on the lower, left-hand side, so we're
17 showing a modest area of signage for that. Next document, please.

18 Again, around the corner, identifying the zone where
19 signage could be located. Of course when the retail folks go to
20 apply for their permit, again, the signage will be reviewed at
21 that time. Next document, please.

22 This is a plat. I don't really need to go into detail
23 about that. But I would like to say that we have complied with

1 all the zoning regulations, especially the ones identified in
2 Section H909 that are specifically for this site. And also, with
3 the H Street corridor design guidelines for a type two
4 development. As I mentioned, the building is built to the street
5 property lines. Parking underground. And the encroachment in
6 the public space are not in the ground plane as required by the
7 zoning requirements. We've met the guidelines for a store front
8 that were indicated on page seven of the guidelines for H Street.
9 Windows and doors, we're complying with those requirements on
10 page 8. And on the other pages, complying with the guidelines
11 regarding how walls should be structured and with (audio
12 interference) and requirements shown on page 11.

13 So I think that the building to be designed and I think
14 the neighbors and the ANC agree with us that they're welcoming
15 this development. Thank you.

16 MS. BLOOMFIELD: That would conclude our direct
17 presentation, Chairman Hill. So we are available to answer any
18 questions that you may have.

19 CHAIRPERSON HILL: Okay, great. Ms. Bloomfield,
20 considering H1200.1 about noise associated with operation shall
21 not adversely affect adjacent nearby residences. Have you done
22 anything about noise or thought about it?

1 MS. BLOOMFIELD: I can start and then I can send it
2 over to Jessie and/or Eric. As it relates specifically to the
3 penthouse, I'm not sure if that's what you're referring to, that
4 will just be residential use. There's no retail, or restaurant,
5 or anything proposed up there. So it's just residences. And
6 then the intent -- I mean, the surrounding area is also full of
7 other residential buildings with ground floor retail. So Jessie
8 may be able to speak to the type of retail being proposed. But it
9 wouldn't be anything out of character with what's already existing
10 on H Street, along that corridor.

11 MS. STERCHI: Yeah. I mean, honestly, I -- it's too
12 premature for me to speculate what retail we can (audio
13 interference). But I think it would be in keeping with what's
14 already there, you know, which is, I mean, truthfully, almost
15 anything. So I -- you know, we are prepared for there to possibly
16 be a restaurant. We've put in the right infrastructure for that.
17 But we don't know if that's what we would get. We, you know,
18 akin to the projects I listened to earlier, that you all looked at
19 by Douglas, you know, we are concerned, needless to say, of the
20 residents living above whatever retail we sign below. And we're
21 cognizant of that. You know, we are primarily a residential
22 focused developer. And that's -- we're very sensitive to noise
23 issues for the residents above.

1 CHAIRPERSON HILL: Okay. Okay.

2 MR. COLBERT: I'd like to say a couple of things too.
3 And that is the rooftop on common area is very small and would not
4 be able to accommodate any significant size party. And also, the
5 way it's located, we have a residential condominium abutting the
6 east side. But the penthouse would block that roof deck from any
7 kind of direct observation or noise coming from anyone that would
8 be, you know, spending time there.

9 The other thing is that we have our exhaust from the
10 garage is actually exhausting out in the middle of our courtyard.
11 And so there wouldn't be any motors or anything that exist on the
12 site that would be providing noise for any adjacent buildings.
13 And we are, on the south side we are abutting a commercial
14 property.

15 CHAIRPERSON HILL: Okay. All right. Let's see, does
16 anyone else have any questions for the applicant?

17 Mr. Turnbull?

18 MR. TURNBULL: Yeah. I really don't have one, not
19 really a question, it's just a comment. I want to thank you for
20 the signage drawings. I think we were -- that clarifies for us on
21 the two sheets. My only question is, it's in blue ink. When you
22 go to print you don't get those, those blue ink drawings do not
23 print. So it's like writing with invisible ink. I've tried -- my

1 prints on my printer, I tried to print the signage drawings and
2 they just show up as architectural drawings of the background
3 information. The blue aspect does not print. So I don't know if
4 that, if that's going to be part of the record documents, I don't
5 know what goes to CRA and how they look at it. So just a comment.
6 I don't know how you deal with that. But --

7 MS. BLOOMFIELD: We haven't had that problem in our
8 experience. And I will say that when you download the pdf from
9 the case record, the blue shows up. It's interesting to hear you
10 say that.

11 MR. TURNBULL: No. Well, I didn't -- I just printed it
12 directly from my -- I saw the pdf on the screen, so I downloaded
13 it. And it just didn't show up. So just a little quirk. So I
14 don't know whether it's, again, maybe you have to do it a certain
15 way. So anyway, I just thought I'd point that out.

16 MR. COLBERT: Thank you.

17 CHAIRPERSON HILL: Okay. I'm going to turn to the
18 Office of Planning.

19 MS. THOMAS: Good afternoon, Mr. Chair, members of the
20 Board. Karen Thomas for the Office of Planning, for application
21 20455. I will highlight OP's report and how the standards were
22 less than the requested relief for a new building proposed on the
23 underutilized site at 1107 H Street, Northeast, which is on the

1 mixed-use retail corridor where moderate top medium development is
2 anticipated.

3 Mixed-use development is guided by the H Street,
4 Northeast, strategic development plan, as well as Subtitle H,
5 Section 909, both of which provides design guidelines. In terms
6 of demonstration and preservation of the pre-1958 facade, ground
7 floor transparency, and facade street for (indiscernible) signs,
8 projection signs, (indiscernible) signs. And the plans have
9 satisfied those elements.

10 We see that OAG requested the applicant to supplement
11 the record with a more detailed signage plan than the original
12 plans provided. And that's included at Exhibit 44. OP report
13 reviewed the items individually, and they were satisfied that the
14 design is consistent with those requirements. Further, this
15 informed our determination that the special exception relief would
16 be in harmony with the intent of the regulations, including the
17 proposed design satisfying the bulk and area requirements of the
18 NC17 district. And also, it would satisfy the intent to encourage
19 infill development on underutilized sites.

20 So the proposal should not unduly affect the use of
21 neighboring properties. The corridor has transformed to mainly
22 mixed use, according to the H Street plan. And this proposed
23 mixed-use is anticipated and, again, meets the bulk and area

1 requirement. Where area variance relief is required from the
2 loading requirement, the impact is mitigated as on-street loading
3 is provided in the immediate vicinity of the property on H Street
4 would meet the relief requested from the loading requirement.

5 The lot is an irregularly shaped lot. And at narrows
6 substantially where it connects to the 10-foot wide alley at the
7 rear. And at this location it is not wide enough to permit truck
8 access. The inefficient alley layout, and without the lot at the
9 rear, together with the potential viable ground floor space, if
10 onsite loading were to be provided from the street, create an
11 exceptional situation of the property. The exceptional situation
12 in turn would create a practical difficulty for the applicant in
13 providing the required on-street loading (indiscernible). It
14 would be physically and practically difficult to provide loading
15 access from the rear alley with a potential loss of retail space.
16 Significant area that would be required for truck maneuvers on
17 this site.

18 So with that, we determined that there would no
19 substantial detriment to the public good since loading is already
20 dedicated in public space for this block along the properties 11th
21 Street frontage. We don't anticipate impairment to the intent,
22 purpose and integrity of the zoning regulation, as it is designed
23 would satisfy essentially all other area and design requirements

1 for the NC-17 Zone. The physical configuration at the rear of the
2 lot provides permitted to no access option. And the applicant
3 does not own the surrounding property to satisfy these loading
4 requirements.

5 We also note that the ANC and the Capitol Hill
6 Restoration Society are in support of this application. And with
7 that, I will conclude my presentation. I'd be happy to take any
8 questions. Thank you.

9 CHAIRPERSON HILL: Okay. Thank you, Ms. Thomas. Does
10 the Board have any questions for the Office of Planning?

11 (No response.)

12 CHAIRPERSON HILL: No? All right. Does the applicant
13 have any questions for the Office of Planning?

14 MS. BLOOMFIELD: No. Thank you.

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

17 MR. YOUNG: We do not.

18 CHAIRPERSON HILL: Okay. Ms. Bloomfield, so you guys
19 are good with the TDF plan and the loading management plan that
20 DDOT has requested, correct?

21 MS. BLOOMFIELD: Yes.

1 CHAIRPERSON HILL: And then also the 39 -- I didn't
2 count them, but the 39 long-term biking spaces you did do as well
3 as the outdoor spots, correct? The eight outdoor spots, correct?

4 MS. BLOOMFIELD: Yes. We have eight outdoor spots and
5 slightly more than 38 long-term spots.

6 CHAIRPERSON HILL: Slightly more than 38?

7 MS. BLOOMFIELD: Yeah. It's 42 I think we have,
8 something like that.

9 CHAIRPERSON HILL: Okay. Yeah, they wanted -- I don't -
10 - you know, they wanted 39. So you've got over 39?

11 MS. BLOOMFIELD: Yes.

12 CHAIRPERSON HILL: All right. Let's see, does anybody
13 have any more questions for the applicant? Mr. Erwin, are you
14 there?

15 (No response.)

16 CHAIRPERSON HILL: Mr. Andres, are you there?

17 MR. ANDRES: Yes, I am.

18 CHAIRPERSON HILL: You had to wait all day and you
19 didn't have to say anything?

20 MR. ANDRES: (Audio interference.)

21 CHAIRPERSON HILL: Your internet is not very good
22 either. So that's better for us. All right. Okay. Does anybody
23 have any questions for anybody?

1 (No response.)

2 CHAIRPERSON HILL: No? Ms. Bloomfield, do you have
3 anything you'd like to add at the end?

4 MS. BLOOMFIELD: No. Just thank you for your time and
5 review of our application. And we would respectfully request you
6 support it. Thank you.

7 CHAIRPERSON HILL: Okay. Thank you. All right. I'm
8 going to close the hearing and the record. Mr. Young, if you
9 could please excuse everyone from the hearing room.

10 Commissioner Turnbull, you don't mind talking first, do
11 you?

12 MR. TURNBULL: No. I was going to talk -- I was going
13 to go through the area variance and the special exception
14 requirements and how they met it. But since Ms. Thomas did such
15 an excellent job of going, a thorough job of going through it
16 all, I don't see what we have to do. Anyway, I would just say
17 that she did an excellent job, and I agree with her totally on
18 this. And she also mentioned about all the ANC reports, the CHRS
19 support. So I have nothing more to add, that I would be in
20 support of this. I think they meet every -- they're following the
21 guidelines of H Street. So, hey, they're doing everything they
22 should be doing. So I think it's a good project, and I'm going to
23 vote to approve it.

1 CHAIRPERSON HILL: Okay. Thank you.

2 Mr. Smith?

3 MR. SMITH: I echo Mr. Turnbull's comments. She was
4 very thorough in explaining how the particular proposal meets the
5 variance criteria and the special exception criteria. So with
6 that, I stand on her record and the OP staff report giving it
7 great weight. And I would support this application. Also, s Mr.
8 Turnbull stated, I would note that ANC is also in support of it,
9 and the CHRS.

10 CHAIRPERSON HILL: Okay. Thank you.

11 Mr. Blake?

12 MR. BLAKE: I echo the comments made by the other Board
13 members. I totally would be comfortable supporting this. I
14 believe that the Office of Planning gave an excellent report which
15 I feel very comfortable with the analysis and recommendation, and
16 I'm prepared to support.

17 CHAIRPERSON HILL: Thank you. I will agree, the Office
18 of Planning did a good job of walking through the report so that
19 we don't have to walk through it again. And so I would agree with
20 everything the Office of Planning has said. Also, nice to see
21 that the ANC is in support, as well as DDOT.

22 So I'll go ahead and make a motion to approve
23 application number 20455 as captioned and read by the secretary,

1 including DDOT's TDM plan and loading management plan request, as
2 well as that, that the ANC, they provide 39 long-term bike spaces
3 as well as outdoor park spaces, which they are doing, and ask for
4 a second, Mr. Blake?

5 MR. BLAKE: Second.

6 CHAIRPERSON HILL: The motion has been made and
7 seconded. Ms. Rose, could you take a roll call?

8 MS. ROSE: Yes. When I call your name please respond
9 with yes, no or abstain.

10 Mr. Turnbull?

11 MR. TURNBULL: Yes.

12 MS. ROSE: Mr. Blake?

13 MR. BLAKE: Yes.

14 MS. ROSE: Mr. Smith?

15 MR. SMITH: Yes.

16 MS. ROSE: Mr. Hill?

17 CHAIRPERSON HILL: Yes.

18 MS. ROSE: Staff will record the vote as 4 to 0 to 1 to
19 approve the application on a motion by Mr. Hill, seconded by Mr.
20 Blake, with Mr. Smith and Mr. Turnbull in support of the motion,
21 Ms. John not present, not voting. And that is with the conditions
22 as referenced by the chair.

23 CHAIRPERSON HILL: Okay, great. Thank you, Ms. Rose.

1 Ms. Rose, when you have an opportunity, I don't know if
2 you need to necessarily call it back in, read the whole thing.
3 You can if you'd like. If you want to bring us back into 20445.

4 MS. ROSE: Yes. We're returning to application number
5 20445 of 106 13th Street, LLC. This is for a use variance from
6 the use restrictions of Subtitle U, Section 301, pursuant to
7 Subtitle X, Section 1002, to expand an existing nonconforming
8 restaurant use to the cellar and the second story of a semi-
9 detached, two-story with cellar commercial building, in the RF-1
10 Zone, at premises 106 13 Street, Southeast, Square 1036, Lot 60.

11 CHAIRPERSON HILL: Mr. Sullivan, are you there?

12 MR. SULLIVAN: I am.

13 CHAIRPERSON HILL: Could you reintroduce yourself for the
14 record, please?

15 MR. SULLIVAN: Yes. Marty Sullivan, with Sullivan and
16 Barros, on behalf of the applicant.

17 CHAIRPERSON HILL: Okay. Could you tell us what you all
18 discussed while speaking to your client?

19 MR. SULLIVAN: Yes. We discussed the possibility of
20 providing some financial analysis regarding the viability of the
21 restaurant on the three floors versus two. And I thought that
22 that might be something that would be responsive to Mr. Blake and

1 Mr. Smith. And we could provide something like that within a
2 couple weeks, if the Board is open to that.

3 CHAIRPERSON HILL: Okay. Yeah. I mean, I'll be -- I'm
4 going to just be transparent, Mr. Sullivan. I don't know if the
5 numbers are going to help me out. And so, you know, I don't -- if
6 your client still wants to take a shot at it, then that's fine.
7 You know, but you still might be back here at the same place after
8 that. So you understand that, correct?

9 MR. SULLIVAN: Absolutely.

10 CHAIRPERSON HILL: Okay. All right. And I'm sure your
11 client understands it too. Mr. Smith?

12 MR. SMITH: I want to reiterate what Mr. Hill said. If
13 we -- I support you submitting the financial information, but I
14 still believe that it will be a very high hurdle, even with
15 submitting that information. I don't know if that changes
16 anything, but I'm with Mr. Hill. But I welcome the information,
17 but it's still going to be a high hurdle.

18 MR. SULLIVAN: We appreciate the opportunity and
19 certainly understand it's nothing --

20 CHAIRPERSON HILL: Mr. Blake, --

21 MR. SULLIVAN: We know it's a high hurdle.

22 CHAIRPERSON HILL: anything else to add?

23 MR. BLAKE: No.

1 CHAIRPERSON HILL: No. Mr. Turnbull, anything else to
2 add?

3 MR. TURNBULL: No. I'm okay.

4 CHAIRPERSON HILL: Okay. So then, Mr. Sullivan, I
5 guess, you know, -- yeah. So then I guess if you -- whatever
6 financial information you want to somehow provide, then I guess
7 what you're trying to say is that the restaurant is not viable
8 without the third floor. Those are the economics that you're
9 going to try to provide. And, therefore, that's how you're going
10 to meet the variance test, because you're going to -- you know,
11 that's going to be one of the confluence of factors as to why that
12 second floor can't be residential?

13 MR. SULLIVAN: It's -- yeah. There's also still the
14 argument of the residential being difficult. And we'd like to
15 provide some more information on that. For instance, it was
16 mentioned that there's a C of O for the second floor. There's
17 never been a C of O for any residential use in that building. So
18 there's not a And then, and it was mentioned by the Office of
19 Planning that there are two units that are in effect. They
20 mentioned that it was inhabited by the owner and staff. And so
21 that item, I wouldn't call those viable, marketable units.
22 They're just leftover space that's being used by the owner of the
23 restaurant.

1 And so I think both of those I think both of those -- I
2 think both of those represent potential undue hardship.

3 CHAIRPERSON HILL: Okay. I mean, I'm happy -- I'm happy
4 to -- if you want to, you know, if you want to try again, I'm
5 happy to listen to the argument again. What my, my sticking point
6 probably is also going to be, you know, no substantial impairment
7 of the zone plan. Right. It's actually maybe going to be the
8 last prong, which normally it's not for me. But this might be an
9 issue. Right. So, but again, who knows, you might get the votes.
10 And your client knows that they're spending money. So that's up
11 to you guys.

12 So then you understand what you're going to try to
13 provide us. We're going to leave the record open. I'm going to
14 close the record for everything other than whatever economics you,
15 Mr. Sullivan, would like to provide in either why -- and I'll
16 leave it even open to this, as why you need that space for the
17 restaurant and that somehow ties into the variance, as well as you
18 can't make those units viable, which I find very hard to believe,
19 right, on the second floor, knowing that I've lived above a
20 restaurant. Right. And so, you know, but you can try. And then
21 you're saying you think you'll be able to do that in a couple of
22 weeks?

1 MR. SULLIVAN: Yeah. We can do -- well, so we have a
2 holiday coming up. So let's say three weeks.

3 CHAIRPERSON HILL: So I'm --

4 MR. SULLIVAN: Obviously, it's --

5 CHAIRPERSON HILL: That's all right. I'm just going to
6 see. We're totally jammed up. We're jammed up all the way until
7 the end of August. And so second, third, so that's like the 16th
8 of June, right. Ms. Rose, do you know how many cases we have on
9 the 16th of June?

10 MS. ROSE: We have nine hearing cases.

11 MR. SULLIVAN: I'm sorry, Mr. Chair. I don't know if OP
12 would want to do a supplemental too. So I don't know if we need
13 more than --

14 CHAIRPERSON HILL: Is OP even there, Mr. Young?

15 MS. MYERS: I'm here. I don't have the video option,
16 but I'm here.

17 CHAIRPERSON HILL: Okay, great. All right, Ms. Myers.
18 Then, you know, if you want to provide -- I mean, I guess we'll
19 find -- well, hold on. Give me a second.

20 So why don't we do this. I mean, we're -- Ms. Rose, can
21 you work with Mr. Sullivan and try to find some dates. Because,
22 Mr. Sullivan, I just don't want to give you a date right now. I
23 mean, we're doing our best to accommodate this situation. Right.

1 And it is really, really jammed up through when we go away.
2 Right. And so, you know, -- and, again, I don't know if this
3 plays into your discussion with your client, wherein if you give
4 this thing a shot, and it ends up being on the 23rd of June
5 something, you know, or I don't know, and gets into July, we'll
6 see what happens with you. You know, you might now be back in
7 September before you're back to us again if this effort fails.
8 Right. So I'm just being, again, transparent. But Ms. Rose, go
9 ahead and see what dates you and Mr. Sullivan can work out, if
10 that's fair.

11 MS. ROSE: And you would like to have a decision
12 meeting?

13 CHAIRPERSON HILL: No. We're not going to --

14 MS. ROSE: Or a continued hearing?

15 CHAIRPERSON HILL: We'll have a continued hearing.

16 MS. ROSE: So do you want to keep the record open?

17 CHAIRPERSON HILL: I'm keeping -- we'd like to keep the
18 record open just for the material that we asked for. We don't
19 need any more testimony from anybody about anything. I mean, if
20 we can, the ANC is always -- the ANC is a party. So then probably
21 what is going to end up happening is that the applicant is going
22 to submit some economic numbers, the ANC will then have an
23 opportunity to respond to those economic numbers, the Office of

1 Planning, if they want to supply a different report, may do so.
2 Right. They may decide that there's nothing that they're changing
3 their mind about. Right. And then we're back again for a
4 continued hearing. So if you can figure all that out, Ms. Rose,
5 right now on the fly and tell me when is kind of a good time to
6 meet, because I just don't know what our schedule is. Like, nine
7 is a lot. But if that's kind of the softest day we have, then
8 maybe nine is not that bad. But I think that -- I think we have
9 a, you know, I think nine is -- I think we have a lot.

10 MS. ROSE: Well, on the 30th you have eight cases.

11 CHAIRPERSON HILL: On the 30th of June?

12 MS. ROSE: Yes.

13 CHAIRPERSON HILL: Okay. Okay. Then let's do that. So
14 if you want to work backwards from the 30th of June.

15 MS. ROSE: Right. So if the applicant could supply a
16 response by the 17th, and then the responses would be due on the
17 24th. Does that work for Mr. Sullivan on the 17th?

18 MR. SULLIVAN: Yes. I'm sorry. I'm communicating with
19 my client as well. So I'm a little distracted.

20 CHAIRPERSON HILL: I'll tell you what. Hold on. Mr.
21 Sullivan, you -- your client is watching. And I'm sorry, Board
22 members, if we might do this. Because if this helps me at all,
23 then I want help. Okay. So, again, I'm trying to clarify. This

1 | could possibly get strung out until after Sep -- until into
2 | September. Okay. And I don't know. I mean, I don't know.
3 | Right. So I'm going to let you have five minutes. I'm going to
4 | let you have five minutes. Do you want five minutes or you don't
5 | want five minutes?

6 | MR. SULLIVAN: Two minutes.

7 | CHAIRPERSON HILL: Okay. We're going to take a five-
8 | minute break and then I'm going to come back. Okay.

9 | MR. SULLIVAN: Thank you.

10 | CHAIRPERSON HILL: Otherwise, we're going to be here on
11 | the 30.

12 | MR. SULLIVAN: Thank you.

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

15 | CHAIRPERSON HILL: So once again. I'm calling us back
16 | into session for application number 20445. Mr. Sullivan, did you
17 | have additional thoughts?

18 | MR. SULLIVAN: The June 30th is okay. If we went past
19 | that, then there would be a problem. But if we could get in by
20 | June 30th at the latest, that works.

21 | CHAIRPERSON HILL: Okay. I'm saying that if you get in
22 | -- and now I'm just kind of talking this through. I can't believe
23 | I'm going to talk this through some more. But I'm also talking

1 | this through, Mr. Sullivan, because we're in this COVID world.
2 | Right. And it's been very -- if we were in the hearing room, we
3 | might not be as accommodating as we are with this. Right.
4 | Because, you know, this option A or option B stuff is not usually
5 | what we've done before. Right. We have and we haven't. But
6 | we're trying to be as accommodating as possible because of COVID.
7 | And I really mean this. Right. Because of the pandemic, we're
8 | trying to do this the best way possible. So all I'm trying to
9 | convey is I don't know for sure if I'm going to be able to get you
10 | back in here again, if June 30th doesn't work. Okay. Right. So
11 | we can see what happens. We can bring you back on June 30th, but
12 | if you're still at zero, then we're going to have to -- you might
13 | be in September when you're back in again. Okay. And it might be
14 | even --

15 | MR. SULLIVAN: Still at zero?

16 | CHAIRPERSON HILL: If this doesn't, if you can't get
17 | this third floor to work the way you're trying to get it to do,
18 | and you want to bifurcate or whatever, change your application,
19 | right, and just get, again, the ground level and the ground floor,
20 | we are jam packed all the way through until August. And then
21 | we're even kind of I think jam packed into September. So what I'm
22 | trying to say is, I don't know if this bifurcated thing, if you --
23 | if this doesn't work on the 30, I don't know if you're back before

1 us until mid September or -- I'll try to do what I can do, but I'm
2 being very honest that we have a jam agenda. And that's why I'm
3 trying to stipulate this.

4 MR. SULLIVAN: Okay. Well, you know, we can't go past
5 June 30th. So I thought the bifurcation would be able to be
6 addressed at June 30th with the decision. I mean, it's two
7 separate decisions in the same case. One is --

8 CHAIRPERSON HILL: No. I don't feel -- and you can see
9 how the Board thinks. And I can pause. And I'm sorry, Board
10 members, to think about this again. This "A" or "B" thing at the
11 same time doesn't work for me. Right. And so, like, in the past,
12 I know today we did this because I wasn't involved in the first
13 case when you bifurcated and you were like, you know, we're either
14 going to do the parking or the not the parking. I mean, and I
15 don't know what my fellow -- and maybe we'll do this one more
16 time. I don't know. This precedent thing, I know in the past
17 we've never done this. We've never done this --

18 MR. SULLIVAN: It has been done many times in the past.

19 CHAIRPERSON HILL: No.

20 MR. SULLIVAN: Bifurcation has been done many times.

21 CHAIRPERSON HILL: Mr. Rice, are you there?

22 MR. RICE: Yes, sir.

1 CHAIRPERSON HILL: Okay. So -- and I'll -- we can see
2 how this goes. Maybe I'm also getting tired. You're not asking
3 for bifurcation, Mr. Sullivan, the way I see it. You're asking
4 for either "A" or "B." Right. So there's two arguments. Right.
5 And so I don't see it as bifurcation. I see it as two different
6 arguments. And so I'm trying to understand if Mr. Rice says that
7 he sees it differently or how we can do this. What you're trying
8 to ask, Mr. Sullivan, is on the 30th you want a decision with what
9 you think we might be able to approve, which is the basement. And
10 you're going to try and see whether you can make a further
11 argument for the third floor. What I thought we were doing, and
12 I'll talk this through, what I thought we were doing, and Mr. Rice
13 is there, what I thought we were doing is hearing the argument
14 about the third floor. And if we decide we don't think the third
15 floor is feasible, then we would set a time to hear again the
16 argument about how the third floor is not, no longer necessary and
17 how you just are making the argument for the additional basement.
18 But maybe I can do it both ways. I don't know. Mr. Rice, have
19 You heard what my question is? And I'm going to turn to my
20 fellow Board members.

21 MR. RICE: So traditionally, when the Board has
22 bifurcated a case, at least what I've seen, and I've checked with
23 Ms. Cain on this, is it's bifurcating two different forms of the

1 lease in order to make it very clear when it considers the forms
2 of relief, and what the criteria are, and to avoid confusion to an
3 overall project with multiple forms of relief. It's -- like, the
4 case could be split. It sounds like Mr. Sullivan is requesting,
5 you know, almost in a traditional sense, to split the case so that
6 he's got one variance running for one floor, another running on a
7 different floor. That would need to be handled administratively.
8 And there might be application fees incurred.

9 And as far as the last portion, where you're saying, you
10 know, at one point and another area on a different day. That is
11 within your prerogative. But there is, like you said before, I
12 don't recall any precedent where that's occurred in the past.

13 CHAIRPERSON HILL: Okay. Don't respond yet, Mr.
14 Sullivan. That's fine. I don't want to make a quick decision on
15 this because we did end up doing this with something earlier
16 today. However, I have been here a little bit of time now, and I
17 remember that we did not do it this way. Meaning that an
18 applicant came before us and they asked for relief. That was the
19 application. There wasn't an "A" or "B." Right. So that's what
20 I'm a little confused about. But I don't want to -- I also want
21 to make this as efficient as possible for the Board. So if there's
22 a way to do this "A" and "B" on the 30th, then I'm fine with doing
23 this one on the 30th. But I want something to be cleared up for

1 me. Because I thought we didn't do this "A" or "B" stuff. Right.
2 Okay. And so, Mr. Smith, do you have a comment?

3 MS. SMITH: Maybe this will clarify the discussion. I
4 don't see it as a bifurcation. I see it as a change in the nature
5 of your relief. Because right now you're requesting a restaurant
6 on three floors, and then potentially in the future, depending on,
7 it seems to me, how, you know, things may go generally, then you
8 would be requesting a different type of relief. So to me this
9 isn't bifurcated since how we bifurcated this case earlier this
10 morning. It's a whole different case. So I'm where Chairman Hill
11 is. If, you know, we vote in June, then you have a change in
12 nature of your request, then that would be heard at a later date,
13 not on the same day.

14 CHAIRPERSON HILL: Okay. So --

15 MR. SULLIVAN: The regulation provides, Subtitle Y,
16 Section 3180 provides for alternatives. I know we've done it. I
17 have the cases to show. What it comes down to is June -- if we go
18 beyond June 30th, it's done. So we have to decide whether or not
19 to just withdraw.

20 CHAIRPERSON HILL: This is not -- this is also -- Mr.
21 Sullivan, I'm trying to do my best. And I know, this is just too
22 fast for me to try to figure out, you telling me something that
23 we've done before. I know that what we have done before is not

1 | what this is. Right. That it's a new form of relief. Right.
2 | And so -- so another little question, you know, some little bird.
3 | So we could vote today if you'd like, Mr. Sullivan. Right. We
4 | could vote today on this third floor. Right. And then you would
5 | know. And then you could come back before us with the -- but I'm
6 | spending a lot of time on this now. And we could come -- you
7 | could come back before us with the new applic -- what I think --
8 | and this is where I'm confused, whether it's a new application or
9 | you have to, you know, change the relief that's being requested,
10 | which I would think you would need to. And so that's where OAG --
11 | and actually, I can't -- I mean, we can keep -- we can have an
12 | emergency meeting with OAG right now, which I wouldn't necessarily
13 | mind, I suppose. And if you guys aren't in a big hurry, we can
14 | talk to OAG and figure out what exactly we're doing here. Because
15 | I don't want to do this on the fly, in front of the public. Okay.
16 | There you go.

17 | So where is the emergency meeting stuff, Ms. Rose? I
18 | think you sent it to me, right?

19 | MS. ROSE: Yes.

20 | CHAIRPERSON HILL: Okay. Great. Let me look. And I do
21 | have it. Mr. Blake, I've only had -- I've had more emergency
22 | closed meetings with you than anybody, you know. All right.

1 As chairman of the Board of Zoning Adjustment in the
2 District of Columbia, and in accordance with 407 of the District
3 of Columbia Administrative Procedures Act, I move that the Board
4 of Zoning Adjustment hold a closed meeting on February -- on
5 5/26/2021, for the purposes of seeking legal advice on case number
6 20445 and/or deliberate, but not vote on case number 20445, for
7 the reasons citing DC Official Code 2-575(b)13; is there a second,
8 Mr. Blake?

9 MR. BLAKE: Second.

10 CHAIRPERSON HILL: All right. The motion has been made
11 and seconded. Ms. Rose, could you take a roll call, please?

12 MS. ROSE: When I call your name please state yes, no or
13 abstain.

14 Mr. Turnbull?

15 MR. TURNBULL: Yes.

16 MS. ROSE: Mr. Blake?

17 MR. BLAKE: Yes.

18 MS. ROSE: Mr. Smith?

19 MR. SMITH: Yes.

20 MS. ROSE: Mr. Hill?

21 CHAIRPERSON HILL: Yes.

22 MS. ROSE: And Ms. John is not present. So that would
23 be 4 to 0 to 1 to hold the meeting.

1 CHAIRPERSON HILL: Okay. I think -- did someone send a
2 link? Is there a link that's going to get sent?

3 MS. ROSE: Paul is to send it.

4 CHAIRPERSON HILL: Okay. And then --

5 MR. YOUNG: Yeah, I'm sending it right now.

6 CHAIRPERSON HILL: -- we leave this one, then we come
7 back, right?

8 MR. YOUNG: You can stay on this one. If you just mute
9 your mic on here and turn your camera off, you can join the other
10 one.

11 CHAIRPERSON HILL: I'm leaving this one. That sounds
12 too scary. Okay. I'm leaving. Bye-bye.

13 (Whereupon, at 4:21 - 4:48 the Board met in closed
14 session.)

15 CHAIRPERSON HILL: The time is now 4:47, and we're back
16 into application 20445, after taking an emergency closed meeting
17 to speak with OAG.

18 So, Mr. Sullivan, could you re-introduce yourself for
19 the record?

20 MR. SULLIVAN: Yeah. Marty Sullivan, with Sullivan and
21 Barros, on behalf of the applicant.

22 CHAIRPERSON HILL: Thank you, Mr. Sullivan. So Mr.
23 Sullivan, I mean, I'm just kind of going to give you my thought

1 process. And I don't really necessarily want to have a discussion
2 with you, but if you want to talk, we can talk. When we have
3 bifurcated things in the past, right, that has been when I've been
4 when I have been on the (indiscernible) and somebody wanted to
5 vote one set of circumstances but didn't want to vote on the other
6 set of piece of relief, much like what happened this morning.
7 Right. There was, you know, -- and even that I was a little bit
8 uneasy with. Because even in that situation you would have had to
9 come back to show us the plans without the drawing, without the
10 parking. So I'm just -- since that happened today, it's just
11 fresh in my brain. But I'm trying to compare it to this, which is
12 that in the past and I -- to be quite honest, first of all, I'm
13 uncomfortable with this. So that's number one, right. And -- but
14 in the past we've done the bifurcation when, again, somebody on
15 the (indiscernible) wanted to vote but they didn't want to vote
16 for everything. Right. And the thing that I heard and been with
17 in my experience in the past is that we have never done something
18 when people, people could get "A" or "B" at the same time. And
19 if you want to speak with OAG after today, and we can figure out
20 whether or not that is something that we've done in the past, we
21 may entertain that. But I'm definitely uncomfortable -- I'm
22 definitely uncomfortable with it now. Right.

1 So what that means -- and I also talked to my fellow
2 Board members, and so we're all kind of in agreement. Let me get
3 to my speech here first because I don't want to forget it. Is
4 that you come to us with whatever relief you're requesting, and
5 that's the relief you're requesting. Right. So if you come to us
6 on the 30th and you want to provide further arguments, economic
7 arguments for why that third floor is necessary to your
8 restaurant, then that's what you would do on the 30th. Right.
9 Then, if we did want to be flexible, which I think this Board is
10 very flexible to applicants, we would then take a vote. And then
11 you would either win or lose. And we wouldn't be like, well, it
12 looks like you're going to lose. Do you want to change your
13 application? And that's when we're somewhat flexible. Right.
14 And so but really, in the past and in previous Boards, they've
15 just voted. Right. And you'd come back and you'd start where you
16 start. Right. But I, under my tenure, my leadership, if you
17 will, I'm trying to be as flexible as possible. So I've allowed
18 this kind of last minute, it's not going to work, let's see what
19 happens. Right. Okay.

20 So on the 30th, if you came with your presentation,
21 that's fine for the third floor. We would see what happens. And
22 then if it looks as though you might not, you still might want to
23 change your application, we would then need to see new drawings

1 because that relief that you're asking for with just the first
2 floor and the basement would need a new vestibule. Right. So the
3 plans would actually change. Right. So I'm uncomfortable, unless
4 there was like new plans and all that stuff. So I'm just
5 thinking, it's a road I think is too slippery to go down. And my
6 fellow Board members agree with me. Right. So what I would
7 suggest is that you go ahead on the 30th, provide your
8 information, and see what you think you can come up with. And
9 before the 30th, if you think that it would be better to change
10 your application for the first floor and the basement, you could
11 do that before the 30th. And then we could go ahead and hear from
12 OP, I'm sorry, from OZ and the ANC about that change. Otherwise,
13 on the 30th we're going to hear whatever we're going to hear on
14 the 30th. And then if you need to change it, then it's whatever
15 date you get after that.

16 MR. SULLIVAN: Thank you. I appreciate all of that.
17 And I understand. And in light of that, and I've spoken to my
18 client, what we would like to do is to amend the application to
19 withdraw the request for the third -- for the second floor, and
20 leaving, leaving simply a request for use variance relief for the
21 basement, and ask the Board to decide on that as soon as possible.
22 And if it requires revised plans, we could get them within a week.
23 But based on the likelihood of eventual approval of the second

1 floor, and the timing, and the issues with, you know, the bank and
2 all that, the best move right now is to withdraw that portion of
3 the -- if we could do that now and vote, wonderful. If it takes a
4 week or two, great. That's what we would like to do. And I
5 appreciate you working through this and I'm, you know, sorry that
6 it's dragged on all day.

7 CHAIRPERSON HILL: That's all right, Mr. Sullivan. I
8 mean, even though people think we don't care, all of us are --
9 well, some of us are citizens of the City and we really care.
10 Right. Some of us don't live in the City and they don't care.
11 So, but anyway. So okay.

12 Okay. So Mr. Rice, I don't even know if we -- and all
13 fellow Board members, I mean, I would rather have some drawings, I
14 guess, that show what exactly we're approving. And also then, Mr.
15 Sullivan, if you want to give us a revised self cert, or whatever
16 you need to do to clean this thing up so that we can vote on it as
17 quickly as possible. Or, I guess now that I've asked Mr. Rice, I
18 mean, how would we even create the order? There would have to be
19 flexibility for the design, right?

20 MR. RICE: If you had an order on it you would
21 basically be -- it would be very difficult because you would have
22 plans that you could refer to in the order.

1 CHAIRPERSON HILL: Okay. All right, Mr. Sullivan, go
2 ahead and submit your new plans. Okay. Submit a revised self
3 cert for whatever relief you're actually requesting, and then we
4 can have this as a decision meeting. Okay. Unless you all think
5 you need to talk anymore to anybody, meaning my fellow Board
6 members, then we would have a continued hearing. Does anybody
7 want a continued hearing? If so, raise your hand.

8 (No response.)

9 CHAIRPERSON HILL: Can you all hear me?

10 (Heads not affirmatively.)

11 CHAIRPERSON HILL: Okay. All right. Okay. Then, all
12 right. So we don't need a continued hearing. And if that's the
13 case, then you getting this tidied up, Mr. Sullivan, how long
14 would it take you to get us back here?

15 MR. SULLIVAN: Going to commit the architect and say we
16 could have something by Friday. Is there even a meeting date next
17 week? Because it's a holiday.

18 CHAIRPERSON HILL: I don't think there is, actually.
19 We're -- aren't we off, Ms. Rose?

20 MR. SULLIVAN: So then maybe Tuesday so that there's a -
21 - I'm sorry.

22 CHAIRPERSON HILL: I'm just -- Ms. Rose, are we off next
23 week?

1 (No response.)

2 CHAIRPERSON HILL: You're saying yes or no? I can't
3 hear Ms. Rose. Did you say yes? No.

4 MS. ROSE: There's no session June 2nd, sir.

5 CHAIRPERSON HILL: That's just wonderful. Okay. So,
6 all right. Then --

7 MR. SULLIVAN: I mean, so I submit by Tuesday.

8 CHAIRPERSON HILL: Tuesday the 1st.

9 MS. ROSE: Tuesday, June 1st.

10 CHAIRPERSON HILL: Okay. And then the ANC has to have
11 time to, if they want to file anything. Right, because they're a
12 party. And then if OP wanted to give an additional report they
13 could. Is OP there still?

14 MS. MYERS: Yes, I am. But I don't have video option
15 here. Oh, there we got.

16 CHAIRPERSON HILL: Okay. Ms. Myers, do you have any
17 thoughts on -- I mean, I think you already thought that they met
18 the variance test for the basement. Right. And so do you have
19 any additional -- would you need a new report? Or I'll leave the
20 option open to you guys based upon the filing.

21 MS. MYERS: If the application is going to be revised,
22 we just need variance relief for the cellar. We were in support
23 of that. I don't know if you all need a new report for that, but

1 in our current report we actually do note that they meet those
2 requirements, or the variance test for the cellar.

3 CHAIRPERSON HILL: Okay. So we don't need a new report
4 for Office of Planning. So that means if we get the filings by
5 the first of June, then we'd leave, what, a week; do you leave a
6 week open for the ANC, Ms. Rose?

7 MS. ROSE: Yes.

8 CHAIRPERSON HILL: So that would be the 8th of June?

9 MS. ROSE: Yes.

10 CHAIRPERSON HILL: And then we could have a decision
11 meeting on the 9th of June.

12 MS. ROSE: Yes.

13 CHAIRPERSON HILL: Okay. Okay. So let's do that.
14 Let's close the record. Close the record in the hearing except
15 for the information that we're requesting from the applicant,
16 clarifying the relief that's being requested, and drawings for the
17 first and basement, basement and first floor, based upon the
18 relief being requested. And then we will get all of that by the
19 1st of June. We'll leave the record open for the ANC for the 8th
20 of June. And then we'll decide on the 9th.

21 MS. ROSE: I have that.

22 CHAIRPERSON HILL: Okay. All right. Mr. Sullivan, any
23 questions?

1 MR. SULLIVAN: No. Thank you.

2 CHAIRPERSON HILL: Okay. All right. Well, I'm going to
3 close the hearing then. Thank you all very much. Bye-bye.

4 Ms. Rose, do we have anything else before the Board
5 today?

6 MS. ROSE: Nothing from staff.

7 CHAIRPERSON HILL: Okay. Well, you guys, we're off
8 until the 9th the of June. Like go have fun.

9 MR. TURNBULL: Just so you know, I have a meeting at
10 10:00 on that date.

11 CHAIRPERSON HILL: Oh, I'm sorry. Okay. We'll do it
12 first, Mr. Turnbull.

13 MR. TURNBULL: If you do it first thing I can -- or I
14 can send in an absentee ballot.

15 CHAIRPERSON HILL: Whatever you want to do.

16 MS. ROSE: It's a decision meeting, so we can do it
17 first. And we don't have any other cases as far as I can see.

18 CHAIRPERSON HILL: We can do it first thing. Okay,
19 great. All right. Thank you, Mr. Turnbull. Thank you
20 Commissioner. We stand adjourned. Bye-bye.

21 MS. ROSE: Thank you. Bye-bye.

22 (Whereupon, at 4:58 p.m., the meeting was adjourned.)

23

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

31
32
33
34
35

36
37

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 05-26-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
accurate record of the proceedings.



KATHLEEN A. COYLE