

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 21, 2021

+ + + + +

The Public Hearing by the District of Columbia Zoning Commission convened via videoconference at 9:39 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
MARY NAGELHOUT, ESQ.

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The transcript constitutes the minutes from the Public Hearing held on July 21, 2021.

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

Case No. 20485 - Application of Bruce and Francesca Woodrow -
 (Withdrawn by the applicant 8

Case No. 20481 - Application of Scott Anderson and Elizabeth
 Arkell - (rescheduled to October 6, 2021). 8

Case No. 20472 - Application of The River School -
 (rescheduled to October 13, 2021). 8

Case No. 20458 - Application of The Washington International
 School. 9

Case No. 20511 - Application of Jeremy Emmert. 47
 (Public Meeting Case)

Case No. 20478 - Application of Taliza Bins Johnson. 50

Case No. 20484 - Application of 2805 M Street, LLC. 63

Case No. 20482 - Application of KAJ Ventures, LLC. 75

Case No. 20402 - Application of The Chain Bridge
 Road/University Terrace Preservation Committee. 90

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

(9:39 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen Board of Zoning Adjustment. Today's date is 7/21/2021. The hearing will please come to order.

My name is Fred Hill. I'm the Chairperson of the District of Columbia, Board of Adjustment. Joining me today is Lorna John, Vice Chair and Board Members Carl Blake and Chrishaun Smith, and Zoning Commissioner Members Peter Shapiro and Rob Miller.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised these proceeding is being recorded by court reporter and is also webcast live via Webex and YouTube Live.

The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised that we do not take any public testimony at our decision meeting sessions.

If you're experiencing difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number at 202-727-5471, to receive Webex login or call-in instructions. At the conclusion of a decision meeting session, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order is

1 required when the decision it contains is adverse to a party,
2 including the affected ANC. A full order may also be needed if
3 the Board's decision differs from the Office of Planning's
4 recommendation. Although the Board favors the use of summary
5 orders whenever possible, an applicant may not request the Board
6 to issue such an order.

7 In today's hearing session, everyone who is listening
8 on Webex or by telephone be muted during the hearing, and only
9 persons who have signed up to participate or testify will be
10 unmuted at the appropriate time. Please state your name and home
11 address before providing oral testimony or your presentation.
12 Oral presentations should be limited to a summary of your most
13 important points. When you're finished speaking, please mute
14 your audio that your microphone is no longer picking up sound and
15 background noise.

16 Once again, if you're experiencing difficulty accessing
17 Webex or with your telephone call-in or if you forgot to sign up
18 24 hours in advance, please call our OZ hotline number at
19 202-727-5471 to sign up to testify and to receive Webex login or
20 call-in instructions.

21 All persons planning to testify, either in favor or in
22 opposition, should have signed up in advance and they'll be called
23 by name to testify. If it is an appeal, only parties are allowed
24 to testify. By signing up to testify, all participants completed
25 the oath or affirmation required by Subtitle Y 408.7.

1 Requests to enter evidence at the time of an online
2 virtual hearings such as written testimony or additional
3 supporting documents other than live video, which may not be
4 presented as part of the testimony, may be allowed pursuant to
5 Subtitle Y 103.13, provided that the person may either request
6 to enter an exhibit explaining how the proposed exhibit is
7 relevant, the good cause it justifies allowing the exhibit into
8 the record, including an explanation of why the requester did not
9 file the exhibit prior to the hearing pursuant to Subtitle Y 206,
10 and how the proposed exhibit would not unreasonably prejudice any
11 parties.

12 The order of procedure for special exceptions and
13 variance is pursuant to Y 409. If this is an appeal, the order
14 is pursuant to Y 507.

15 At the conclusion of each case, an individual who is
16 unable to testify because of technical issues may file a request
17 for leave to file a written version of the planned testimony to
18 the record within 24 hours following the conclusion of public
19 testimony in the hearing.

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

24 Moreover, the Board may request additional specific
25 information to complete the record. The Board and the staff will

1 specify at the end of the hearing exactly what is expected and
2 the date when persons must submit the evidence to the Office of
3 Zoning. No other information shall be accepted by the Board.

4 Once again, after the Board adjourns the hearing, the
5 Office of Zoning, in consultation with myself, will determine
6 whether a full or summary order may be issued. A full order is
7 required when the decision is adverse to a party including the
8 affected ANC. A full order may also be needed if the Board's
9 decision differs from the Office of Planning's recommendation.
10 Although the Board favors the use of summary orders whenever
11 possible, an applicant may not request the Board to issue such
12 an order.

13 Finally, the District of Columbia Procedures Act
14 requires that the public hearing on each case be held in the open
15 before the public. However, pursuant to 405(b) and 406 of that
16 Act, the Board may, consistent with its Rules of Procedures and
17 the Act, enter into a closed meeting on a case for purposes of
18 seeking legal counsel on a case, pursuant to D.C. Official Code
19 Section 2-575(b)(4), and/or deliberating on a case pursuant to
20 D.C. Official Code Section 2-575(b)(13), but only after providing
21 the necessary public notice and in the case of an emergency closed
22 meeting, after taking a roll call vote.

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

24 MR. MOY: Good morning, Mr. Chairman, and members of
25 the Board. We do, but as has been customary, I will call those

1 preliminary matters when I call the case.

2 Other than that, Mr. Chairman, I would like to review
3 for the record today's docket -- rather cases that are not on
4 today's docket.

5 First Application No. 20485 of Bruce and Francesca
6 Woodrow has been withdrawn by the applicant.

7 We have two cases that have been postponed and
8 rescheduled. The first is 20481 of Scott Anderson and Elizabeth
9 Arkell has been rescheduled to October 6, 2021. And finally,
10 Case Application No. 20472. This is the application of The River
11 School has been rescheduled to October 13, 2021, and that's it,
12 Mr. Chairman.

13 CHAIRPERSON HILL: Okay. Great.

14 Mr. Young, is Commissioner Miller with us yet?

15 MR. YOUNG: Not yet.

16 CHAIRPERSON HILL: Okay.

17 All right. Then Mr. Moy -- yep. Go ahead, Mr. Shapiro.

18 COMMISSIONER SHAPIRO: I did see Commissioner Miller
19 when I first got on earlier, so it may be a technical issue.

20 CHAIRPERSON HILL: Okay.

21 Mr. Moy, can you reach out to Commissioner Miller?
22 Well, after you called this next case. Let's go ahead and do
23 Mr. Shapiro's case, which is 20458 in the hearing session, and
24 then we'll come back to the expedited review when we find
25 Commissioner Miller.

1 MR. MOY: Yes, sir.

2 All right. So this is Case Application No. 20458 of
3 The Washington International School. As the Board will recall,
4 this was last heard at the Board's meeting session on June 23rd,
5 2021. This is relief for special exception under the special
6 exception use of Subtitle U, Section 203.1(m). This would
7 construct a new detached academic building in the R-1-A Zone.
8 The property is located at 3100 Macomb Street, N.W. And let's
9 see -- and this is a limited scope continued hearing.

10 Thank you, sir.

11 CHAIRPERSON HILL: Okay. Great. Thank you.

12 Ms. Brown, can you introduce yourself for the record,
13 please?

14 MS. BROWN: Yes, sir. Good morning. Carolyn Brown
15 with the law firm -- The Brown Law Firm on behalf of the
16 applicant, Washington International School.

17 CHAIRPERSON HILL: Okay. And Ms. Brown, who's with you
18 here today?

19 MS. BROWN: The head of school, Ms. Suzanna Jemsby is
20 here.

21 CHAIRPERSON HILL: Okay.

22 MS. BROWN: I've got the rest of the team in reserve
23 if any questions come up.

24 CHAIRPERSON HILL: Can you tell me who they are just
25 so I know who's with you?

1 MS. BROWN: It depends on who is actually logged in,
2 but it should be Patrick Burkhardt from Shalom Baranes Associates.
3 We have Matt Sickle from Michael Vergason Landscape Architects
4 and Erwin Andres from Gorove Slade.

5 CHAIRPERSON HILL: Okay. I don't see Mr. Andres yet.
6 Mr. Young, if you do see him, please allow him in.

7 All right. Let's see. So I don't have -- who's --

8 MS. BROWN: I'm sorry. I was going to --

9 CHAIRPERSON HILL: Well --

10 MS. BROWN: Yes. Mr. Dale Temple, who's head of the
11 Facilities at the Washington International School. I'm sorry.
12 I forgot to mention him.

13 CHAIRPERSON HILL: Okay. No problem.

14 Okay. Ms. Brown, can you tell us what happened since
15 the last time you were here?

16 MS. BROWN: Yes, sir. As you know, your -- the Board
17 submitted a request for the -- to determine whether or not the
18 ANC, the full ANC would adopt the letter submitted by the Single
19 Member District representative, Nancy MacWood. That meeting was
20 held on Monday evening. A resolution was introduced for the ANC
21 to adopt Ms. MacWood's letter. And that letter was -- that
22 resolution failed by a vote of 5-2-2. So as a result, there is
23 no endorsement of Ms. MacWood's letter by the full ANC. So
24 there's nothing in the record that reflects that, but that was
25 the vote that happened on Monday night. And if MacWood is here

1 for the case, she could probably verify that for you.

2 We also filed post hearing submissions, that I believe
3 were available at the last hearing, but it was to give you an
4 annotation of the prior BZA order in BZA Case 17560 that had all
5 the conditions to show you how we were in compliance with those
6 conditions, and Ms. MacWood's letter responded to that
7 submission.

8 So I don't believe there's any additional items for
9 discussion other than a deliberation by the Board and discussion
10 of conditions.

11 CHAIRPERSON HILL: Okay. No, I appreciate that, Ms.
12 Brown. Yeah, I remember there was -- we asked for some
13 information. Then there was the letter from the Commissioner and
14 then there was clarification on that letter. And so, I'm just
15 trying to figure out or remind myself where we were with them.

16 Can you clarify for me the -- in terms of the parking,
17 and maybe you can -- if you need to take a moment, I just want
18 to make sure like, you know, how many total parking spaces are
19 being provided on the property and how many of them are zoning
20 compliant?

21 MS. BROWN: Yes. All of those parking spaces on the
22 campus will be zoning compliant. Based on the previous BZA order,
23 there's a requirement for 84 spaces, and we will be providing, I
24 believe, it is 90, nine zero.

25 CHAIRPERSON HILL: Right. And they are all compliant?

1 MS. BROWN: Yes, they are all compliant.

2 CHAIRPERSON HILL: Okay. One of my Board members was
3 helping me out last night and they had a question.

4 MS. BROWN: Okay then. To the extent, we did verify
5 those spaces with the zoning administrator.

6 CHAIRPERSON HILL: So it seems as though there was a
7 question about that there is 85 zoning compliant and 14 non-
8 compliant --

9 MS. BROWN: I'm sorry.

10 CHAIRPERSON HILL: -- (audio interference) of DDOT
11 through an easement?

12 MS. BROWN: Yes, that's correct. So under the new --
13 the 14 spaces that are farther along the drive are on the Tregaron
14 Conservancy property, and we were not allowed to count those
15 under the old regulations in our total number of zoning compliant
16 spaces. Now, under ZR-16, we are permitted to count them because
17 they are within the requisite adjacency within 500 feet of the
18 existing property. And we have an existing easement agreement
19 with the Conservancy to use those spaces. So those now do count
20 toward our zoning total.

21 CHAIRPERSON HILL: So then how are you getting 90 spots?

22 MS. BROWN: Give me a second to --

23 CHAIRPERSON HILL: Because I get 99 then.

24 MS. BROWN: I'm sorry. Yes, that's correct. That was
25 the other number I have in my head, so yes, that's correct.

1 CHAIRPERSON HILL: So if you can just figure out. Is
2 it 99 or 91 spots, or 90 spots?

3 MS. BROWN: Yes. If you could you just give me a
4 moment?

5 CHAIRPERSON HILL: Yeah, yeah. That's okay. I'm going
6 to go around and figure out some stuff.

7 MS. BROWN: Okay. And I should have an answer for you
8 by then.

9 CHAIRPERSON HILL: No problem.

10 Ms. MacWood, can you hear me?

11 COMMISSIONER MACWOOD: Yes, I can.

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

14 COMMISSIONER MACWOOD: I'm Nancy MacWood. I am
15 Commissioner for ANC 3C. My SMD is 09 and it includes the WIS
16 property.

17 CHAIRPERSON HILL: Okay. Great. All right.
18 Commissioner, I guess is there anything you'd like to add from -
19 - we have a bunch of stuff in the record in terms of the letter
20 that you submitted that is going to be taken into account from
21 you as a Commissioner in the SMD, but not the full ANC.

22 COMMISSIONER MACWOOD: Right.

23 CHAIRPERSON HILL: And so that we have in the record
24 and have an opportunity to look at. Is there anything else you'd
25 like to add?

1 COMMISSIONER MACWOOD: I don't need to. Be happy to
2 answer any questions. I think there's -- frankly, from my point
3 of view, as far as the neighborhood liaison conditions are
4 concerned, I think it's -- that's a condition that is curable,
5 fairly easily curable. I feel very strongly, and I think my
6 letter lays out, that the Conservancy is not a neighborhood
7 liaison group. But I think it would be fairly easy for the school
8 to create one, as other schools in this area have done.

9 CHAIRPERSON HILL: Okay. All right. Thank you,
10 Commissioner.

11 All right. Let's see. Does the Board have any
12 questions for Ms. Brown or the Commissioner?

13 Okay. Mr. Young, is there anyone here wishing to
14 testify?

15 MR. YOUNG: Yes. I have one person signed up. Ms.
16 LePard.

17 CHAIRPERSON HILL: Okay. Great. Could you go ahead
18 and let Ms. LePard in?

19 Hi, Ms. LePard. Can you hear me?

20 MS. LEPARD: I can hear you. Thank you, Chair Hill.

21 CHAIRPERSON HILL: Great. Could you introduce yourself
22 for the record, please?

23 MS. LEPARD: I am Bonnie LePard. I live at 3101 Macomb
24 Street, directly across from the entrance to the Washington
25 International School at 3100 Macomb Street. And I used to be -

1 - I founded the Tregaron Conservancy and was its executive
2 director for decades and for that (audio interference), they are
3 not present.

4 CHAIRPERSON HILL: Okay. Let's see. Ms. LePard, so
5 you're going to go ahead. You have three minutes to testify.
6 There should be a timer on the screen. If not, I can also time
7 -- there we go. Great.

8 And then -- basically, again, the testimony that we're
9 trying to get, we're not going back over the original stuff.
10 It's everything that's kind of come into the record and the
11 testimony that we take in today as this a limited scope hearing,
12 and you can give your testimony whenever you like.

13 MS. LEPARD: Thank you very much.

14 I'm here to endorse Commissioner MacWood's post-hearing
15 submission to the BZA. And I wanted also to say that Tregaron
16 Conservancy does not serve as a neighborhood liaison group
17 because of their financial interest and their obligation to
18 always support the Washington International School, any
19 development proposal. And I really want to -- would like to
20 insist that there be a construction management agreement. This
21 is something that was very close to being completed and has been
22 stopped. And it's very, very important to the neighborhood. We
23 had dozens of people write to the ANC and they did not -- that
24 particular ANC on Monday night did not make it a condition, but
25 we really took strongly that the school needs to show good faith

1 and have a construction management agreement.

2 And then there's just existing incredibly terrible
3 traffic problems on Macomb Street that will be severely
4 exacerbated when beginning construction. And there have been
5 parking issues as well with the school, students, and faculty
6 parking on the Macomb Street. And so those are some of the major
7 issues that we would like the BZA to address, and hopefully, put
8 into some of the conditions of your decision; just (audio
9 interference) neighborhood liaison group, to have a construction
10 management agreement, and to have some traffic relief, traffic
11 control, something to happen during this construction period.
12 Thank you very much for your time. I appreciate it.

13 CHAIRPERSON HILL: Thank you. Thank you, Ms. LePard.

14 All right. Does the Board have any questions for the
15 witness? If so, raise your hand.

16 Okay. All right. Thank you, Ms. LePard for your
17 testimony.

18 And Mr. Young, if you could excuse Ms. LePard.

19 Okay. Ms. Brown, I know there's all of the conditions
20 that were in the previous BZA order that we're going to get
21 probably reinstated if this actually were to move forward. Do
22 you know what other conditions have been kind of proffered, either
23 by you, or what you guys have been discussing?

24 MS. BROWN: Yes, sir. First, I want to get back to
25 your question on the number of parking spaces. And that is in

1 the last sheet of our drawings submitted to the record, and it's
2 also the last page of our presentation at the hearing. And the
3 total number of vehicle spaces is 93, and the diagram shows in
4 detail where are those spaces are located. And that includes the
5 14 spaces that are on the Conservancy property that can now count
6 toward the total.

7 CHAIRPERSON HILL: Which exhibit are you in, Ms. Brown?

8 MS. BROWN: Right now, I'm in Exhibit 31A-2, which is
9 our PowerPoint presentation, but it also is part of our pre-
10 hearing submission. I just don't have the exhibit --

11 CHAIRPERSON HILL: That's all right. The staff helped
12 me out with that with that. They found 91 vehicle spaces and
13 two bus spaces.

14 MS. BROWN: Right. So a total of 93 vehicle spaces.

15 CHAIRPERSON HILL: Okay. But is it accurate, then 91
16 vehicle spaces and two bus spaces? I'm just trying to figure
17 out for the record what exactly there is.

18 MS. BROWN: The zoning regulations don't distinguish
19 between passenger vehicles, the regular cars and bus vehicles,
20 so --

21 CHAIRPERSON HILL: Okay. So 93 is --

22 MS. BROWN: -- the total is 93.

23 CHAIRPERSON HILL: -- spaces.

24 MS. BROWN: Yes.

25 CHAIRPERSON HILL: Ms. Cain, can you hear me?

1 MS. CAIN: Yes.

2 CHAIRPERSON HILL: If you can just take a look and see
3 if that's what you get?

4 MS. CAIN: Yep, that's what I'm showing in Exhibit
5 31A-2 at page 16.

6 CHAIRPERSON HILL: Okay. Great. All right. Thank you
7 so much, Ms. Brown. Okay. So other than that, so we have that
8 clarity with the 93 spaces. There's the conditions that were in
9 the previous BZA order. And in terms of that construction
10 management agreement that would be something that will be outside
11 of our purview, it seems as though you guys are kind of -- so
12 are you guys still working with the ANC 3C to kind of put together
13 a CMA?

14 MS. BROWN: We already negotiated that. We were ready
15 to sign it, and at the ANC meeting back in April, the motion --
16 the resolution was amended to withdraw that from the resolution.
17 So the resolution passed without that construction management
18 plan attached. But I have since spoken with Ms. MacWood, and we
19 are prepared to execute a construction management plan.

20 CHAIRPERSON HILL: Okay. How come they withdrew the
21 CMA?

22 MS. BROWN: I do not know.

23 CHAIRPERSON HILL: Okay.

24 MS. BROWN: It is because some of the neighbors wanted
25 to have more input to it, but ultimately, what we negotiated was

1 | what was attached with --

2 | CHAIRPERSON HILL: Okay. Got you.

3 | MS. BROWN: -- (audio interference).

4 | CHAIRPERSON HILL: All right. Commissioner, give me
5 | one second, okay? Let's see. Okay.

6 | All right. Does anybody have anything else for Ms.
7 | Brown?

8 | MS. BROWN: And Mr. Hill --

9 | CHAIRPERSON HILL: All right. Hold on -- Ms. Brown,
10 | I'll give you the last word. Just give me a second.

11 | MS. BROWN: Okay.

12 | CHAIRPERSON HILL: Ms. MacWood, you had your hand up?

13 | COMMISSIONER MACWOOD: I did. Two points. When we're
14 | talking about the parking spaces, I think it is important to
15 | also reflect what the zoning requirement is for the number of
16 | parking spaces, which, I believe is a 106, based on the formula.
17 | So I think it's important to just to make sure that that number
18 | is reflected when we're talking about the number of parking
19 | spaces. And as far as the CMA is concerned, what Ms. Brown said
20 | is accurate. At the April ANC meeting, the CMA was on the agenda,
21 | along with the original resolution regarding this case.

22 | And some neighbors had not seen the draft CMA and wanted
23 | to have an opportunity to comment on it, so I withdrew it from
24 | that meeting. Since then, the neighbors provided some additional
25 | comments. We went back and finalized the agreement, and now it

1 is waiting for signatures.

2 CHAIRPERSON HILL: Okay. Great. Well, thanks,
3 Commissioner. In terms of the parking space, I was just trying
4 to clarify what parking space they actually are providing.

5 COMMISSIONER MACWOOD: Yeah.

6 CHAIRPERSON HILL: But thank you for your commentary.
7 All right. So let's see. Does anybody have any more
8 questions for anybody?

9 Okay. Ms. Brown, do you have any conclusion you would
10 like to add?

11 MS. BROWN: Yes, sir. I did want to respond to the
12 points raised by Ms. LePard, and they also dovetail some of the
13 conditions in the previous order. One is the liaison committee,
14 and the assertion that the Tregaron Conservancy is just a
15 preservation organization. First, the previous order did say
16 that we were to coordinate with the Friends of Tregaron, and the
17 intent of what that organization was, to report to them. The
18 Tregaron Conservancy is the successor in interest to the Friends
19 of Tregaron. And the Tregaron Conservancy has on its Board the
20 ANC, the school, the Cleveland Park Historical Society, and
21 another community organization.

22 And the point being is that one of the reasons those
23 organizations are part of the Conservancy, is because it was
24 supposed to be a bit of a clearinghouse for information, so that
25 acted as a liaison group. I think that we would not oppose

1 | changing that if that is not working, but we report to the
2 | Conservancy at the end of the school year with the number of
3 | faculty and staff counts, and that's part of the requirement
4 | under the agreement with the -- I think it was a 2005 neighbors,
5 | a 2006 agreement.

6 | And that way, all of the neighborhood groups are
7 | notified in that manner. The Conservancy obviously does not want
8 | to act as an enforcement organization, but that was not intended
9 | either.

10 | The bottom line is, you know, if there's going to be a
11 | liaison committee different from the current arrangement, I think
12 | the ANC is the appropriate vehicle for that, and I don't think
13 | any other type of liaison committee needs to be created because
14 | either we have one or we just work through the ANC, so I think
15 | those are the two alternatives.

16 | Second, we already addressed the construction
17 | management agreement.

18 | And third, with respect to traffic issues, I think we
19 | have to rely on the testimony of our expert witness, Mr. Erwin
20 | Andres and the Department of Transportation, DDOT, and there's
21 | no indication that parking or traffic are at issue. In fact,
22 | the change was so minimal that no full report was required -- or
23 | inquiry was required. So that meant we're relying on the stated
24 | parking requirement of 84 spaces and that was the transportation
25 | demand mitigation measures in both the Gorove Slade report that

1 | were adopted by DDOT, that we think that all those issues can be
2 | handled. So that concludes my remarks and -- no, I'm sorry. One
3 | more.

4 | Just as a reminder, back in -- at the June, I believe
5 | was 16th hearing, I did request if the Board were favorably
6 | disposed to this application that we could submit a draft order,
7 | and you said that that would be fine.

8 | CHAIRPERSON HILL: Okay. All right. So I'm going to
9 | talk to my -- these are my Board members here. I mean in terms
10 | of the Tregaron Conservancy issue, I mean, I think that, you
11 | know, this -- there's a member of the ANC that's on that
12 | Conservancy, I mean sorry that's on that liaison group, right.
13 | And this is -- and I'm reading some of the issues, some of the
14 | items that the applicant had submitted. I mean, I don't know
15 | where we are with deliberation. I just want to have -- talk to
16 | this issue with my Board members, which is that I'm fine with
17 | the way it is also, because I don't want to get into creating
18 | another thing. I mean, again, what the applicant just said, it's
19 | either this, which is already I think there, which seems to be
20 | working because the ANC voted in favor, right.

21 | Or, if you all want to create something else, then we
22 | got to go into some other discussion about that. So either we
23 | can -- when we get to deliberations, we can either deliberate on
24 | this losing the Conservancy thing and these guys just deal with
25 | the ANC, or not.

1 But I'm just looking at my fellow Board members. Do
2 you all got anything that you want to talk to the applicant about
3 before I release the hearing?

4 Mr. Blake?

5 BOARD MEMBER BLAKE: I just have a question with the
6 effectiveness of the conservatory as a liaison. As you said,
7 there is an ANC member on that Board. Is there -- what is the
8 impediment for that communication flow? (Audio interference.)
9 Would you answer that?

10 COMMISSIONER MACWOOD: Yes. I'd be happy to.

11 The Conservancy, its primary and sole function is as
12 the owner of the conserved land is to rehabilitate, maintain, and
13 operate the conserved land. In fact, in the Articles of
14 Incorporation, there is a prohibition to doing any other type of
15 activity. And in fact, there has to be -- if they were to do
16 something like become a neighborhood liaison group, and I have
17 to tell you, there's no -- I attend all those Board meetings and
18 it is to advocate and to participate in order to conserve the
19 land. That is our purpose. Those are -- that's what our agenda
20 is always occupied with. There are not neighborhood issues on
21 our agendas, there has never been. We never organized a
22 neighborhood meeting.

23 Whereas the Friends of Tregaron, the agreement that was
24 referred to in the 2007 conditions had to do with -- that
25 agreement had to do with traffic controls at the school's

1 entrance, light effects, the parking spaces onsite on the
2 neighborhood, objectional -- how to mitigate objectionable
3 conditions related to construction on the neighborhood. These
4 are all issues that are not in the purview of the Conservancy
5 given its very strict and limited mission.

6 So I think you -- it's important that the Board
7 understand the participation of the community organizations,
8 including the ANC on the Conservancy Board, was to demonstrate
9 our full cooperation and commitment to the landmark and to
10 preserving the landmark and making sure that we were
11 participating in that endeavor and that mission.

12 Just because we are on a Board, doesn't mean that we
13 have the ability to expand the agenda and the mission of that
14 Board. We don't. And in fact, the school was -- the condition
15 refers to the school. The school creating a liaison group has
16 no control over the Conservancy Board. It is an independent
17 body, and we all participate in it. And the school certainly
18 has some additional obligations to that Board, financial
19 obligations, but I think we're talking apples and oranges here.

20 BOARD MEMBER BLAKE: All right. Do you attend the
21 meetings or are you the --

22 COMMISSIONER MACWOOD: Yes.

23 BOARD MEMBER BLAKE: -- are you on the Board?

24 COMMISSIONER MACWOOD: Yes. I am the ANC -- by virtue
25 the fact that I am the SMD Commissioner, I am a member of the

1 Board, and I attend the meetings.

2 BOARD MEMBER BLAKE: And why are you --

3 COMMISSIONER MACWOOD: We make (audio interference).

4 BOARD MEMBER BLAKE: And why are you precluded from
5 commenting about community issues at those Board meetings and why
6 would you being unable to communicate what's going on there to
7 the ANC at the regular ANC meetings?

8 COMMISSIONER MACWOOD: The agendas at the Conservancy
9 Board meetings have to do with primarily what our schedule is for
10 rehabilitating the property, how we are doing on fundraising,
11 what sort of fundraising events we are going to sponsor, what are
12 -- how we are going to promote our website, what sorts of
13 activities we're going to promote for educate -- fulfill our
14 education mission. That is the scope, Mr. Blake, of our agendas.
15 We do not concern of ourselves at those meetings with parking,
16 with traffic, with those sorts of issues.

17 And as I explained, the Board is actually prohibited
18 from doing that. If we're not talking about rehabilitating or
19 maintaining the land, there has to be an affirmative vote of the
20 Board. And in fact, if it has to do with any of the school
21 activities, the Articles of Incorporations state further that
22 every member of the WIS, every WIS-related Board member has to
23 vote affirmatively. So there's strict controls on us venturing
24 into other types of issues.

25 BOARD MEMBER BLAKE: Yes. It seems to me though that

1 | the Board was composed in a way that we're allow for this feedback
2 | and flow of information. And what you're describing to me
3 | suggests that you -- it could be incorporated in the agenda of
4 | the meeting and as a Board member, wouldn't you able to suggest
5 | that they add community issues as a -- just a discussion point
6 | on that agenda?

7 | COMMISSIONER MACWOOD: I could do that, Mr. Blake, but
8 | there would have to be an affirmative vote of the Board and if
9 | it was concerning something (audio interference) with the school
10 | every one of the WIS Board members would have to agree that we
11 | could have that discussion.

12 | The other thing that I think is important to understand
13 | is that the Conservancy was already created in 2007 when the
14 | Board created the condition that there'll be a liaison group. So
15 | I don't think back in 2007, the BZA anticipated that the
16 | Conservancy would fulfill that role because it was already in
17 | existence. It could've -- the Board could have stated that rather
18 | than -- the language that was used anticipated a new creation and
19 | something that the school would create, which is not the
20 | Conservancy, as I said it, it's an independent body.

21 | MS. BROWN: Mr. Blake, it may be helpful to hear from
22 | the Head of School, who is also on the committee, and to explain
23 | what happens at the meetings.

24 | Ms. Jemsby, would you care to respond to the
25 | discussion?

1 MS. JEMSBY: Absolutely. Can you all hear me?

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

4 MS. JEMSBY: Good morning. Suzanna Jemsby. I am the
5 Head of School at WIS.

6 I just wanted to comment on a couple of things. First
7 of all, I've been in my role now for three years. And when I
8 started at the school, I did actually attempt to put something
9 like the neighborhood liaison group together. We put -- we
10 invited neighbors on Macomb Street to, I think in total four
11 meetings. And it started out -- there were A good number of
12 people. We then whittled it down to a smaller group of people
13 who would then liaise back to the community.

14 We didn't continue in the end because it became kind
15 of apparent that there was going to be a lot of resistance to
16 any building, and so it wasn't super fruitful. And I don't want
17 to speak for the Conservancy, because I don't run the Conservancy,
18 but I am absolutely sure there will be -- of course, that primary
19 role is to look up to the Conservancy. But a big portion of
20 every meeting that we have, there's a report from the school and
21 activities, and the activities at the school have no bearing per
22 se on the Conservancy. So it's not as if the agenda is entirely
23 filled with just conversation about the Conservancy and the
24 preservation of the land. We certainly give a full summary report
25 from the school on issues as best we can and what we think the

1 chatter is in the neighborhood. You know, trees that have come
2 down that we've had to take care of, and those kinds of things.
3 And again, I don't want to speak for the Conservancy, but Nancy,
4 I would be more than happy to hear issues that the neighborhood
5 is raising at any point. You and I have had communication back
6 and forth, and to the extent that we're not hearing them in the
7 ANC meeting directly, I'd like to think that you can bring them
8 to my attention either through the Conservancy or directly to me,
9 or the ANC sets up some kind of a task force to work with us. I
10 don't mind. We are open to it. We really want to be great
11 neighbors in this neighborhood. We've been in the neighborhood
12 for decades. We want to be the best neighbors that we can be.
13 And I feel as if this is -- there seems to be a feeling of
14 distrust, that somehow, we would be obfuscating numbers or trying
15 to fudge things, and that's really not the case. So to the extent
16 that we can be transparent, I would love to be.

17 CHAIRPERSON HILL: Okay. All right. Thank you, Ms.
18 Jemsby, Head of School.

19 So let's see. Mr. Blake -- all right. So anyway, so
20 I'm back to this.

21 So Commissioner MacWood like -- you're and I'll ask
22 your suggestion and then I mean like your ANC adopted -- your
23 ANC voted in favor, right? And your ANC voted in favor with the
24 conditions that were already there, right? And so your suggestion
25 would be to create another liaison group, is that what you're

1 | trying to suggest; or, currently where we are in this discussion
2 | is that they can go back to the ANC once a year and just give
3 | them a report, right? And then have we would have an opportunity
4 | to hear from -- they can go back to the ANC once a year and then
5 | they can give a report on what's going on, the community can hear
6 | everything they have to hear, and then the ANC can figure out
7 | what they want to do about it, I guess. That's another thought.

8 | You are -- Commissioner, you're suggesting creating
9 | another liaison group; is that what you're suggesting?

10 | COMMISSIONER MACWOOD: That's how I interpret the 2007
11 | order, Mr. Chairman. That was what the Board at that time wanted.

12 | CHAIRPERSON HILL: They were (audio interference).

13 | COMMISSIONER MACWOOD: Further alternatives to that,
14 | we certainly -- you certainly could consider.

15 | CHAIRPERSON HILL: They were hopefully -- what your
16 | opinion is, and this is your opinion, is that the Board at that
17 | time thought that this was going to work as a liaison group. And
18 | you are saying that it's not really working as a liaison group,
19 | in your opinion?

20 | COMMISSIONER MACWOOD: No. In my opinion, the Board
21 | wanted the school to create a liaison group. You know, NCS has
22 | a liaison group. We've got many schools with liaison groups.

23 | CHAIRPERSON HILL: Commissioner, Commissioner give me
24 | a second, because Commissioner Shapiro has his hands up. I got
25 | a lot of Commissioners today.

1 Commissioner Shapiro.

2 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

3 Yeah. I just want to make sure we're talking about the
4 same thing. I'm looking at the annotated BZA order 17560. It
5 says, "The school is to maintain an ongoing liaison with the
6 community of the type contemplated by a written agreement with
7 Friends of Tergaron or by equivalent means." That's what it
8 says. So right. Am I missing it? Is there something else that
9 we are looking to interpret as well, or is that what we're
10 interpreting here?

11 CHAIRPERSON HILL: No. You're correct.

12 COMMISSIONER SHAPIRO: Okay. So it seems to me that
13 the school has maintained an ongoing liaison with the community
14 of the type contemplated by a written agreement with Friends of
15 Tergaron or by equivalent means. That --

16 CHAIRPERSON HILL: Right.

17 COMMISSIONER SHAPIRO: -- what MacWood -- what
18 Commissioner MacWood is saying, I think makes sense. I think it
19 make sense to have a liaison committee that works with the
20 community. I would leave that to the -- if the ANC wants to work
21 with the school and establish something in addition to what is
22 in this order, I don't have a problem with that, but they're
23 clearly, from my perception, in compliance with the order.

24 CHAIRPERSON HILL: Okay. I don't want to get into
25 deliberation and that's totally good. All I wanted to do -- and

1 Ms. Brown, I'm going to give you the last word because there's
2 been a lot of things getting thrown around, so you can have
3 rebuttal, conclusion, and we're going to be done. The reason why
4 I was trying to put on to this discussion with the Board was to
5 clear this up, and if anybody wanted to figure out something else
6 other than what's going on. Okay. Meaning what -- and I can --
7 -- I'm going to close the hearing and the record and then we're
8 going to deliberate, right.

9 And so the reason why I'm asking this question, is that
10 everybody is here, right. And technically, and usually, people
11 don't necessarily go anywhere. And when we have live hearings,
12 people stayed in the room so you could close the record, you
13 could close the hearing, and they'd go sit in another chair. And
14 then if you wanted to bring them back up, you could bring them
15 back up, right.

16 So now, we're in this video world and you turn off the
17 button and I don't know where anybody goes. Okay. So my question
18 again is does anybody have anything else they want to say about
19 this issue with anybody, and then I'm going to let Ms. Brown have
20 rebuttal, conclusion, and going to close the hearing.

21 All right. Nobody is raising their hand.

22 All right. Ms. Brown, rebuttal please, or whatever you
23 want to add, everything that just came up and then let's move
24 on.

25 MS. BROWN: Yes.

1 Just to close out the liaison committee. I agree that
2 the -- we are in compliance. I believe that regardless of whether
3 or not that we choose the ANC, the school and the other -- choose
4 another vehicle, we are still obligated under that original
5 agreement to have this dialogue, and that they are controls in
6 the agreement with the Friends of Tregaron, now Tregaron
7 Conservancy, to deal with all the typical school issues. It's
8 not just the landscape issues.

9 So that's the separate agreement that's still active
10 that we have to follow. So then we also would have another layer
11 of a liaison group and then, in addition to that, the ANC. So
12 we were fine with the arrangement the way it is, or to work
13 through the ANC. Yes, sir.

14 CHAIRPERSON HILL: No, because I can (audio
15 interference) and wrap.

16 And so I do have one question. And Commissioner
17 MacWood, like there is not an agenda point. I mean, I understand
18 that I'm -- I understand the school is going to be a good neighbor
19 and wants to be. I mean the school has been there forever, well,
20 not forever, but anyway. And so the school gives a report and
21 then there's not, like it's not -- is it an agenda item? Do you
22 know or you don't know?

23 MS. BROWN: Yes.

24 CHAIRPERSON HILL: Okay. Hold on. Give me a second.
25 Everybody's going to get a chance to talk. I'm going to open my

1 mouth again.

2 Ms. Jemsby, you said something?

3 MS. JEMSBY: Sorry. Yes. Every meeting with the
4 Conservancy, the school has a portion of the agenda to brief the
5 attendees, the Board, on what's been happening at the school,
6 happening events, how the construction project is shaping up, the
7 interactions that we have with the traffic consultants. We (audio
8 interference).

9 CHAIRPERSON HILL: So that's when you're providing on
10 your agenda, you talk about traffic, construction, all the things
11 that we are here discussing, correct?

12 MS. JEMSBY: Not just (audio interference), but the
13 Conservancy sets the agenda but that -- they always give a section
14 of that for a WIS update, and --

15 CHAIRPERSON HILL: Yes. But what I'm saying is you get
16 update what you want to update. And so therefore, you could talk
17 about -- you could make sure that you talk about all the things
18 we're talking about here.

19 MS. JEMSBY: Correct. I don't know how often. If it's
20 been a few weeks since the last meeting, but there'll be questions
21 back from folks what -- you know, we've heard about this, have
22 you got any thoughts on that, and so we do our best to answer.

23 CHAIRPERSON HILL: Okay.

24 Commissioner MacWood, you had your hand up? No? Okay.

25 All right.

1 Okay. All right. Ms. Brown, is that it?

2 MS. BROWN: Yes. We adopt all the recommendations in
3 the Office of Planning report that how we meet the standard of
4 review for special exception relief. And with that, we would ask
5 that the Board act favorably on our application.

6 CHAIRPERSON HILL: Okay.

7 All right. Does the Board have any final questions of
8 anybody?

9 Okay. Well, you all, thank you very much for coming.
10 Commissioner, thank you for coming. Again, Head of School. I've
11 learned Head of School rather than we -- the other alternatives.

12 COMMISSIONER MACWOOD: Thank you.

13 CHAIRPERSON HILL: Ms. Brown, nice to see you.

14 Okay. Going to close the hearing and the record.

15 Mr. Young, if you could please release everyone.

16 Okay. I've been talking a lot. I don't want to start.

17 So Commissioner Shapiro, do you want to start?

18 COMMISSIONER SHAPIRO: Sure, I'll start.

19 I mean there's obviously lots of concerns from some
20 members of the community. When I'm looking at what's before us,
21 it feels fairly straightforward.

22 I think first of all, in this last issue, it seems
23 pretty clear that they are in compliance with the conditions of
24 the previous BZA order. I'm appreciative that the CMA is close
25 to finalized work in progress.

1 We did not hear from DDOT around any really significant
2 transportation, parking, traffic issues, even though there are
3 some at the school and the neighborhood, there's no doubt.

4 So as I reflect on what I've heard, I don't have any
5 concerns. I feel like they've met the standards to grant the
6 relief for the special exception under the use provisions of
7 Subtitle U 203.1(m). And I don't have any concerns about acting
8 favorably on this, Mr. Chair.

9 CHAIRPERSON HILL: Mr. Smith?

10 BOARD MEMBER SMITH: I agree with Mr. Shapiro on this
11 particular matter. But on the question that was raised about
12 condition filed with the previous BZA order, and I'll re-read it
13 again: "The school shall maintain an ongoing liaison with the
14 community of the type contemplated by a written agreement with
15 Friends of Tergaron or by equivalent means." So I do agree with
16 Mr. Shapiro that they are in compliance with the requirement, and
17 based on that particular condition, the ANC can reach out to the
18 school, and it seems like the school would be willing to set up
19 some type of communication with the ANC.

20 But I would say the term "ongoing" is fairly loose. So
21 if we do contemplate the condition, I believe, Chairman Hill, you
22 kind of alluded to this. We could put in some condition that
23 provides some guardrails on what "ongoing" means, at least with
24 the ANC and we could require them, the school, to report directly
25 to the ANC at least once, I would say twice a year. So that we

1 | can assure that that there is an adequate amount dialogue directly
2 | with the ANC because it seems to be a concern of the SMD
3 | representative (audio interference), so I would put that out
4 | there. I do believe that we can add an additional condition that
5 | would provide some guardrails to require the school to go to the
6 | ANC directly.

7 | And I will also recommend to put -- if we do look
8 | favorably on this application -- that we do put in a direct
9 | condition that requires the school to maintain a minimum number
10 | of parking spaces at the site.

11 | CHAIRPERSON HILL: And that minimum would be the 93?

12 | BOARD MEMBER SMITH: The 93, right.

13 | CHAIRPERSON HILL: Okay. All right. Vice Chair John.
14 | You're on mute, Ms. John.

15 | VICE CHAIR JOHN: Okay. This is an application for
16 | special exception relief to construct a new academic building
17 | under Subtitle U-203.1(m) in the R-1-A Zone. This is a very full
18 | record with strong neighborhood engagement in support and in
19 | opposition. Most of the opposition focused on the potential
20 | adverse impacts to traffic and parking, the inclusion of a large
21 | kitchen that would cater for large events, and some community
22 | members also alleged that the size of the center is too large.

23 | The school provided evidence that there will be no
24 | increase in the number of students and potential reduction in
25 | faculty because of the COVID offsite telecommuting or whatever.

1 So the applicant clarified that there will be 93 onsite parking
2 spaces, including the four parking spaces in the easement.
3 Residents also allege that students park illegally and create
4 great traffic jams making it difficult to gain access to their
5 homes. There's also an allegation that the school is not in
6 compliance with the previous BZA order requiring coordination
7 with the ANC.

8 At the outset, it's important to note that the project
9 meets all development standards, and it's located more than 30
10 feet away from the residency.

11 In response to the community's concern regarding
12 traffic impacts, the applicant described its drop off and pickup
13 policies and transportation plan. There's a transportation
14 coordinator and onsite personnel who manage the flow of traffic
15 on the one-way driveway during the drop off and pick up times,
16 and this is shown at Exhibit 6.

17 The Head of School testified that she had not received
18 complaints about illegal student parking or other problems. The
19 applicant also clarified in testimony and in exhibits how it is
20 compliant with the previous BZA order 17560 concerning
21 communication with the community. For example, representative
22 of the Conservancy in support of the school and described the
23 coordination process, which is consistent with condition 5 of the
24 agreement all created into the previous BZA order.

25 Today, the SMD Commissioner raised additional concerns

1 and requested perhaps a new condition. But I would also note
2 that in an email to the record last night, the ANC reiterated
3 its support for the school and did not recommend any new
4 conditions.

5 I gave great weight to OP's analysis of how the
6 application meets the specific criteria for relief under Section
7 203.1(a). The ANC supports the application, as I mentioned
8 earlier, and that's in Exhibits 29 and 113.

9 THE ANC also did not accept the SMD's recommendation
10 that the school provide parking stickers for students, which is
11 not included in the original BZA order 17560.

12 I agree that a construction agreement is perhaps
13 appropriate. And the ANC also did not request that the Board
14 include the construction agreement as a condition in the order,
15 and the BZA ordinarily does not incorporate construction
16 agreements.

17 DDOT is in support of the application, and the
18 applicant has stated that it will implement the existing TDM
19 plan.

20 HPRB approved the plans for the new building after the
21 applicant made design changes to the project.

22 And based on all of the testimony in the record, I
23 believe that this application should be approved.

24 CHAIRPERSON HILL: Okay. Thank you, Ms. John, for that
25 very good summary.

1 Okay. We will come back to talk about the ANC thing
2 because I don't know either, meaning reporting back to the ANC.

3 Mr. Blake.

4 BOARD MEMBER BLAKE: I agree with all the comments that
5 have been made by my colleagues to this point. I do think that
6 the conditions have been met for the special exception.

7 With regard to the parking, there's been clarification
8 on that.

9 The liaison issue is an interesting one because clearly
10 there is a communication issue at some level. I do think that
11 there is some effort being made by the school to either include
12 as part of its agenda, the conversation, a slight update about
13 conditions or the report back to the ANC, although, the ANC did
14 not ask for that, would be helpful to make sure the community is
15 aware of what's going on.

16 So I would be in favor of some level of additional
17 nudging for communication even if it's just at the school, because
18 it's clear that the school wants to communicate. I'm not sure
19 that there had been consistent communication, but the school is
20 willing to do so, so I think they should do that.

21 But I'm in favor of the application and would be able
22 to support it based on all that's been transpired.

23 CHAIRPERSON HILL: Okay. All right. So I appreciate
24 everything you all said. I would agree with what has been put
25 forward -- I mean this is a special exception, right? And so

1 | this is something that is thought about in the zoning regulations
2 | if the criteria is met for us to grant the relief. I believe
3 | that -- I mean this is obviously a huge project, but I mean you
4 | have an architectural firm, world-renowned, doing the
5 | architecture. It's a private school that's been around for years
6 | and years in D.C. And the land that they're on is just as
7 | tremendous amount of land that's over there in the middle of
8 | Washington, right, meaning that this is a well-founded
9 | institution. It's going to try to do its best to make sure that
10 | they continue to educate the people that they are able to educate.
11 | So I feel as though they are -- it's within their best interest
12 | to try to be good neighbors. I understand that.

13 | Unfortunately, as we all know, traffic exists around
14 | schools. No matter what you do, there's the time, the drop off
15 | time, the pick-up time, you get stuck in that lane at the wrong
16 | moment, and that's just too bad for you, right.

17 | And so there's nothing you can really do about it if
18 | you're living right around that school except for move, right?
19 | And so I don't know what -- so I'm saying all that, which is to
20 | say that I agree that they have met -- I think they're trying to
21 | do their best, right. I do think that there is a communication
22 | perhaps issue, right. I mean, the way the city is set up is
23 | there are ANCs, right. I mean the SMD can bring up something to
24 | the ANC at any time. And if the ANC wants to hear from the
25 | school, they can bring the school down and hear from them, right.

1 And so I don't know if -- I mean, I don't know. Okay.
2 So this is my thought. If I get it and it says -- so the parking,
3 93 spaces; the CMA, it's not within our purview. But if they're
4 going to go ahead and do it, that's great, right. I think that
5 a draft order, if the applicant wants to put that forward, that's
6 fine. We'll go ahead and take a look and accept that.

7 I think that all of the previous conditions are being
8 met, and I don't think we need to necessarily add any new
9 conditions to it except that perhaps within number 5, the school
10 shall maintain an ongoing liaison with the community, the type
11 contemplated by a written agreement with Friends of Tregaron or
12 by equivalent means to include an agenda item concerning traffic
13 and construction management.

14 I mean I'm just trying to think what words are -- it
15 seems as though the head of school has said they're happy to
16 communicate whatever they can. The Commissioner said she can't
17 change the agenda. And so I don't want to get into this trying
18 to figure out how to fix the agenda. I mean if we go ahead and
19 say the head -- I'm sorry, Washington International School has
20 to provide this update at their liaison meeting. Is that
21 something that would suffice or what do you all think?

22 Ms. John.

23 VICE CHAIR JOHN: I think that the treat to condition
24 5 might make sense to add the updates regarding traffic and
25 construction. Well, I would say traffic and parking, so that

1 | it's included in the school's update at each Board meeting. And
2 | I don't think anything prohibits the ANC and the school from
3 | working together to address other community concerns. But I
4 | don't think the Board has to mandate that. I think it's an
5 | additional burden on the school to mandate another process when
6 | one already exists. And the Board and the WIS Head of School
7 | has an agenda item, which provides the opportunity to communicate
8 | all of the issues with the school and get feedback from all those
9 | members of the community, and so it's happening now. So I'm not
10 | sure what the issue is. I'd also add that the ANC had the
11 | opportunity to ask for a modification of the order and the ANC
12 | did not do that.

13 | CHAIRPERSON HILL: Agree. Commissioner Shapiro.

14 | COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

15 | I agree with Vice Chair John. In terms of Board Member
16 | Smith's question about could we add something related to the ANC.
17 | I mean, I'm (indiscernible) of Vice Chair John, as I think that
18 | the ANC didn't ask for it. Though my quick reaction was it's
19 | certainly not going to hurt, but I don't have a strong opinion
20 | about that.

21 | I would say related to what Vice Chair John said about
22 | how to craft the language around what WIS reports to, I wonder
23 | if we could -- excuse me, broaden the language because this is a
24 | sort of a short-term thing, not that short term, but relatively
25 | short-term thing around construction. Maybe there is some

1 language that we that they report to related to neighborhood
2 impact issues, so it carries beyond just this construction.
3 That's the only thing I have to say. I don't have a strong
4 opinion about that either, Mr. Chair.

5 CHAIRPERSON HILL: Okay. I mean, I think we can say
6 updates to include -- I mean traffic and parking is always going
7 to be an issue. So updates to include traffic and parking and
8 neighborhood impact issues, so it leaves open the door to -- I
9 mean again, these are people that are going to try to communicate.
10 I mean, they want to communicate, right. And so this creates an
11 agenda item, so that -- and then the ANC, a member of the SMD is
12 there. Their role is to communicate that information back to the
13 ANC, right, and give their report.

14 And the ANC has plenty of authority if they wanted to
15 create a new liaison group, which the school I'm sure would agree
16 to. I guess the thing that I never know -- or shouldn't say I
17 never know, like what -- as we have all experienced when we go
18 to community meetings, it seems as though it kind of got whittled
19 down to the same number of people that had the same opinions over
20 and over again perhaps, right.

21 And so that's why the liaison committee doesn't
22 necessarily -- even that has to be structured. It's not like
23 anybody who shows up. Somebody has to be chosen to be on the
24 liaison committee so that you don't get -- you have someone who
25 has been chosen to be on this group. And that gets us into all

1 kinds of issues that we're not really around because we're not
2 at that level. That's the ANC.

3 So I would be fine with adding this tweak to Condition
4 number 5, concerning updates to include traffic and parking and
5 neighborhood impacts. And then that could at least -- and again,
6 there's nothing stopping the ANC from reaching out to the school
7 and say, hey, could you come down twice a year to report. And I
8 don't see why the school wouldn't say, yeah, we'll come down
9 twice to report, but it's up to the ANC. That's their role. But
10 okay. Those are my -- Commissioner, you said that, Vice Chair,
11 you said that.

12 Mr. Blake.

13 BOARD MEMBER BLAKE: Yes, I absolutely agree with that
14 additional comment on number 5. I think that accomplishes our
15 objective.

16 CHAIRPERSON HILL: Mr. Smith.

17 BOARD MEMBER SMITH: I completely agree. So I've been
18 swayed by Ms. John's position. I think we can accomplish the
19 same measure. And if there's any concerns, the SMD representative
20 is there, and they can request the school to come to the ANC
21 meetings. So I'll be in favor of that tweak that you recommended,
22 Chairman Hill.

23 CHAIRPERSON HILL: Okay. Great.

24 And again, I would agree with the report that I was
25 provided by the Office of Planning and that of DDOT. So again,

1 | to clarify, we have 93 spaces, and that the CMA is something that
2 | will be happening on the side because it's not really even within
3 | our purview.

4 | I'm going to make a motion to approve application No.
5 | 20458 including all of the previous BZA conditions with -- yep,
6 | Ms. Cain.

7 | MS. CAIN: I just wanted to confirm it. In addition
8 | to tweaking the language of Condition 5 as discussed, that you
9 | want to add that condition clarifying the amount of parking to
10 | be provided.

11 | CHAIRPERSON HILL: Yeah, yeah. Thank you.

12 | MS. CAIN: Yeah.

13 | CHAIRPERSON HILL: Okay. So we'll go ahead and -- I'm
14 | going to go ahead and make a motion to approve Application No.
15 | 20458, as captioned and read by the Secretary, including all the
16 | conditions previously set by the BZA with a tweak to No. 5, which
17 | is that the school shall give updates to include traffic and
18 | parking and neighborhood impacts. And then also a condition that
19 | the number of onsite spaces will remain at 93, and ask for a
20 | second, Ms. John?

21 | VICE CHAIR JOHN: Second.

22 | CHAIRPERSON HILL: The motion has been made and
23 | seconded.

24 | Mr. Moy, if you could please take a roll call vote.

25 | MR. MOY: Yes. Thank you, Mr. Chairman.

1 When I call each of your names, if you would please
2 respond with a yes, no, or abstain made to the motion made by
3 Chairman Hill to approve the application for the relief requested
4 including the condition as he has cited in his motion. The motion
5 was seconded by Vice Chair John.

6 Zoning Commissioner Peter Shapiro.

7 COMMISSIONER SHAPIRO: I vote yes.

8 MR. MOY: Mr. Smith.

9 BOARD MEMBER SMITH: Yes.

10 MR. MOY: Mr. Blake.

11 BOARD MEMBER BLAKE: Yes.

12 MR. MOY: Vice Chair John.

13 VICE CHAIR JOHN: Yes.

14 MR. MOY: Chairman Hill.

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: Staff would record the vote as 5-0-0, and
17 this is on the motion made by Chairman Hill to grant the zoning
18 relief, seconded by Vice Chair John. Also in support of the
19 motion to grant is Zoning Commissioner Peter Shapiro, Mr. Smith,
20 and Mr. Blake. The motion carries on a vote of 5-0-0.

21 CHAIRPERSON HILL: Okay. Great.

22 Commissioner Shapiro. How's the weather up there?

23 COMMISSIONER SHAPIRO: Miserable. You'd hate it.

24 CHAIRPERSON HILL: Is it really?

25 COMMISSIONER SHAPIRO: No.

1 CHAIRPERSON HILL: It's really nice.

2 COMMISSIONER SHAPIRO: I was just being kind. It's
3 beautiful.

4 CHAIRPERSON HILL: Really? Wow. That's great. Okay.
5 Okay. You go ahead. Have fun. Okay. Bye.

6 Commissioner Miller, are you there?

7 Hello, Commissioner. Good morning.

8 COMMISSIONER MILLER: Good morning.

9 CHAIRPERSON HILL: Okay. Mr. Moy, if you want to go
10 ahead and call our meeting case.

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

12 The one case in the Board's meeting session is Case No.
13 20511 of Jeremy Emmert. This is an expedited review calendar
14 case for a special exception from the rear yard requirements of
15 Subtitle E, Section 306.1, which would construct a second story,
16 rear addition to an existing attached two-story with basement
17 principal dwelling unit, RF-1 Zone. The property is located at
18 16 Quincy Place, N.W., Square 16. Quincy Place, N.W., Washington,
19 D.C., 20001, Square 3100 Lot 29. And that's it for me, Mr.
20 Chairman.

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

22 Okay. You all ready?

23 Okay. I reviewed the record and I thought it was a
24 full record. I thought it was a well-founded argument. I agree
25 with the Office of Planning's recommendation and their analysis

1 and also that of the ANC. DDOT had no objections. In addition
2 to all of that, the adjoining neighbors were also in support as
3 well as nearby neighbors as well as the Bloomingdale Civic
4 Association.

5 I didn't think that there was going to be any issues
6 with light and air or privacy or use of enjoyment or the character
7 or scale of the project, and so I'm going to be voting to approve.

8 Commissioner Miller, do you have any thoughts to add?

9 COMMISSIONER MILLER: No, I concur.

10 CHAIRPERSON HILL: Mr. Smith.

11 BOARD MEMBER SMITH: No, I concur as well.

12 CHAIRPERSON HILL: Vice Chair John.

13 VICE CHAIR JOHN: I agree. I just would add that the
14 neighbors have similar retaining walls because of the slope.

15 CHAIRPERSON HILL: Mr. Blake.

16 Thank you, Ms. John.

17 BOARD MEMBER BLAKE: I have no additional comments and
18 I approve.

19 CHAIRPERSON HILL: Okay. I'm going to make a motion
20 to approve application No. 20511 as captioned and read by the
21 Secretary, and ask for a second, Ms. John.

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: The motion has made and seconded.

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

25 MR. MOY: When I call each of your names, if you would

1 please respond with a yes, no, or abstain to the motion made by
2 Chairman Hill to grant the special exception relief. The motion
3 to approve was seconded by Vice Chair John.

4 Zoning Commissioner Rob Miller.

5 COMMISSIONER MILLER: Yes.

6 MR. MOY: Mr. Smith.

7 BOARD MEMBER SMITH: Yes.

8 MR. MOY: Mr. Blake.

9 BOARD MEMBER BLAKE: Yes.

10 MR. MOY: Vice Chair John.

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: Chairman Hill.

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: Staff would record the vote as 5-0-0, and
15 this is on the motion made by Chairman Hill to approve -- the
16 motion to approve was seconded by Vice Chair John. Also, in
17 support of the motion to approve is Zoning Commissioner Rob
18 Miller, Mr. Smith, and Mr. Blake. The motion carries on a vote
19 of 5-0-0.

20 CHAIRPERSON HILL: Okay. It's up to you guys. You
21 guys want to take a break, or you want to do one more case?

22 Okay. One more case it is.

23 Mr. Moy, you can go ahead and call our next one.

24 MR. MOY: Thank you, Mr. Chairman.

25 The Board is back in its public hearing session and we

1 -- the Board is at Application No. 20478 of Taliza Bins Johnson.
2 This is a request for special exception from the retaining wall
3 requirement of Subtitle C, Section 1401.3(c). This would
4 construct a rear retaining wall to an existing detached principal
5 dwelling unit in the R-1-B Zone. The property is located at 4436
6 Alabama Avenue, S.E., Square 5382, Lot 132. And the applicant
7 attempted to submit into the record revised site plans showing
8 the distance of the retaining wall from the property line. And
9 you don't have that in hand yet, because it was submitted within
10 that four-hour block. So that's before you, Mr. Chairman, and
11 that's it for me.

12 CHAIRPERSON HILL: Okay. Let's see.

13 Will the applicant, please introduce themselves?

14 MS. JOHNSON: Hi. I'm Taliza Bins Johnson. I am the
15 applicant as well as the registered engineer for the project.

16 CHAIRPERSON HILL: Okay. Ms. Johnson, who's here with
17 you today?

18 MS. JOHNSON: It's just myself, and I think my ANC is
19 on the line as well.

20 CHAIRPERSON HILL: Got it. Are you not using your
21 camera? It's fine. I just want to know.

22 MS. JOHNSON: I can't see the camera, but let's see.

23 CHAIRPERSON HILL: That's okay.

24 MS. JOHNSON: Yeah. I can't see the camera but --

25 CHAIRPERSON HILL: Commissioner Fletcher, are you

1 | there?

2 | MS. FLETCHER: Yes, I'm here.

3 | CHAIRPERSON HILL: Commissioner, could you introduce
4 | yourself for the record?

5 | MS. FLETCHER: Hi. This is Commissioner Tiera
6 | Fletcher. Commissioner of Single Member District 7E02 and also
7 | Chair of Advisory Neighborhood Commission 7E.

8 | CHAIRPERSON HILL: Great, Commissioner. Commissioner,
9 | that's one hell of a microphone you got over there.

10 | MS. FLETCHER: I forgot the brand. I thought it
11 | Sennheiser.

12 | CHAIRPERSON HILL: Wow.

13 | MS. FLETCHER: I forget right now, but yeah.

14 | CHAIRPERSON HILL: That's (audio interference). Okay.
15 | All right. Let's see. Okay.

16 | Ms. Johnson, you want to go ahead and tell us about
17 | your project? If you can also clarify where the wall is inside
18 | your property line. And so -- and go ahead and just kind of walk
19 | us through why you believe you should be granted the relief being
20 | requested. I have 15 minutes on the clock over there, and you
21 | can begin whenever you like.

22 | MS. JOHNSON: Okay. I'm requesting the wall to be four
23 | inches inside the property line at the rear by the alley.

24 | CHAIRPERSON HILL: Four inches?

25 | MS. JOHNSON: Four inches.

1 CHAIRPERSON HILL: Okay. Great. Thank you.

2 MS. JOHNSON: Just inside, just to match. The neighbor
3 to me at 4428 also has the same height, within like four inches
4 of the rear as well. And then my neighbor on -- at 4440 has a
5 retaining wall. It's a little bit further back in, but she's
6 looking eventually in the future to move it back. The slopes
7 are really steep from the house to the grade. It's about maybe
8 20, 30 feet from the house to the alley. So initially, with the
9 yard, back in 2014 when we bought the house (audio interference),
10 the DOEE project for rain guard because there was so much runoff
11 and erosion in the backyard. So started Phase 1 up further in
12 the yard to do -- to stabilize the banks on one side of the DOEE
13 rain guard. And on the other side, I put -- I paid to have the
14 landscaping put in with the idea of future landscaping to go to
15 the bottom, because we're still having erosion at the bottom of
16 the lot, and the soil seems to somehow end up in the alley because
17 it's eroding.

18 The fence that was originally there when we bought the
19 house has collapsed. It was kind of old, but it was in
20 collapsing. The footing wasn't stable, so there's quite a steep
21 drop off probably from where I am, in the middle, there's still
22 probably about 12 feet drop. And that doesn't include the
23 additional 12 feet up to the to the bottom of the steps to the
24 house. So they put in a retaining wall to kind of get a flat
25 space in the backyard: one, to deal with the erosion as well as

1 to have a flat play space to have play equipment, just a yard
2 that's just not running out into the alley.

3 Additionally, there is constant dumping in the yard.
4 Since I've submitted this application, I had the yard cleaned up
5 and there seems to be dumping that has occurred again. Just the
6 most ridiculous -- like someone would find a random place to dump
7 carpets and construction debris in the rear of my property. So
8 to stabilize it, to provide a flat space, to aesthetically improve
9 the neighborhood because the neighbors in the rear kind of give
10 me the eye and had make comments about the yard and asking if I
11 would fix it eventually, and I said yes.

12 So it's been kind of like a project that everyone keeps
13 asking me, when is it going to happen. So when I moved into the
14 neighborhood, I wasn't accustomed to -- neighbors being so active
15 in the way the property looks. So it's the improvement that is
16 being supported by the neighborhood as well.

17 CHAIRPERSON HILL: Okay. Thank you.

18 Does anybody have any questions for the applicant?

19 CHAIRPERSON HILL: I am going to turn to the Office of
20 Planning.

21 Ms. Brown-Roberts, you're breaking up.

22 Ms. Brown-Roberts, maybe you can turn off your video.

23 MS. BROWN-ROBERTS: This is Maxine Brown-Roberts.
24 (Audio interference). Can you hear me?

25 CHAIRPERSON HILL: Yep. Now, we got you.

1 MS. BROWN-ROBERTS: Is that clear?

2 CHAIRPERSON HILL: Yes.

3 MS. BROWN-ROBERTS: Okay. Great. Sorry about that.

4 The applicant proposes a retaining wall at a height of
5 5.5 feet within four inches of the property line. And I want to
6 make a correction to our report, because I think in the report
7 it was four feet, and not four inches; where the maximum is four
8 feet, within 25 feet of the rear property line is permitted. The
9 special exception relief from the requirement is permitted under
10 Subtitle C, Section 1402.1.

11 The applicant proposes to upgrade fencing around the
12 property line with a retaining wall along the property line --
13 the rear property line. Primarily, the increase in height of the
14 wall is necessary from an engineering point of view to support
15 and stabilize the steep slope on the property. Compliance with
16 a four-foot height limit would be unduly restrictive and
17 unreasonable because it would result in a retaining wall would
18 not be able to fully support the slope of the hill.

19 Additionally, the wall would discourage dumping into
20 the rear yard as the applicant stated and would allow for
21 additional use of the rear yard.

22 Regarding the general special exception of Subtitle
23 X 901.2, the proposal is in harmony with the general purpose and
24 intent of the Zoning Regulations because reasonable retaining
25 walls are permitted in the R zones to help resist displacement

1 of soil or other materials on steep slopes. The height
2 limitations are to maximum -- to minimize the visual appearance
3 of a retaining wall and to avoid over-manipulation of grade. In
4 this case, the wall's visibility would only be along at alley,
5 the rear of the property. The requested relief to increase height
6 would be what is adequate to support the slope and prevent
7 slippage of soil into the alley.

8 The wall would be close to the rear of the property and
9 would not be near any structures. It would limit runoff and soil
10 slippage into the alley and lessen existing adverse impacts of
11 the slope. Other properties along the alley have similar issues
12 of slope drop-off and unstable soils and have installed retaining
13 walls which are similar in height. Construction of the wall
14 would be in harmony with the neighborhood properties along the
15 alley and should not adversely impact the use of neighboring
16 properties. OP therefore recommends approval of the requested
17 special exception.

18 Thank you, Mr. Chairman, and I'm available for
19 questions.

20 CHAIRPERSON HILL: Thank you, Ms. Brown-Roberts.

21 Does the Board have any questions to the office
22 Planning?

23 Mr. Moy, were you going to tell me about that record
24 thing?

25 MR. MOY: Yes, sir. You're clairvoyant, also.

1 CHAIRPERSON HILL: Okay. Yeah, I forgot.

2 What was the item that got submitted 24 hours?

3 MR. MOY: Yes. I believe applicant filed a revised
4 site plan that would give you -- to confirm what she gave in
5 testimony about the distance of the retaining wall from the
6 property line.

7 CHAIRPERSON HILL: Okay. If the Board has any issues,
8 I want to -- unless the Board has any issues, I want to go ahead
9 and allow that into the record. If the staff could please go
10 ahead and put that into the record for us all to see, that would
11 be helpful. Thank you.

12 Ms. Brown-Roberts, are you back at the office?

13 MS. BROWN-ROBERTS: Yes, Mr. Chairman.

14 CHAIRPERSON HILL: All right. D.C. is back at work in
15 the office. Okay.

16 All right. Let's see. I bet the Internet is not as
17 good as your house, apparently. Let's see. That was no offense
18 (indiscernible). Okay. Let's see.

19 Mr. Young, is there anybody here wishing to speak?

20 MR. YOUNG: We do not.

21 CHAIRPERSON HILL: Okay. Does the Board have any final
22 questions of anybody?

23 Okay. Ms. Johnson, do you have anything you'd like to
24 add at the end? All right.

25 MS. JOHNSON: No, I don't.

1 CHAIRPERSON HILL: I'm going to go ahead and close the
2 hearing and the record. Don't leave -- don't let anybody go,
3 Mr. Young.

4 Mr. Blake, did you have a question?

5 BOARD MEMBER BLAKE: No. Just with the ANC. I'm just
6 curious about the ANC. That's all.

7 CHAIRPERSON HILL: I'm sorry. Thank you. I apologize.
8 Thank you, Mr. Blake.

9 Commissioner Fletcher. I completely -- sometimes, I
10 forget what's going on.

11 Commissioner Fletcher, did you have anything you'd like
12 to add in testimony?

13 MS. FLETCHER: I did prepare testimony for support. It
14 doesn't seem that this is contentious. So if you would like, I
15 could enter it just for the purposes of the record. I've also
16 submitted a written letter of support.

17 CHAIRPERSON HILL: I saw the written letter. Why don't
18 you go ahead and give your testimony, Commissioner, since you're
19 here and you have that wonderful microphone?

20 MS. FLETCHER: Well, I'm not recording on that
21 microphone presently, but I'll go ahead.

22 For the clarity of record, it's (indiscernible), it's
23 reported that Michael Jackson apparently used a similar
24 microphone, but -- going forward, I'm Tiera Fletcher, Chair of
25 Advisory Neighborhood Commission 7E and also Commissioner of

1 7E02. I'm here to notify in support of the zoning variance for
2 BZA 20478 by Ms. Taliza Bins.

3 And we have decided to do so in interest of safety, and
4 also accessibility and use of the property. It was approved by
5 the Commission by a vote of five commissioners. And at the time,
6 there were six commissioners with the quorum being four. There
7 were five commissioners present at the meeting and all five
8 commissioners voted in support of the variance.

9 It was also, again, in the interest of safety and
10 accessibility, and the functionality of the property. Some of
11 the reasons were, as I've already stated, there's a particular
12 steepness of the hill and also a drop-off, and also, the exposure
13 to the alley especially in the interest of passing vehicles. And
14 this is a particular concern as far as the accessibility and the
15 safety in regards to children and perhaps individuals with
16 limited ability. So overall, we were concerned about this being
17 a safety hazard and also, the accessibility and the usability of
18 the property. And that concludes my testimony. I'm also
19 available for questions. Thank you so much.

20 CHAIRPERSON HILL: Thank you, Commissioner.

21 And yeah, Commissioner, if you could submit that into
22 the record, that'd be great.

23 Let's see, does the Board have any questions for the
24 Commissioner?

25 Okay. Does the applicant have any questions for the

1 Commissioner? No, she says, yeah.

2 MS. FLETCHER: Just for clarity, would you like me to
3 submit an additional document in addition to the letter of
4 support?

5 CHAIRPERSON HILL: No, no. I apologize.

6 MS. FLETCHER: Okay.

7 CHAIRPERSON HILL: You have said something about
8 submitting your testimony into the record. And I'm comfortable
9 with your oral testimony. Is there something else you'd like to
10 submit into the record or is that good?

11 MS. FLETCHER: No. That's all. Thank you.

12 CHAIRPERSON HILL: And also for the record, I believe
13 they're here for a special exception not a variance, but that's
14 --

15 MS. FLETCHER: Thank you.

16 CHAIRPERSON HILL: -- you all are in support. So thank
17 you, Commissioner.

18 All right. Okay. Then I'm going to go ahead and close
19 the hearing and the record, and if you could excuse everyone.
20 Thank you. Thank you, Commissioner. Thank you, Ms. Johnson.

21 Commissioner Miller, may I start with you?

22 COMMISSIONER MILLER: Sure. Thank you, Mr. Chairman.

23 This is fairly straightforward. The Office of Planning
24 supports the retaining wall height meeting the special exception
25 specific and general standards, and I concur with that. DDOT has

1 no objections, and the ANC supports, so I support for all those
2 reasons.

3 CHAIRPERSON HILL: Okay. Mr. Smith.

4 BOARD MEMBER SMITH: (Audio interference), Mr. Miller.
5 I give great weight to the OP staff report that they have -- or
6 the applicant has met the burden of proof for us to support
7 special exception from C-1402 and the general special exception
8 standards under X-901.2(a) and (b). The ANC is in support and
9 gave a lovely testimony stating the reasons why they are in
10 support of the special exception. So with that, I would also be
11 in support of the special exception.

12 CHAIRPERSON HILL: Great. Thank you. Vice Chair John.

13 VICE CHAIR JOHN: So Mr. Chairman, before I talk about
14 this case, I need to note that in the previous case I mentioned
15 that there was a retaining wall, and I completely confused that
16 case with this case. There was no retaining wall in that case.
17 So my comments were intended for this case. So since I already
18 commented on this case, I will just agree with everything that's
19 been said so far.

20 CHAIRPERSON HILL: Thank you, Vice Chair John.

21 Mr. Blake. And thank you, Mr. Blake for keeping me on
22 my toes. That's good. I was like I almost -- I don't know why.
23 I've almost done that twice now. I don't know how. All right.
24 Mr. Blake.

25 BOARD MEMBER BLAKE: Yeah. The evidence in the record

1 obviously supports the applicant's assertion that it would be
2 unduly restrictive and unreasonable to do a four-foot wall
3 because it won't be effective. And I certainly feel that every
4 other standard has been met, and I would be prepared to support
5 this.

6 CHAIRPERSON HILL: Okay. Let's see. I will agree with
7 everything that has been stated. I believe that the applicant
8 has met the standard for us to grant the relief requested. I
9 would also agree with the analysis as provided by the Office of
10 Planning as well as that of the ANC. It was very kind of the
11 Commissioner to come today to speak, and I thought that her
12 testimony was helpful.

13 Also, the clarity that the applicant had provided, that
14 it's four inches within the property line, as well as we will be
15 getting some -- I'm sorry. The record is going to -- we added
16 into the record the site plan that'll be coming in. I'm going
17 to go ahead and make a motion to approve Application No. 20478
18 as captioned and read by the Secretary, and ask for a second,
19 Ms. John.

20 VICE CHAIR JOHN: Second.

21 CHAIRPERSON HILL: The motion has been made and
22 seconded.

23 Mr. Moy, will you take a roll call, please.

24 MR. MOY: Thank you, Mr. Chairman.

25 When I call each of your names, if you would please

1 respond with a yes, no, or abstain to the motion made by Chairman
2 Hill to approve the relief requested by the applicant. The motion
3 to approve was seconded by Vice Chair John.

4 Zoning Commissioner Rob Miller.

5 COMMISSIONER MILLER: Yes.

6 MR. MOY: Mr. Smith.

7 BOARD MEMBER SMITH: Yes.

8 MR. MOY: Mr. Blake.

9 BOARD MEMBER BLAKE: Yes.

10 MR. MOY: Vice Chair John.

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: Chairman Hill.

13 CHAIRPERSON HILL: Yes, to approve.

14 MR. MOY: Staff would record the vote as 5-0-0 and this
15 is on the motion of Chairman Hill to approve. The motion was
16 seconded by Vice Chair John to approve. Also in support of the
17 motion to approve is Zoning Commissioner Rob Miller, Mr. Smith
18 and Mr. Blake. The motion carries on a vote of 5-0-0.

19 CHAIRPERSON HILL: Okay. Thank you.

20 And I don't know why, I can go for one more if you all
21 want to go for one more. We're going to take a break either way
22 before the appeal, so it's up to you guys. Do you want to do
23 one more, or you want to do one more and then take a break?
24 Everyone take a break and then do one more and then take a break,
25 or do you want to do one more? Do I get a second?

1 VICE CHAIR JOHN: One more. Take a break.

2 CHAIRPERSON HILL: There you go.

3 VICE CHAIR JOHN: I want to take a break before the
4 appeal.

5 CHAIRPERSON HILL: Got you. Okay. Got it.

6 All right. Mr. Moy, you can go ahead and call the next
7 one.

8 MR. MOY: All right. This would be Case Application
9 No. 20484 of 2805 M Street, LLC. Captioned and advertised for
10 special exception from the rear yard requirement, Subtitle G,
11 Section 405.2. This would construct a rear stairway addition to
12 an existing semi-detached three-story with basement commercial
13 building in the MU-4 Zone. The property is located 2805 M Street
14 N.W., Square 1212, Lot 201. That's it, Mr. Chairman.

15 CHAIRPERSON HILL: Thanks. I'm sorry. I forgot I
16 wasn't on mute. There's two more before the appeal. There's
17 this one, then there's another one, so we're probably going to
18 take a break, so. But anyway. Okay.

19 Ms. Moldenhauer, could you introduce yourself for the
20 record please?

21 MS. MOLDENHAUER: Good morning, Chairman Hill, and
22 members of the Board. My name is Meridith Moldenhauer on behalf
23 of the applicant.

24 CHAIRPERSON HILL: Thanks. Ms. Moldenhauer, I haven't
25 seen you in a little while.

1 MS. MOLDENHAUER: Good to be here.

2 CHAIRPERSON HILL: Well, I also -- the reason why I'm
3 remembering, is you're part of the appeal.

4 MS. MOLDENHAUER: Yes.

5 CHAIRPERSON HILL: And so I thought --

6 MS. MOLDENHAUER: I will be here later on today.

7 CHAIRPERSON HILL: I thought we were going back to
8 that, but we're not, so there's a gap. That's why I got confused.

9 All right. Ms. Moldenhauer, if you could go ahead and
10 kind of walk us through your client's application and why you
11 believe they're meeting the standard for us to grant the relief
12 requested.

13 There was something about the CFA time frame or whether
14 or not that was submitted. I don't -- or something about the
15 notice requirements. I have to kind of like look at that a little
16 bit. I don't have as much of a concern about that because of
17 OGB and HPRB that has gone through that. But if you can just
18 kind of clarify that while you give your presentation. I'll put
19 15 minutes on the clock, and you can begin whenever you like.

20 MS. MOLDENHAUER: Right. I also believe that the
21 project architect, Nick Giordano should be -- had signed up to
22 be a witness as well. And we have a PowerPoint presentation that
23 Mr. Young can pull up.

24 CHAIRPERSON HILL: Okay.

25 Mr. Young, if you can find Mr. Giordano, and then also,

1 | if you could pull up the PowerPoint for Ms. Moldenhauer.

2 | MR. YOUNG: Yeah. I have him and he's calling in, so
3 | I just unmuted him.

4 | CHAIRPERSON HILL: Okay.

5 | Mr. Giordano, could you introduce yourself for the
6 | record, please?

7 | MR. GIORDANO: Can you hear me?

8 | CHAIRPERSON HILL: Yes.

9 | MR. GIORDANO: Hi. Nick Giordano, BBGM Architects.

10 | CHAIRPERSON HILL: Okay. Great. Okay. Thank you.

11 | All right. Mr. Young, I guess -- thank you very much.

12 | MS. MOLDENHAUER: We are here today on application for
13 | 2805 M Street.

14 | Next slide. The property is located in Georgetown
15 | along M Street. You can see it is located in the MU-4 Zone.

16 | Next slide. The proposal to construct a stair at the
17 | existing building to access the second floor. It's part of a
18 | larger restoration of this historic building, in addition to also
19 | addressing a car crash that occurred at the site. This is a
20 | permanent stair that will be replacing an existing temporary
21 | stair that you'll see in some of the pictures in a moment.

22 | That temporary stair actually replaced a pre-existing
23 | historic fire stair that was also located in the rear of the
24 | property.

25 | The proposal here, the existing condition is that the

1 rear yard is currently four feet, three inches. This is a
2 required 15-foot rear yard. And the request is to reduce it to
3 one foot for only a portion of the property.

4 Next slide. We have engaged with the community. This
5 also addressed some of the Chair's questions. The ANC, in the
6 record, we presented to them. They identified, no comment. The
7 Office of Planning has recommended approval. And this
8 application has gone both through the Old Georgetown Board, here
9 is the case number and the approval, and has received approval,
10 as well as Historic preservation approval and that case number.

11 Next slide. I'm here. I'll let Nick walk you through
12 the project and kind of look at some of the existing conditions.

13 MR. GIORDANO: Okay. Are you getting my camera? Do
14 you guys see me? No?

15 MS. MOLDENHAUER: Nick, I don't think we can see you.
16 We can hear you but --

17 CHAIRPERSON HILL: We can hear you though.

18 MS. MOLDENHAUER: -- we can hear you okay.

19 CHAIRPERSON HILL: Okay. That's okay. Can you see the
20 presentation?

21 MR. GIORDANO: Yeah, yeah.

22 CHAIRPERSON HILL: Okay. Great.

23 MR. GIORDANO: On the left is a drawing of the existing
24 building and the proposed work. It's basically replacing
25 windows, painting, new shutters, and putting in a show window

1 that was knocked out by an automobile. The subject property is
2 on the very right of that elevation, you see in the picture is
3 to add a (indiscernible) metal stair on the back. Right now,
4 there's a wood stair coming down. You see it on the picture
5 along the side of the property and extending a couple of feet
6 out into the public space.

7 Go to the next slide. This is a view of that back.
8 There's a little bustle on the back of the building there, which
9 is what the stair goes to. That roof is the second-floor line.
10 So what we're proposing is to move that stair orientation, so it
11 wraps, just so it will bump on the back of the building.

12 Go to the next slide. So this is the plan of that
13 second floor. You see, the existing roof is where we step out
14 from the existing second floor of the building onto where -- the
15 addition of the metal stair, you see on the bottom of page. It
16 goes along the side of the bump out. Then it turns up the page,
17 again wrapping it, and then down to drop well within the property
18 line.

19 Go to the next slide. So here's the drawing revised
20 on the right. You see where the metal stair now comes down around
21 that existing bump out to drop down. And it has a guardrail,
22 (indiscernible) guardrail now added up there so you don't fall
23 off.

24 Next slide. And here is the rear view of that. Looking
25 at the rear of the property, showing how it comes down and misses

1 the door. This is a metal stair. It's open. The treads are
2 open, checkered plates. The rails are open. So it's not really
3 blocking any light or anything. I believe that's -- is there
4 another slide for me, or is that it?

5 MS. MOLDENHAUER: That's it. Thank you --

6 MR. GIORDANO: Thank you.

7 MS. MOLDENHAUER: -- so much. So this is an application
8 for special exception relief under Subtitle G 405.2. As indicated
9 earlier, there's a required 15-foot required rear yard.
10 Currently, there's only a four-foot rear yard, and we're asking
11 to reduce it to one foot for only approximately about one-third
12 of the rear.

13 Next slide. I think we jumped one. But -- we believe
14 it satisfies the special exception conditions and there is
15 harmony of the intent and zoning requirements.

16 Sorry, Mr. Young, can you move to the next slide. This
17 is an MU Zone, which obviously supports moderate density, mixed
18 use. The stair is to accommodate a commercial use on the upper
19 floor of this property, which needs the stair for co-compliance
20 and access to that commercial space. It's a highly trafficked
21 area and it's consistent with the Historic Preservation standards
22 of Georgetown as it has been approved by both OGB and HPRB.

23 Next slide. The relief would not be adverse -- have
24 any adverse effect on neighboring properties as indicated from
25 the project architect. It's going to be open and airy and would

1 have no impact on light and air. Obviously, less use of the rear
2 stair versus the M Street frontage. It has minimum impact on
3 privacy. And also, this is a historic nonconforming rear yard.
4 The relief is really only focused on one-third of the property's
5 width.

6 Next slide. Under the various specific conditions
7 under G 1201.1, we believe that we satisfy all of them as the
8 project does not propose any apartment windows, and there is no
9 new windows that are being added to the rear addition. And in
10 addition to that, the existing stair is already there, and we are
11 obviously just simply bringing that stair into code compliance
12 and is minor repairs that do not trigger any parking requirements.
13 And then OP referred the application to the relevant agencies as
14 required by this section. DDOT had no objection and HPRB and
15 OGB had approved this application.

16 Next slide. And so based on that, we believe that we
17 satisfy the special exception conditions for rear yard and would
18 be available to answer any questions from the Board.

19 CHAIRPERSON HILL: Okay. Does the Board have any
20 questions for the applicant? Okay. I'm going to turn to the
21 Office of Planning.

22 MS. THOMAS: Good morning, Mr. Chair, and members of
23 the Board. Karen Thomas for the Office of Planning for
24 Application 20484 at 2085 M Street, N.W.

25 OP is recommending approval of the special exception

1 request under Subtitle G, Section 405 for the stair addition into
2 the nonconforming four-foot rear yard. We found that the stair
3 renovation should not have a great impact on the adjoining
4 neighbor's property than what currently exists, and it met the
5 other criteria for the special exception especially with respect
6 to the addition of fenestration, which is not proposed in this
7 case.

8 The stairs are primarily for the building's service
9 use, and the emergency ingress and egress is not anticipated to
10 change. In addition, the access provided by the five-foot
11 easement should not be hindered by the new stairway. The proposal
12 is in harmony with the intent of the regulations as noted in our
13 report. The reduction of the rear yard by three feet for the
14 unenclosed stair structure, when weighed against the requirement
15 to accommodate safety, ingress and egress for the second floor
16 should not adversely impact the intent of the regulations. This
17 concludes my report, and I'll be happy to take any questions.
18 Thank you.

19 CHAIRPERSON HILL: Okay. Thank you.

20 Does the Board have any questions for the Office of
21 Planning? Does the applicant have any questions for the Office
22 of Planning?

23 MS. MOLDENHAUER: No. Thank you very much, Ms. Thomas.

24 CHAIRPERSON HILL: Ms. Moldenhauer, how come -- why the
25 ANC, no comment. You presented to them, and they just didn't

1 decide to comment?

2 MS. MOLDENHAUER: Obviously, ANC's only get great
3 weight on comments that they provide, and so they did not provide
4 any comments here.

5 CHAIRPERSON HILL: No. I'm just asking, do you know
6 why? Did you go -- you all presented to them; I know.

7 MS. MOLDENHAUER: I did, yeah. I presented it to them,
8 and I had conversations with the Single Member District
9 representative. They discussed the project in detail, and they
10 asked if we had engaged with the neighbors. We indicated that
11 we had spoken with MCM Build, who owns the building to the north.
12 But then that's the action that they took. I did not inquire as
13 to why.

14 CHAIRPERSON HILL: Okay. Great. All right.

15 COMMISSIONER MILLER: Mr. Chairman, I would just note
16 on that point that this particular ANC often chooses to express
17 their opinion this way.

18 CHAIRPERSON HILL: Okay. Great. All right. Thanks,
19 Commissioner Miller. Let's see.

20 Okay. And just also, it wasn't the applicant's issue
21 with this whole CFA thing, it was the Office of Zoning. We sent
22 the notice to them late, but I guess it's -- again, I'm going to
23 waive that notice requirement because we did get information from
24 OAG -- I'm sorry, Old Georgetown Board as well as being HPRB. So
25 I'm comfortable with that, unless the Board has any issues, and

1 raise your hand. Okay.

2 Is there anybody here wishing to speak, Mr. Young?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, is anything
5 you would like to add at the end?

6 MS. MOLDENHAUER: No. Thank you all for your time.

7 CHAIRPERSON HILL: Okay. Great. All right. Go ahead
8 and close the hearing on the record.

9 Okay. I can start. I thought it was actually pretty
10 straightforward. I didn't have any questions with it. I would
11 agree with the analysis the Office of Planning has provided. I
12 was again a little curious about the ANC, but I understand why
13 they would also not feel the need to provide any (audio
14 interference) one way or the other. Also, then DDOT had no
15 objection, and I'm going to be voting to approve.

16 Commissioner Miller, do you have anything you would
17 like to add?

18 COMMISSIONER MILLER: No, not really, Mr. Chairman. I
19 agree with your analysis. I think the applicant and the Office
20 of Planning have shown why -- the special exception specific and
21 general standards have been met in this case, and with ANC 2E's
22 no comment and with DDOT's no objections, I think this is ready
23 for our approval.

24 CHAIRPERSON HILL: Thank you.

25 Mr. Smith.

1 BOARD MEMBER SMITH: I believe this is a fairly
2 straightforward application. So I agree with your analysis and
3 Commissioner Miller's analysis on this particular project. I
4 will be in support of this application.

5 CHAIRPERSON HILL: Thank you.

6 Vice Chair John.

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

9 CHAIRPERSON HILL: Thank you.

10 Mr. Blake.

11 BOARD MEMBER BLAKE: Yes. I agree with the comments
12 made. And giving substantial weight to the analysis and
13 recommendation of the Office of Planning, I'll be prepared to
14 support.

15 CHAIRPERSON HILL: Thank you.

16 Okay. I would agree with everything that has been said
17 and also make a motion to approve Application No. 20484 as
18 captioned and read by the Secretary, and ask for a second, Ms.
19 John.

20 VICE CHAIR JOHN: Second.

21 CHAIRPERSON HILL: The motion has been made and
22 seconded.

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

24 MR. MOY: When I call your names, if you would please
25 respond with a yes, no, or abstain to the motion made by Chairman

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

3 Zoning Commissioner Rob Miller.

4 COMMISSIONER MILLER: Yes.

5 MR. MOY: Mr. Smith.

6 BOARD MEMBER SMITH: Yes.

7 MR. MOY: Mr. Blake.

8 BOARD MEMBER BLAKE: Yes.

9 MR. MOY: Vice Chair John.

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: Chairman Hill.

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: Staff would record the vote as 5-0-0. And
14 this is on the motion made by Chairman Hill to approve. The
15 motion to approve was seconded by Vice Chair John. Also, in
16 support of the motion to approve is Zoning Commissioner Rob
17 Miller, Mr. Smith, and Mr. Blake. The motion carries on a vote
18 of 5-0-0.

19 CHAIRPERSON HILL: Thank you, Mr. Moy.

20 Okay. Well, then this is what I propose, I guess. We
21 have one more case and then we have an appeal. So maybe we'll
22 take a quick break, come back do one more case, take lunch and
23 then come back and do the appeal. Does that sound -- okay, I
24 got some several nods. All right. So then let's go ahead and
25 take a 10-minute break. We'll come back in 10 minutes or so.

1 Okay. Thank you. Bye-bye.

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

4 CHAIRPERSON HILL: Okay. Mr. Moy, could you call our
5 next case, please?

6 MR. MOY: The Board is back in its hearing session
7 after a quick break, and the time is at or about 11:40 a.m.

8 The next case is Application No. 20482 of KAJ Ventures,
9 LLC. Captioned and advertised for special exception under the
10 new residential development requirements of Subtitle U, Section
11 421.1; minimum long-term bicycle parking space requirements,
12 Subtitle C, Section 805. And this would construct an eight-unit
13 apartment house from an existing three-story with basement
14 residential building in RA-1 Zone. The property is located at
15 2805 Jasper Street, S.E., Square 5722, Lot 74.

16 And as you'll recall, Mr. Chairman, there's a request
17 for expert witness as well as the applicant filing two documents
18 that are outside of the 21-day rule, so they're asking for a
19 waiver of that. And that's all I have, unless the applicant has
20 something else to add to that.

21 CHAIRPERSON HILL: Okay.

22 Mr. Freeman, could you introduce yourself for the
23 record, please?

24 MR. FREEMAN: Good morning. My name is Kyrus Freeman.
25 I'm a partner in Holland & Knight on behalf of the applicant.

1 CHAIRPERSON HILL: Okay. Mr. Freeman, who is with you
2 today?

3 MR. FREEMAN: My colleague, Jessica Bloomfield; the
4 owner, Mr. Kenneth Jackson; and the architect, Mr. Stephen White.

5 CHAIRPERSON HILL: Okay. And first of all, so there's
6 a 21-day filing waiver that you guys needed. Can you tell me
7 why you didn't meet the deadline?

8 MR. FREEMAN: Two things. One is good news. We
9 withdrew our relief for GAR relief, and the Office of Zoning
10 asked us to submit an additional, a revised form 135 reflecting
11 the fact that we withdrew that relief, so that's the first thing.

12 Secondly, after we saw DDOT's report, they had some
13 concerns. So we submitted a revised plan on 07/15 to address
14 DDOT's concerns, which is -- which was after the 20-day
15 requirement.

16 CHAIRPERSON HILL: Okay. Thank you, Mr. Freeman.

17 All right. I don't have any issues with the filing
18 deadline being waived because I want to see -- well, both. One
19 is just the revised form and the other is the biking plans because
20 of the conversation with DDOT. Unless the Board has any issues,
21 I'm going to waive those filing deadlines and allow those into
22 the record. No one's raising their hands, so we'll go ahead and
23 allow those things into the record.

24 And then there's an expert, Mr. White. Is that correct,
25 Mr. Freeman?

1 MR. FREEMAN: Yes, sir. His resume is included in the
2 record.

3 CHAIRPERSON HILL: Which one is that again?

4 MR. FREEMAN: It is exhibit --

5 CHAIRPERSON HILL: Oh, I got it, 14. Okay.

6 I don't have any problem with admitting Mr. White as
7 an expert in architecture unless someone here on the Board does,
8 and if so, please raise your hand. Okay. We're going to do
9 that. All right.

10 Okay. Mr. Freeman, if you want to go ahead and walk
11 us through how you believe your applicant is meeting the criteria
12 for us to grant the relief requested. I got 15 minutes on the
13 clock there, and you can begin whenever you like.

14 MR. FREEMAN: Mr. Chairman, I actually think I can do
15 it in much less than that. We are prepared to rest on the record.
16 As I'm sure you know or have seen, we have the Office of Planning
17 report at Exhibit 40.

18 Well, in addition, to our materials, we have an Office
19 of Planning report at Exhibit 40, which goes through in detail
20 how we meet the special exception standards for the new
21 residential development as well as the special exception for the
22 long-term bike parking relief. That's a great report.

23 We have two DDOT reports. The last of which is Exhibit
24 45. Their initial report did not support the application. After
25 seeing the report, we added some bike storage spaces on the

1 exterior of the building in the rear yard. As a result of
2 submission of that, that new plan was late, which required the
3 waiver. DDOT submitted a new report, Exhibit 45, the last line
4 of which says, "As such, DDOT has no objection to the approval
5 of this application."

6 And last, but not the least, Exhibit 42, we had the
7 support of the ANC. They voted unanimously. That's ANC 8B voted
8 unanimously to support the application. Just to pull what they
9 say, they have no concerns. Happy to have this property go from
10 a boarding house to apartment building. Security has been an
11 issue in the area. The owner has already established security
12 clearance.

13 So we think the record is thorough and complete and
14 indicates how we meet the standards of relief. Happy to rest on
15 the record and answer any questions that the Board might have.

16 CHAIRPERSON HILL: Okay. And Mr. Freeman, we usually
17 ask you to go a little bit through some of the criteria, but I
18 agree that we have we have an appeal a little bit later today,
19 and also that I, after reviewing the record, would agree with
20 you.

21 But does the Board have any questions of Mr. Freeman?

22 I do have one question, Mr. Freeman. So was the
23 property already like -- well, is this a brand-new property? I
24 was a little confused.

25 MR. FREEMAN: It's an existing building that was last

1 used as a rooming house with 13 rooms. So we're converting that
2 rooming house into an apartment building, eight units.

3 CHAIRPERSON HILL: Got it.

4 MR. FREEMAN: Just a little detail. There's a cellar,
5 and then levels one, two and three. So eight units, each of
6 those units are three bedrooms, which as Commissioner Miller, I'm
7 sure you all know, but Commissioner Miller during his time on the
8 Zoning Commission can attest to that. The fact that it's rare
9 to have a project with all three bedrooms, so we're anxious to
10 move forward with this project, which we believe is consistent
11 with the District's goals of providing more family size housing.

12 CHAIRPERSON HILL: No, I got it, Mr. Freeman. I mean
13 my question was, no offense to the architect, I mean it's kind
14 of a boring building. And so I was just like -- it's just kind
15 of square. No offense to the owner either. Just kind of curious
16 as to how you got it in this condition and so this is how it kind
17 of came. And so -- okay. Nobody has any questions?

18 Ms. John.

19 VICE CHAIR JOHN: Mr. Freeman, briefly, why do you need
20 relief for no parking spaces?

21 MR. FREEMAN: So our request is relief for no bike
22 parking spaces.

23 VICE CHAIR JOHN: Bike parking spaces.

24 MR. FREEMAN: Long-term bike parking spaces.

25 VICE CHAIR JOHN: Right. Thank you.

1 MR. FREEMAN: Mr. Young, if you could pull up the
2 exhibit PowerPoint, which I believe is Exhibit 46, our pre-
3 hearing submission. I'm sorry, the PowerPoint.

4 So long-term bike parking spaces have minimum size
5 dimensions, square footage, clearance requirements, et cetera.
6 And if you look at the center plan, which is the proposed first
7 floor plan -- Mr. Young, I wonder if you can make that any larger.

8 So when you enter the building, Ms. John, you see the
9 door. You walk up some steps, there's a landing and then there's
10 a door. You enter that door, and you immediately meet steps and
11 there are doors into units. So long-term bike spaces, usually
12 are in a storage room, again, which has to meet certain minimum
13 dimensions. So there's physically no space within the existing
14 shared space in order to provide a bike storage room within the
15 building that meets the requirements for long-term bike parking.
16 The only way to do that, arguably, would be to take space out of
17 a unit, which is contrary to what the District's goals are as it
18 relates to maximize any amount of housing.

19 I would say, OP noted in their report, rather adeptly
20 that these are three-bedroom units. So to the extent that
21 individuals own a bike, there's plenty of space to put that space
22 in the unit. I would also say, subsequently to DDOT filing their
23 report, we've submitted additional plans.

24 Mr. Young, if you go to page, I think 5 or 6 of the
25 submission.

1 Although, we do not have any zoning-compliant long-
2 term bike parking spaces, in order to mitigate that, we have
3 installed -- or are proposing to install -- if you can enlarge
4 this, please, Mr. Young.

5 Although we don't have zoning-compliant long-term bike
6 parking spaces, as a mitigation measure, we have agreed to install
7 bike lockers outside, three bike lockers to provide additional
8 options for bike storage. Again, it's covered, it's locked, it's
9 outside. It's not long-term bike parking in the sense of what
10 the regulations require, but it is an additional mitigation
11 measure to provide spaces.

12 VICE CHAIR JOHN: Thank you, Mr. Freeman.

13 MR. FREEMAN: Thank you.

14 CHAIRPERSON HILL: Mr. Blake.

15 BOARD MEMBER BLAKE: Yeah. Quick question. What is
16 the -- I understand they are three-bedroom unit, but what exactly
17 is the square -- approximate square footage of the units?

18 MR. FREEMAN: I'll ask. I don't know the answer to
19 that, so I'll ask the owner. Mr. (indiscernible), do you know
20 the average square footage of the units offhand or is that a
21 Stephen question.

22 MR. WHITE: Yes. This is Stephen White, the architect.
23 I do not have the immediate, but I tabulated those areas at one
24 point. I don't have that before me. But from memory, those
25 units are around 700 plus square feet. They're fairly small in

1 terms of the area you would anticipate for a three-bedroom
2 apartment.

3 MR. FREEMAN: No, Stephen. I'm going to stop you. So
4 the answer is, on average, they're 700 square feet.

5 BOARD MEMBER BLAKE: I'm sorry. Say that again.

6 MR. FREEMAN: They're an average of 700 square feet.

7 BOARD MEMBER BLAKE: So it's 700 square foot, three-
8 bedroom apartment. It has ample -- extra space to store bicycles
9 indoors; is what you're saying?

10 MR. FREEMAN: No, what I'm saying is that there is no
11 space within the building in order to provide the required long-
12 term bike parking space.

13 MR. WHITE: Mr. Freeman --

14 MR. FREEMAN: Hold on a second, Mr. White, please.

15 And although we don't have that zoning required bike
16 parking space, we do have the bike lockers that are exterior to
17 the outside, bike lockers, so that if people want to park bike
18 parking spaces there, they can do that. And then I think the
19 other point I was making is if people don't want to use that,
20 they could put it in their unit.

21 BOARD MEMBER BLAKE: And in terms of the bike lockers,
22 are they class 1 bike lockers individually locked, or is it one
23 storage bin? How are they structured?

24 MR. FREEMAN: The goal is for them to be three separate
25 lockers, covered, secured. The ultimate desired layout, we'd

1 work with DDOT on that. They've provided some specs, but they
2 would be three separate individually locked lockers.

3 BOARD MEMBER BLAKE: Thank you.

4 CHAIRPERSON HILL: Okay. Anyone else have any more
5 questions for Mr. Freeman?

6 MR. FREEMAN: That's it for us. Thank you.

7 CHAIRPERSON HILL: Okay. Let's see.

8 Mr. Mordfin, may we hear from the Office of Planning,
9 please?

10 MR. MORDFIN: Good morning.

11 CHAIRPERSON HILL: Good morning.

12 MR. MORDFIN: The video -- there it goes. The video
13 started.

14 So the Office of Planning is in support of this
15 application and the two areas of relief in question including the
16 bicycle parking. Subsequent to the Office of Planning filing its
17 report, DDOT filed their report making recommendations to the
18 applicant on an alternative way that they could provide bicycle
19 parking spaces that's conforming to the zoning regs, so it still
20 requires relief, but they found that a better solution and
21 therefore, we also then found a better solution to have those
22 three outdoor bicycle parking spaces, which, as we understand it,
23 are designed per DDOT's standards for the outdoor spaces. So the
24 Office of Planning continues to recommend approval of this
25 application as submitted by the applicant. Thank you.

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

3 Does the applicant have any questions to the Office of
4 Planning?

5 No. All right.

6 COMMISSIONER MILLER: Mr. Chairman?

7 CHAIRPERSON HILL: Yes.

8 COMMISSIONER MILLER: I meant to ask Mr. Freeman if he
9 knows how long the property, which used to be apparently a 13-
10 room -- rooming house or boarding house, how long it has been
11 vacant? I understand it's a vacant property that's going to be
12 converted to eight three-bedroom units, which I think is great.
13 I just want to -- if anyone knew how long it had been vacant in
14 that neighborhood. Maybe we have a neighborhood representative
15 who knows that -- answer that question.

16 MR. FREEMAN: Is that for Mr. Jackson?

17 COMMISSIONER MILLER: I just thought it'd be useful to
18 know.

19 MR. FREEMAN: Mr. Jackson might know. I do not know.
20 You're on mute.

21 CHAIRPERSON HILL: Mr. Jackson, you're on mute.

22 No, now you're on mute again, for sure. Maybe try it
23 again. Now try. Now.

24 COMMISSIONER MILLER: You might need to go to your
25 audio and visual settings.

1 MR. JACKSON: Can you hear me now?

2 CHAIRPERSON HILL: Yes.

3 MR. JACKSON: Okay.

4 CHAIRPERSON HILL: Could you introduce yourself for the
5 record, Mr. Jackson?

6 MR. JACKSON: This is Kenneth Jackson. I am the owner
7 of the building. I live at 8403 Kittama Drive in Clinton,
8 Maryland. The building has been vacant since 2017, and I acquired
9 the building in 2019. So from the ANC, the actual ANC
10 Commissioner lives directly across the street. And she was glad
11 that something was being done to improve that vacant site.

12 COMMISSIONER MILLER: Thank you, Mr. Jackson.

13 MR. JACKSON: All right. Thank you.

14 CHAIRPERSON HILL: All right. Thank you, Mr. Jackson.
15 And Mr. Jackson, it's great that that building is getting some
16 improvements and use. The black and white pictures just, I'm
17 sure, don't do it justice. I'm sure it's beautiful.

18 So let's see. Okay. Is that it?

19 Now, Mr. Young, you said -- already answered. There's
20 nobody here wishing to speak or is there somebody here?

21 MR. YOUNG: We do not have anyone.

22 CHAIRPERSON HILL: Okay. Does the Board have any final
23 questions?

24 Mr. Moy, you have something to add?

25 MR. MOY: Yeah. I sent you a message, Mr. Chairman.

1 I just want to clarify to round out the record when the Board is
2 going to take action on the request for expert status or not.

3 CHAIRPERSON HILL: Yeah, I'm sorry. We did do that.
4 I left my phone somewhere. I don't know where it is.

5 MR. MOY: Okay.

6 CHAIRPERSON HILL: We did let Mr. White in as an expert
7 in architecture. And then we did go through the two waivers for
8 the 21-day filing deadlines for the -- for Form 135 as well as
9 the new bike parking deadline.

10 My wife just brought me my phone. So, okay. All right.
11 So, let's see. Great.

12 So Mr. Freeman, do you have anything you'd like that
13 at the end?

14 MR. FREEMAN: I'd just like to say we look forward to
15 the Board's approval. I have to think of a new way to ask for
16 this, given your statements on what applicants can and cannot ask
17 for. So let me say, we look forward to the Board's approval as
18 expeditiously as possible so that we could move forward with
19 converting this vacant building to new housing as expeditiously
20 as possible, noting of course, again, that there are no adverse
21 parties. There's OP, DDOT and ANC support.

22 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
23 Freeman.

24 Okay. I'm going to go ahead and close the hearing on
25 the record. Mr. Young, if you could please excuse everyone.

1 Okay. Great. After reviewing the record, I really
2 didn't have any issues with the application. I mean, I think
3 it's interesting. I didn't really understand that they were what
4 they were doing with the building itself in terms of its
5 architecture, but it's not really part of our discussion. But
6 still, I think that it's wonderful that they're able to make use
7 of that property that's been dormant now, I guess since 2017.

8 And I also would agree with the analysis that the Office
9 of Planning has provided concerning the request that's being
10 asked for.

11 As far as the long-term bicycle parking, I mean I guess
12 I would agree with DDOT. I mean I don't know how they would
13 necessarily put it in the building. And so if Peter May --
14 Commissioner May were here, maybe he'd give a little bit more
15 clarity as to the way they're being protected. And I guess --
16 but I'm comfortable with what the applicant is putting forward.

17 And so I would also agree with the ANC in terms of
18 their support, and also that now DDOT, after they addressed with
19 the bike issue. And so I will be voting in support of the
20 application.

21 Commissioner Miller, may I ask for your thoughts?

22 COMMISSIONER MILLER: Thank you, Mr. Chairman.

23 I concur with your analysis and think that the
24 standards for relief have been met in this case and with the ANC
25 support and with the resolution, the lockers and the outdoor

1 | protected lockers for the three bikes, I think. And with the -
2 | - I said the ANC's support. I think it's ready for approval.
3 | Thank you.

4 | CHAIRPERSON HILL: Thank you, Commissioner Miller.
5 | Mr. Smith.

6 | BOARD MEMBER SMITH: I don't have anything additional
7 | to add. While they are requesting a waiver from a special
8 | exception on the minimum long-term parking -- bicycle
9 | requirements, I do think they've come up with a fairly unique
10 | solution to this issue that I think strikes a successful balance
11 | in providing that this long term -- some form of long-term bicycle
12 | parking and maximizing the number of residential units that can
13 | be provided within the city. So I would support the application,
14 | and I'll give great weight to OP staff and their recommendation.

15 | CHAIRPERSON HILL: Okay. Great. Thank you.

16 | Ms. John.

17 | VICE CHAIR JOHN: So I agree, this is a special
18 | exception for relief from providing three bicycle parking spaces
19 | within the building and that providing the outdoor parking is a
20 | good mitigation strategy, so I am in support of the application.
21 | I should add that I give great weight to OP's analysis, and I
22 | believe the application meets the criteria for relief, both the
23 | special exception criteria and the general special exception
24 | criteria.

25 | CHAIRPERSON HILL: Thank you, Ms. John.

1 Mr. Blake.

2 BOARD MEMBER BLAKE: Yes. I agree that the special
3 exception criteria has been met. I give substantial weight to -
4 - great weight to the Office of Planning's analysis and
5 recommendation and would be able to support this as well.

6 CHAIRPERSON HILL: Okay. Thank you. Thank you all for
7 your thoughts and comments. And also, to what the applicant was
8 speaking to, I mean we, again, do not take requests for summary
9 orders. However, in consultation with myself after this, we try
10 to do our best, when possible, to give summary orders, which this
11 one would qualify for. So with that, I'll go ahead and make a
12 motion to approve Application No. 20482 as captioned and read by
13 the Secretary and ask for a second, Ms. John.

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: The motion made and seconded.

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

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

18 When I call each of your names, if you would, please
19 respond with a yes, no, or abstain to the motion made by Chairman
20 Hill to approve the application of the amended relief being
21 requested. The motion was seconded by Vice Chair John.

22 Zoning Commissioner Rob Miller.

23 COMMISSIONER MILLER: Yes.

24 MR. MOY: Mr. Smith.

25 BOARD MEMBER SMITH: Yes.

1 MR. MOY: Mr. Blake.

2 BOARD MEMBER BLAKE: Yes.

3 MR. MOY: Vice Chair John.

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill.

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Staff would record the vote as 5-0-0, and
8 it's on the motion made by Chairman Hill to approve, seconded by
9 Vice Chair John to approve. Also, in support of the motion to
10 approve, Zoning Commissioner Rob Miller, Mr. Smith, and Mr.
11 Blake. Staff would record vote as 5-0-0. The motion carries,
12 sir.

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

14 Okay, guys, it's 12:05. Let's just say 12:40; is that
15 okay and just see what happens? Okay. See you guys at 12:40.
16 Have a nice lunch. Bye-bye.

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

19 CHAIRPERSON HILL: Mr. Moy, if you want to call us
20 back, and then call us in for our next case.

21 MR. MOY: With pleasure. Thank you, Mr. Chairman.

22 The Board is back in its hearing session after a lunch
23 recess, and the time is at or about 12:50 p.m.

24 The next application before the Board, and it's the
25 final application on today's docket, is Appeal No. 20402. This

1 is The Chain Bridge Road/University Terrace Preservation
2 Committee. This is an appeal from the decisions made on August
3 25th, 2020, September 4th, 2020, September 15th, 2020, and
4 October 21st, 2020, by the Zoning Administrator, Department of
5 Consumer and Regulatory Affairs to issue building permits No.
6 B2000096, B2010618, B2010621, B201063, B2010625, B2010627,
7 B2010628 and B2010871 issued on August 25th, 2020, to construct
8 eight apiaries, A-P-I-A-R-I-E-S, on existing vacant lots in the
9 R-21 Zone. The property is located at 2750 to 2762 Chain Bridge
10 Road, N.W., Square 1425 Lots 841 through 847.

11 CHAIRPERSON HILL: Okay. Great. Thank you.

12 Let's see. Mr. Brown, are you there? Mr. Brown, can
13 you hear me?

14 Can everybody else hear me? Okay. Now, you're nodding.
15 Okay. Great.

16 If anybody's going to join us, if you wouldn't mind,
17 if you can, turn on your camera, turn on the camera just so I
18 know. I'm going to have to introduce ourselves. But I'm still
19 waiting for Mr. Brown.

20 Mr. Brown. All right. Let me come back to Mr. Brown
21 and we'll see who --

22 Mr. Bello, can you hear me? Mr. Bello, can you hear
23 me?

24 Okay.

25 MR. BELLO: Yes. Good afternoon.

1 CHAIRPERSON HILL: Hi, Mr. Bello. Okay. Great. I'm
2 just waiting for Mr. Brown.

3 MR. BELLO: Okay.

4 CHAIRPERSON HILL: I'll come back to you, Mr. Bello,
5 in a minute. Okay?

6 MR. BELLO: Okay, sir.

7 CHAIRPERSON HILL: Mr. Green, could you introduce
8 yourself for the record, please?

9 MR. GREEN: Yes. Good afternoon, Chairman, members of
10 the Board. My name is Hugh Green, attorney with the DCRA.

11 CHAIRPERSON HILL: Okay. Mr. LeGrant, could you
12 introduce yourself for the record, please?

13 MR. LEGRANT: Good afternoon, Chairman Hill, and
14 members of the Board. I'm Matthew LeGrant, Zoning Administrator,
15 DCRA.

16 CHAIRPERSON HILL: Okay.

17 Ms. Moldenhauer, can you hear me? Could you introduce
18 yourself for the record, please?

19 MS. MOLDENHAUER: Good afternoon. Meridith
20 Moldenhauer, from the law firm of Cozen O'Connor, here on behalf
21 of the property owner.

22 CHAIRPERSON HILL: Okay. And who are you here with?

23 MS. MOLDENHAUER: I am here with Mr. Bender and also
24 Mr. Stan Andrulis.

25 CHAIRPERSON HILL: Okay. And what does Mr. Andrulis

1 do?

2 MS. MOLDENHAUER: He is an architect that filed and
3 obtained the building permits.

4 CHAIRPERSON HILL: Okay. And Mr. Bender is the owner?

5 MS. MOLDENHAUER: Correct.

6 CHAIRPERSON HILL: Okay.

7 Mr. Bender, could you introduce yourself for the
8 record, please, sir?

9 MR. BENDER: Morton Bender, the owner of the property
10 in question.

11 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Bender.

12 If you could put yourself on -- perfect. Thank you.

13 Mute. Let's see.

14 Mr. Andrulis, can you hear me?

15 MR. BENDER: His name is actually pronounced Andrulis.

16 MR. ANDRULIS: Yeah. Hi. This is Stan Andrulis here.

17 CHAIRPERSON HILL: Great. Who told me the
18 pronunciation?

19 MS. MOLDENHAUER: That was Ms. Moldenhauer. I
20 apologize.

21 MR. ANDRULIS: No problem.

22 CHAIRPERSON HILL: That's all right. I'm just --

23 MR. ANDRULIS: I've heard worse.

24 CHAIRPERSON HILL: That's all right. So Andru -- how
25 did you say your name, sir?

1 MR. ANDRULIS: Andrulis.

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

4 MR. ANDRULIS: Yeah. My name is Stan Andrulis. I'm
5 an architect with the firm of Andrulis Architects here in D.C.

6 CHAIRPERSON HILL: Okay. Great. Thank you.

7 Good afternoon, Mr. Brown. Can you hear me?

8 MR. BROWN: I can. My apologies. I had to log out
9 and log back in, but I'm here.

10 CHAIRPERSON HILL: No problem. Could you introduce
11 yourself for the record?

12 MR. BROWN: Sure. Patrick Brown from Greenstein
13 DeLorme & Luchs on behalf of the appellant, the Preservation
14 Committee.

15 CHAIRPERSON HILL: Okay. Great.

16 And then Mr. Bello is here with you as well, correct,
17 Mr. Brown?

18 MR. BROWN: Mr. Bello is my expert witness, and Mr.
19 Bill Barnard is a Chair of the Preservation Committee, and he
20 should be available as well.

21 CHAIRPERSON HILL: Yeah, I see him. Thank you.

22 Mr. Bello, could you introduce yourself for the record,
23 please?

24 MR. BELLO: Olutoye Bello, here with the appellant.

25 CHAIRPERSON HILL: Okay. Great.

1 Mr. Bello, you haven't received expert status before
2 from us for zoning, isn't that -- I thought that had already
3 taken place?

4 MR. BELLO: Several years now.

5 CHAIRPERSON HILL: Okay.

6 So Mr. Brown, you're just presenting him. You're not
7 asking for -- he already has expert status.

8 MR. BROWN: That's correct.

9 CHAIRPERSON HILL: Okay.

10 MR. BROWN: He's appeared numerous times as an expert.

11 CHAIRPERSON HILL: Okay. Great.

12 Mr. Barnard, can you hear me?

13 MR. BARNARD: Yes.

14 CHAIRPERSON HILL: Could you introduce yourself for the
15 record, please, sir?

16 MR. BARNARD: Yes. I'm William Barnard. I'm co-chair
17 of the Chain Bridge Road/University Terrace Preservation
18 Committee. My wife and I are the property owners at 2700 Chain
19 Bridge Road. The Preservation Committee is a neighborhood, 501
20 C3, which represents more than 100 households and is dedicated
21 to protection and preservation under the special arboreal,
22 topographical, and landscaping features. In addition, the
23 historic residential and park-like character of the neighborhood.

24 CHAIRPERSON HILL: Okay. Mr. Barnard, I just need a
25 quick introduction.

1 MR. BARNARD: Okay.

2 CHAIRPERSON HILL: You'll have an opportunity to give
3 testimony.

4 MR. BARNARD: Okay. All right.

5 CHAIRPERSON HILL: Okay, but thank you.

6 I heard somebody's voice. Is there somebody whose
7 microphone is not muted or?

8 MS. MOLDENHAUER: It might have --

9 MR. BARNARD: (Audio interference). It might have been
10 my wife telling me to shut up.

11 CHAIRPERSON HILL: No, that's all right. That's you're
12 -- you have a very happy household then, that's for sure. That's
13 the normal one in my house.

14 Let's see. Okay. But Mr. Barnard, if you would mute
15 your microphone, that'd be wonderful.

16 Mr. Brown, can you hear me?

17 MR. BROWN: I can.

18 CHAIRPERSON HILL: Okay. Mr. Brown, I'm going to go
19 ahead and let you start to make your case. I'm going to put --
20 you know how this goes and you know how lengthy it can be. I
21 mean, I think that we have -- I know that all my colleagues as
22 well as myself has reviewed the record, including all of your
23 testimony. I'm going to go ahead and start you off at 20 minutes
24 because then we're going to go back and forth with -- you know
25 how this goes, right. And so I think 20 minutes to present why

1 | you think the Zoning Administrator erred is a good way that we
2 | can start this.

3 | The one question I do have for you was like and this
4 | is even something that Ms. Moldenhauer might be able to help me
5 | with or Mr. Green. But Mr. Brown, is it seven or eight building
6 | permits that are in question here?

7 | MR. BROWN: At this point -- can you hear me, Mr.
8 | Chairman?

9 | CHAIRPERSON HILL: Yes.

10 | MR. BROWN: At this point, I believe there are only
11 | seven permits that were actually issued. There were eight applied
12 | for but only seven issued. In my PowerPoint presentation and my
13 | other submissions, I've highlighted the seven permits, one for
14 | each of the seven lots that were actually issued. The eighth
15 | permit was never issued, and I'm not so sure why. That's beyond
16 | me.

17 | CHAIRPERSON HILL: Okay. Let me clear this up, because
18 | I just want to make sure we don't come back here for another
19 | permit, if that's what we're doing.

20 | Is there -- Ms. Moldenhauer, is there an eighth permit
21 | that is pending?

22 | MS. MOLDENHAUER: The eighth lot has a historic
23 | property on it, and so there are seven lots that I believe are
24 | in question.

25 | CHAIRPERSON HILL: So then what's going on with the

1 eighth one right now?

2 MS. MOLDENHAUER: I can -- Mr. -- our architect can
3 probably answer that question.

4 MR. ANDRULIS: Yeah. Hi. This is Stan Andrulis. The
5 eighth is a building. It was the first building permit I applied
6 for, and I applied for the wrong type of building permit. So I
7 did not request that went on. We reapplied for that same lot,
8 so there are only seven. I agree with Mr. Brown. There are only
9 seven lots and only seven permits.

10 CHAIRPERSON HILL: No, I got it, and I saw the seven.
11 I saw Mr. Brown's charge that had the permits. But what I'm
12 trying to understand is, if there is an eighth one -- and OAG
13 can help me with this, or we can talk this through. Like, I
14 don't want to come back and talk about the eighth one later if
15 in fact, this is going to turn into another --

16 MR. ANDRULIS: No. One of the lots, I applied for a
17 permit for it, and then I realized that I had applied for the
18 wrong thing. I was applying for a shed permit. So I let that
19 one go. I reapplied for the same property and the correct permit
20 designation. So there are only seven properties involved and
21 each one has a permit. One of them has a mistake in permit
22 applied for, but never followed up on, so it was never issued.

23 CHAIRPERSON HILL: Okay. I just want to be clear. So
24 there's only seven lots in question?

25 MR. ANDRULIS: Yes.

1 CHAIRPERSON HILL: There will not be in the future
2 another line in question?

3 MR. ANDRULIS: No.

4 CHAIRPERSON HILL: Okay. All right. Okay. That's
5 fine. All right then Mr. Brown, we're all on the same page. I'm
6 pulling up your presentation. Let's see. And then, Mr. Brown,
7 I got 20 minutes on the clock there, and you can begin whenever
8 you like.

9 MR. BROWN: Certainly. If I could -- can you hear me?

10 CHAIRPERSON HILL: Yes.

11 MR. BROWN: I'd like Mr. Barnard -- he had some very
12 brief remarks that he was making but let him continue and then I
13 and Mr. Bello will proceed.

14 CHAIRPERSON HILL: Okay. Go ahead, Mr. Barnard. You're
15 on mute, Mr. Barnard.

16 MR. BARNARD: Okay. All right. I need my wife's
17 assistance with every step.

18 CHAIRPERSON HILL: Why don't you let your wife
19 introduce herself, Mr. Barnard?

20 MR. BARNARD: This is my wife, Cassie.

21 MS. BARNARD: I'm Cassie Barnard, married to Bill
22 Barnard, also a resident of 2700 Chain Bridge Road.

23 CHAIRPERSON HILL: Well, congratulations. You guys
24 been married for a while?

25 MS. BARNARD: Too long.

1 MR. BARNARD: I think she's kidding. I hope she is
2 kidding.

3 CHAIRPERSON HILL: Whether she is or not, Mr. Barnard,
4 I think it's too late. Okay. Go ahead.

5 MR. BARNARD: The Preservation Committee is a
6 Neighborhood 503(c), which represents more than a hundred
7 households and is dedicated to the protection and preservation
8 of the special arboreal, topographical, and landscaping features,
9 in addition to the historic, residential, and park-like character
10 of the property. Five active members of the committee immediately
11 abut or are adjacent to the property.

12 The Committee and its members are an aggrieved party.
13 The Committee was instrumental in 1999 and established one of the
14 Chain Bridge Road/University Terrace overlay. and successfully
15 proposed theoretical lot development on the property in BZA No.
16 17309 in 2007, which was affirmed by the D.C. Court of Appeals.
17 The Committee is committed to working with property owners for
18 responsible and thoughtful development of the property. Thank
19 you for your time and consideration.

20 CHAIRPERSON HILL: Thank you, Mr. Barnard. Okay. We'll
21 go and put you back on mute again, Mr. Barnard.

22 Mr. Brown.

23 MR. BROWN: Yes. Mr. Chairman, what I'd like to do and
24 try to streamline this, I'll make some brief introductory remarks
25 and ask Mr. Bello to testify, and as -- rather than asking him

1 questions, let him testify. And if I need to follow up with
2 questions at the end, I will.

3 And we've been down this road before, but we're still
4 -- two issues at hand. Whether these seven lots meet the lot
5 width and lot frontage requirements. I mean I think the one
6 thing we can probably all agree on across all the parties is that
7 the seven lots are irregularly shaped. And in fact, the BZA, in
8 the earlier appeal, made that determination repeatedly.

9 So I think we start from the fact that there are
10 irregularly shaped lots. And as to lot width, the regulations
11 in C-304.1 provide specifically general regulations unless
12 otherwise stated in the regulations. And then, it's very clear
13 in the regulations, the definition of lot width and which calls
14 for an average lot width calculation for irregularly shaped lots.

15 And with respect to our argument for irregularly -- for
16 the lot width, we've indicated that when you do the required
17 average lot width calculations, and we've provided the four
18 recognized methods, you find that these lots, for lot width, do
19 not comply as I've stated in the chart, for the lot width.

20 Going to the lot frontage requirement. And it came up
21 in the lot width discussion, the (indiscernible) case where the
22 Court of Appeals made it clear that the Zoning Administrator as
23 well as the Board are to avoid applying a calculation method that
24 reaches absurd results. And our position is that if you look at
25 these irregularly shaped lots, that whether it's lot width or lot

1 frontage, applying the regulations, the way they've been applied,
2 reaches absurd results that that should not be permitted.

3 I'll leave it at that. Mr. Bello, if you could -- and
4 everybody knows that Mr. Bello is, once upon a time the zoning
5 administrator, and ask him to testify.

6 MR. BELLO: Thank you.

7 I think the central question before the Board is
8 whether the adoption of Subtitle C, the rules of measurement,
9 specifically Section 304.1, operate to render redundant the
10 definition for lot width set forth under Subtitle B, the
11 definition section.

12 And also that adoption of the rules of measurement
13 (audio interference), all related case law and indeed the Zoning
14 Commission, the historical aversion of disfavor lot of pipestem
15 lots. To reach that conclusion, one would have to conclude that
16 one, the Zoning Commission (audio interference) will have an
17 oversight in retaining the 1958 definition of lot width (audio
18 interference) and understand that they repealed the 1958 zoning
19 regulations.

20 Two, as Subtitle C, Section 100.1, which states that
21 the provisions of Subtitle C provides general regulations
22 applicable to all zones unless otherwise stated, with the
23 emphasis on unless otherwise stated. And when that Section refers
24 to the title, it refers to the entirety of the title of the Zoning
25 Regulations, and not the subtitle, including the definition

1 section.

2 In that definition section, it is otherwise stated that
3 irregularly shaped lots shall be determined by an average method.
4 I would also note that the four methods that are known and
5 supported in case law at this point are not specific to the 1958
6 Zoning Regulations or the 2016 Zoning Regulation. So that tells
7 me that the zoning administrator has an obligation to look at the
8 totality of factors affecting these kinds of subdivisions.

9 Clearly, to readdress the issue of creating stem lots,
10 the Zoning Commission adopted the theoretical lot subdivision
11 process under Section 305. And that section is indeed intended
12 to address the difficulties of similar sites that may not be able
13 to meet the required 300, or the average width of the lot.

14 Now, if we go into the mechanics of the rules of measure
15 and that rule requires that you draw a straight line from the
16 front property line where it intersects the street. And my
17 testimony or contention is that that line is intended to be drawn
18 at a 90-degree angle, perpendicular to the street front lot. If
19 you look at these lots, you would find that some of those lines
20 are drawn almost parallel to the front lot line, which makes
21 absolute nonsense of these provisions.

22 So to the extent that ZR-16 can be read to allow
23 something other than what has not been allowed before,
24 historically, then the stem lot would be intended to not only
25 meet the minimum street frontage, but also that the stem would

1 not extend beyond the distance of 30 feet, rather than the outcome
2 that we have, where we have almost 300 feet to 400 feet of
3 pipestem portion.

4 The methods for measuring up width of the lot again has
5 been established by BZA 15129 and 1526, including attendant case
6 law. The other conclusion that one must reach is that the Zoning
7 Commission willfully intended to undermine the theoretical lot
8 provisions set forth under C 305, which was specifically adopted
9 to address this claim of sites.

10 Finally, the case law also indicates that even when the
11 zoning administrator employed the legitimate method, that that
12 method results in an assortment of lot configuration, that the
13 zoning administrator lacks the authority or discretion to approve
14 such subdivisions administratively.

15 The zoning administrator makes clear that he relied
16 solely on the rules of measurement set forth in Subtitle C-304.1
17 and no other factor. My belief is that this is why he (audio
18 interference). Thank you. I appreciate it.

19 MR. BROWN: Mr. Bello, if you could pull up our slide
20 presentation, I think drawings starting with 12.

21 It's Exhibit 39, Mr. Young, and go to page 12.

22 There we go. And I just want you to confirm, Mr. Bello,
23 that you performed the four average lot width calculation methods
24 for the seven lots.

25 MR. BELLO: That's correct. And that's represented

1 graphically, yes.

2 MR. BROWN: In 12 -- page 13 is the average method, 14
3 is the mean depth method, and 15 is the greatest depth method,
4 correct?

5 MR. BELLO: That's correct.

6 MR. BROWN: And then if you go back to slide 10, you'll
7 see in this chart where you list the 10-foot average mean depth
8 and greatest depth. And then the numbers in red indicate where
9 the lot width calculations were less than the required 75 feet.

10 MR. BELLO: That is correct.

11 MR. BROWN: So that, for instance, for lot 841, the lot
12 failed lot width under all the methods of calculation.

13 MR. BELLO: Correct.

14 MR. BROWN: And based on the requirement to apply lot
15 width, based on an average calculation, certainly for lot 841,
16 842, 844 and 847, the lot fails the average lot width calculation
17 for one or more methods.

18 MR. BELLO: That is correct.

19 MR. BROWN: That's all I have at this time for Mr.
20 Bello.

21 CHAIRPERSON HILL: Mr. Bello, I got a question.

22 Mr. Brown, can you throw them back up. You can throw
23 them back up any of those -- you can go to page 12, if you want.

24 So Mr. Bello, what do you think -- how do think that
25 needs to be divided up?

1 MR. BELLO: I'm sorry, sir?

2 CHAIRPERSON HILL: How do you think this lot should be
3 divided up?

4 MR. BELLO: Well, I think that the lot ought to observe
5 all the applicable rules to subdividing a lot, including the
6 current method. Again --

7 CHAIRPERSON HILL: All right. That's okay, Mr. Bello.
8 I'm just (audio interference). You don't have a diagram that
9 shows the way you think the lot should be divided up?

10 MR. BELLO: Well, I don't, but as I described, if the
11 lot were to be divided up somewhat close to what will comply,
12 then those 30-foot lines will be drawn for a distance the --

13 CHAIRPERSON HILL: Okay. That's all right. I'm going
14 to interrupt you. I'm just curious if you had a diagram there
15 that shows that, but that's all right.

16 MR. BELLO: No, I don't.

17 CHAIRPERSON HILL: Okay. Mr. Brown.

18 MR. BROWN: Well, and you asked Mr. Bello an impossible
19 question. I think we need to focus in on what's presented here
20 and his testimony not -- Mr. Bello's job isn't to create a plan
21 that works if he is to evaluate the plan that's presented here.

22 CHAIRPERSON HILL: No, I got you, Mr. Brown. I was
23 just curious. I mean you guys can't think the lot is supposed
24 to be useless, right?

25 MR. BROWN: No.

1 CHAIRPERSON HILL: So there's something that you think
2 is correct, and so I was curious as to what you thought is
3 correct.

4 MR. BROWN: Absolutely. And Mr. Hill, and Mr. Barnard
5 testified for, and I put it in my letters until I'm blue in the
6 face to the property owner. There's a plan to develop this
7 property, whether it's matter of right or through theoretical
8 lots that could work, but this plan we object to. But the door
9 is always open to come up with a plan that --

10 CHAIRPERSON HILL: That's all right. I got you Mr.
11 Brown. I mean the Board's job is to determine whether or not
12 the zoning administrator erred, and we're going to kind of get
13 to that. I, again, was just kind of -- you know, it might be
14 off the cuff, but I was curious as to Mr. Bello had something
15 that he could tell me, which by the way, Mr. Zoning Administrator,
16 that's going to be your question later. Okay. Which is -- yeah,
17 anyway.

18 All right. Mr. Brown, please continue. And by the
19 way, you're over three minutes now. Not that -- I've talked a
20 lot, so. So please go ahead.

21 MR. BROWN: Well, I think we've covered the bases.
22 We'll have the chance to rebut at the end or conclude, so I'll
23 leave it at that. There's plenty of other people who we need to
24 hear from.

25 CHAIRPERSON HILL: Okay. Great. Thank you so much.

1 All right. Ms. Nagelhout, are you there?

2 MS. NAGELHOUT: I am.

3 CHAIRPERSON HILL: I love it. I always kind of forget.
4 It's been a while for the appeal, but like -- I think does
5 everybody do questions now, and please don't let any of the
6 attorneys ask -- answer this question. So does the -- do I do
7 the questions now, or do we do the presentation again with DCRA
8 and then the property owner and then people ask questions, or can
9 I do questions now in that same order?

10 MS. NAGELHOUT: I think the procedure line that's
11 spelled out in the regulations is that you have questions after
12 the appellant's presentation.

13 CHAIRPERSON HILL: Okay. After the appellant's
14 presentation. Okay.

15 MS. NAGELHOUT: So now, in other words.

16 CHAIRPERSON HILL: It just happened, right? Okay.
17 Great. All right.

18 Mr. Green, are you there?

19 MR. GREEN: Yes, Chairman.

20 CHAIRPERSON HILL: Do you have any questions for the
21 appellant?

22 MR. GREEN: No, no. No specific questions for Mr.
23 Bello or the appellant.

24 CHAIRPERSON HILL: Okay. All right.

25 Ms. Moldenhauer, do you have any questions for the

1 appellant?

2 MS. MOLDENHAUER: Yes.

3 CHAIRPERSON HILL: Okay.

4 MS. MOLDENHAUER: Mr. Barnard, a gentleman by the name
5 of Arthur Watson was also listed as part of the Preservation
6 Committee. Are you familiar with Mr. Watson? Arthur Watson?

7 MR. BARNARD: Yes.

8 MS. MOLDENHAUER: Are you familiar with where he lives?

9 MR. BARNARD: Yes. Yes.

10 CHAIRPERSON HILL: Ms. Moldenhauer, I don't mind. I'm
11 just trying to get to wherever you're going. He didn't say
12 anything about Mr. Watson. I don't know who Mr. Watson is. Who's
13 Mr. Watson, and why are you asking questions?

14 MS. MOLDENHAUER: So Mr. Watson lives at a property lot
15 825, Square 1425, which is a flag lot.

16 CHAIRPERSON HILL: Okay. And so you're asking Mr.
17 Barnard questions about this guy's lot, why?

18 MS. MOLDENHAUER: Because he's a member of the
19 Preservation Committee.

20 CHAIRPERSON HILL: Okay. Okay. I just don't get it,
21 but okay. So if you can --

22 MR. BROWN: Mr. Chairman, he's not relevant to this
23 appeal.

24 CHAIRPERSON HILL: I just don't know what he -- and Ms.
25 Moldenhauer, I'm just trying to follow along. I didn't hear this

1 man's name mentioned at all during the person's testimony. So
2 you're bringing up a name that wasn't mentioned.

3 MS. MOLDENHAUER: Well, it was mentioned that there are
4 other households that are part of the Preservation Committee, and
5 that they are here to preserve a certain character. And I'm
6 asking about other people who are named on the PowerPoint, who
7 live on properties that have the same layout as the lots proposed
8 here.

9 CHAIRPERSON HILL: Okay. They're named in which
10 PowerPoint?

11 MS. MOLDENHAUER: Mr. Brown's PowerPoint. The front
12 page of Mr. Brown's PowerPoint. Arthur Watson.

13 CHAIRPERSON HILL: Which exhibit?

14 MR. YOUNG: 39A-1

15 MS. MOLDENHAUER: Or 20 --

16 CHAIRPERSON HILL: 39A-1.

17 MS. MOLDENHAUER: Or 30 -- I got 29.

18 CHAIRPERSON HILL: I'm sorry. I'm just looking for Mr.
19 Watson's name. Okay. Go ahead and ask your question.

20 MS. MOLDENHAUER: Does Mr. Watson live on a flag lot,
21 Mr. Barnard?

22 MR. BARNARD: I have no idea what you're talking about.

23 MS. MOLDENHAUER: I will turn to Mr. Bello.

24 Mr. Bello, based on your resume, you were the zoning
25 administrator from October 2004 and May 2005; is that correct?

1 MR. BELLO: That's correct.

2 MS. MOLDENHAUER: The zoning regulations applicable
3 during your time or the zoning regulation ZR-58; is that correct?

4 MR. BELLO: The definition section as it exists in ZR-
5 16 right now, yes.

6 MS. MOLDENHAUER: The zoning regulations applicable at
7 the time that you were the zoning administrator, were the zoning
8 regulations put into place in 1958?

9 MR. BELLO: Correct.

10 MS. MOLDENHAUER: They were not -- so when you were
11 interpreting the zoning regulations, you were not interpreting
12 the zoning regulations that were implemented in 2016; is that
13 correct?

14 MR. BELLO: In my official duty, or you're talking
15 about now?

16 MS. MOLDENHAUER: Your official duty,

17 MR. BELLO: Of course. ZR-16 was not in existence,
18 yes.

19 MS. MOLDENHAUER: Okay. And have you since, obviously,
20 you know that period of time, have you followed the zoning
21 regulations? Did you present any written testimony during the
22 ZR-16 rewrite process?

23 MR. BELLO: No, I didn't.

24 MS. MOLDENHAUER: Have you followed current text
25 amendments? And could you identify if you provided any written

1 testimony on ZR-16 text amendments?

2 MR. BELLO: Not specifically, no.

3 MS. MOLDENHAUER: Have you followed zoning
4 interpretations issued by the zoning administrator that are
5 available on his website?

6 MR. BELLO: Yes, I have.

7 MS. MOLDENHAUER: And do you find that Mr. LeGrant, as
8 the zoning administrator, interprets obviously the new ZR-16
9 zoning regulations as they are in place today?

10 MR. BELLO: Yes, since the '58 has been repealed,
11 correct.

12 MS. MOLDENHAUER: Did you study the neighborhood of the
13 area in question where the properties are located?

14 MR. BELLO: I studied the neighborhood. I'm familiar
15 with the property and the history of this property going back to
16 when I was still working with the zoning division.

17 MS. MOLDENHAUER: So I'm assuming that you then did not
18 study the area surrounding the property in question?

19 MR. BELLO: Right now, no.

20 CHAIRPERSON HILL: Can I ask you a question? When
21 you're saying -- I love it. I know I can ask the question. When
22 you're saying that you didn't study the area, Mr. Bello, I don't
23 understand. You looked at the maps and you gave your
24 interpretation as to whether you thought the lot width or the lot
25 frontage was accurate, and you're saying it wasn't accurate,

1 correct?

2 MR. BELLO: That's correct. But I'm assuming that Ms.
3 Moldenhauer's question is whether I physically studied the site.
4 But, of course, I studied all the documents related to this.

5 CHAIRPERSON HILL: I'm just trying to understand what
6 the question was. So the question was whether you actually went
7 there, and your answer is, no.

8 MR. BELLO: No, I didn't do it that way.

9 CHAIRPERSON HILL: If that your question, Ms.
10 Moldenhauer?

11 MS. MOLDENHAUER: It's that, as well as did you study
12 the surrounding area of the R-20 neighborhood, R-21 neighborhood?

13 MR. BROWN: Mr. Chairman, I'm not so sure the relevance
14 of the question.

15 MS. MOLDENHAUER: Well, the relevance is that Mr. Bello
16 testified specifically that the zoning administrator should take
17 into fact the totality when looking at subdivisions, and I'm
18 asking if Mr. Bello took into the totality of the surrounding
19 community.

20 MR. BELLO: Well, I can respond to that. The totality
21 that I referred to is with respect --

22 MS. MOLDENHAUER: Would you mind answering my question
23 first? Did you study the surrounding neighborhood, is the
24 question?

25 MR. BROWN: I still object to that question, Mr.

1 Chairman. It's not relevant.

2 CHAIRPERSON HILL: I'm just trying to get through my
3 day also here and understand what everybody's trying to present.
4 And so I'm a little confused also, Ms. Moldenhauer, that you're
5 asking Mr. -- you asked Mr. Bello in terms of the totality of
6 the surrounding neighborhood whether or not he studied. Was that
7 the question?

8 MS. MOLDENHAUER: Correct.

9 CHAIRPERSON HILL: Right.

10 Mr. Bello, did you hear the question?

11 MR. BELLO: I understand the question, but there is a
12 context to it. The "totality" that I referred to is the history
13 of the case law and the interpretation history of the applicant
14 provisions.

15 CHAIRPERSON HILL: Okay. So you're clarifying what you
16 meant by totality?

17 MR. BELLO: That's correct.

18 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, do you have
19 another question?

20 MS. MOLDENHAUER: I'd like my question answered though.

21 CHAIRPERSON HILL: What was the first one?

22 MS. MOLDENHAUER: The question was, did he study the
23 surrounding properties and neighborhood?

24 MR. BELLO: I did not.

25 MS. MOLDENHAUER: Okay. Would you agree that Mr.

1 LeGrant reviews ZR-16 on a daily basis?

2 MR. BELLO: As the zoning administrator, I would assume
3 so, yes.

4 MS. MOLDENHAUER: Yes. Thank you.

5 And then I would look to -- you referenced under the
6 rules of measurement, Subtitle C-304, labeled "Rules of
7 Measurement for Lot Width". Is the word "irregular lot" used at
8 all in that section?

9 MR. BELLO: No.

10 MS. MOLDENHAUER: Is the word "irregular lot" defined
11 under the definition section under Subtitle B?

12 MR. BELLO: It's not a defined term. But when a term
13 is not defined, then you refer to the dictionary definition, so
14 the zoning regulations does define what a lot is. So if we go
15 to the definition of irregular in the dictionary, you'll find
16 that such words is unusual, anomalous, unsymmetrical, the
17 comparable words. I think if one would look at the configuration
18 of this property, that a reasonable conclusion will be that
19 they're unsymmetrical and anomalous.

20 MS. MOLDENHAUER: But my question was, do the zoning
21 regulations under Subtitle B define irregular or lot, irregular?

22 MR. BELLO: It does not specifically, but again, the
23 same definition as far as you --

24 MS. MOLDENHAUER: Thank you for the answer.

25 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, let him

1 finish. Go ahead, Mr. Bello.

2 MR. BELLO: I was just going to say that the same
3 definition sections that says that any term defined in the zoning
4 regulations should have the meaning of the Webster's Dictionary,
5 so there's a reference point.

6 MS. MOLDENHAUER: Can you -- the definition for
7 interior lot is a lot other than a corner lot or a triangular
8 lot; is that correct?

9 MR. BELLO: Correct.

10 MS. MOLDENHAUER: And would you determine that the tax
11 lots are corner lots?

12 CHAIRPERSON HILL: Are we talking about the tax lots
13 now?

14 MS. MOLDENHAUER: They're all tax lots.

15 CHAIRPERSON HILL: Right. But I mean why -- okay. I'm
16 sorry. Ask your question again.

17 MS. MOLDENHAUER: Mr. Bello, would you define the
18 property lot as a corner lot?

19 MR. BELLO: No, they're not.

20 MS. MOLDENHAUER: Would you define the properties as a
21 triangular lot?

22 MR. BELLO: No, I wouldn't.

23 MS. MOLDENHAUER: You referenced that you believe that
24 the zoning administrator required to measure the lot width by 90-
25 degree angle perpendicular to the street. Is that language

1 specifically provided anywhere in the zoning regulations?

2 MR. BELLO: No, it isn't. But neither is the four
3 methods for calculating average lot width. My testimony was that
4 the zoning administrator must look into all factors affecting the
5 subdivision.

6 CHAIRPERSON HILL: Ms. Moldenhauer, how many questions
7 do you have?

8 MS. MOLDENHAUER: That was the last one.

9 CHAIRPERSON HILL: Okay. No, I'm just like, I'm trying
10 to figure out. I'm going to get to your presentation. I need
11 get to DCRA's presentation. There are still questions and answer
12 that has to go on and I've got a little bit -- okay. I'm sorry.
13 You had one more?

14 MS. MOLDENHAUER: No, that was my last question.

15 CHAIRPERSON HILL: Okay. Great.

16 All right. Okay. Mr. Green, you're up, Mr. Green.

17 MR. GREEN: Okay. Thank you very much.

18 Good afternoon, Chairman, and members of the Board.
19 We're here today because the appellant is challenging the
20 issuance of seven building permits to construct apiaries on the
21 undeveloped property located at or near 2700 Chain Bridge Road,
22 Lots 841 through 847, Square 1425.

23 I want to point out before we get to the testimony of
24 Mr. LeGrant, in terms of the calculations in width.

25 One of the issues that's been raised by the appellant,

1 I want to bring to the Board's attention, in the appellant's
2 request for the Board's action, including in the PowerPoint
3 presentation, they've asked the Board to revoke the A&T Plat.
4 However, I don't believe you have authority to revoke the A&T
5 Plat. In fact, in the prior appeal in 20221, in your decision
6 order, the Board finds no decision, and I quote, "The Board finds
7 no zoning decision in the claim error related to the Office of
8 Tax and Revenues issuance of the A&T Plat."

9 What's the purpose of me bringing this up at the
10 beginning is to say that the request by the appellant is actually
11 over-reaching. Certainly, the building permits are within your
12 jurisdiction, but the A&T Plat is not. We've maintained that in
13 the prior appeal, but I want to just underscore that before we
14 began.

15 The appellate raises, I mean we'll get to the major
16 points here. The appellant raises the following (audio
17 interference) the zoning administrator erred.

18 CHAIRPERSON HILL: Mr. Green, you're kind of muddled.
19 I'm sorry. I don't know if anybody's muted, it would be great.
20 Thank you. And then let's see, Mr. Green, how that goes.

21 MR. GREEN: Hello. Can you hear me? I'll wait just
22 before you --

23 CHAIRPERSON HILL: I can hear you better. I'm sorry.
24 You just seemed a little muddled. I don't know if it was muddled
25 (audio interference).

1 MR. GREEN: I'll try to get closer to the camera. How's
2 that? Little better? I'll speak up.

3 Okay. So really the issue is -- the two issues that
4 have been raised for review, challenging the zoning
5 administrator, the building permits violate the lot frontage and
6 the lot width -- excuse me, and the lot width requirements. You
7 know, it will -- we will demonstrate today, the zoning
8 administrator did not err in approving the building permits for
9 the apiaries. And I'd like to bring Mr. LeGrant in to -- right
10 now, to start to help us understand a little better on how the
11 measurements for these two issues were determined.

12 So Mr. LeGrant, can you hear me, sir?

13 I think we might have lost him.

14 CHAIRPERSON HILL: Yeah, I don't know. There's like a
15 symbol in his window.

16 Mr. Young, is Mr. LeGrant there?

17 MR. YOUNG: Sorry, Chairman. His computer froze. Can
18 you give him a minute?

19 CHAIRPERSON HILL: Yep.

20 MR. YOUNG: Thank you.

21 Hey, Mr. Chairman, he's rebooting, so give him a
22 minute.

23 CHAIRPERSON HILL: Sure. No problem.

24 MR. YOUNG: Thank you. Sorry for the inconvenience.

25 CHAIRPERSON HILL: Yes, actually, I'll be right back

1 then. We got 30 seconds. I don't know if (audio interference).
2 Let's just take a minute. When Mr. LeGrant gets back on the
3 screen.

4 (Pause.)

5 MR. YOUNG: Hey, Chairman. He's still working on it.
6 He still -- hopefully get it cleared up here in a little bit.

7 CHAIRPERSON HILL: Okay. Well, actually, now, Ms.
8 Nagelhout, are you there?

9 MS. NAGELHOUT: Yes. Yep.

10 CHAIRPERSON HILL: So can I go out of order, and I'll
11 just come back around? You can tell me to wait, I'll wait.

12 MS. NAGELHOUT: No. You want the property owner to
13 give her case now?

14 CHAIRPERSON HILL: Yeah, while we wait. I guess then
15 -- but I don't know if the ZA will be there.

16 MS. NAGELHOUT: The ZA won't be able to hear what you
17 say, no.

18 CHAIRPERSON HILL: Right, so that won't help.

19 All right. Why don't we -- I mean we all don't have
20 to sit in the little Hollywood Squares thing that we're in right
21 now for -- someone just showed me a picture. It's like -- you
22 ever see The Muppet Show and like at the end where they have the
23 little loops? Apparently, it's like the little loops, and I
24 don't know where. Oh, there's Matt. Mr. LeGrant.

25 MR. LEGRANT: Can you hear me?

1 CHAIRPERSON HILL: Yes, Mr. LeGrant. Okay. Fantastic.

2 MR. LEGRANT: My apologies. The computer froze up.

3 CHAIRPERSON HILL: That's all right.

4 So Mr. Green, what were you -- you going to ask Mr.
5 LeGrant something?

6 MR. GREEN: Right. I was going to start with his
7 testimony, if that's okay.

8 CHAIRPERSON HILL: Okay. Yes.

9 MR. GREEN: Let's get into it. So Mr. LeGrant, welcome
10 back.

11 MR. LEGRANT: Thank you.

12 MR. GREEN: Again, I know you've said -- could you
13 state your name for the record.

14 MR. LEGRANT: Yes. I'm Matthew LeGrant.

15 MR. GREEN: So Mr. LeGrant, the appellant takes issue
16 with your interpretation of the proposed width of the lots. So
17 I would like to draw your attention to the Code sections. And
18 the next step because, of course, we're virtual, I'll certainly
19 try to do this as best we can with the slides, but I ask Mr.
20 Young to pull up our slide deck if he could. Thank you.

21 So Mr. LeGrant -- so again, you're aware of the two
22 issues in this case has to do with lot frontage and lot width.
23 So I wanted to bring out lot frontage here, in terms of Subtitle
24 C-303.2 and 1302.1. Without having to read these into the record,
25 I wanted to say, can you tell me how these are particularly

1 relevant to the appeal that we're addressing today.

2 MR. LEGRANT: Thank you, Mr. Green.

3 Right. The criteria that my office has to look at
4 whether it's a subdivision, a division of a lot into smaller
5 lots, there's three criteria set forth by the regulations: lot
6 frontage, lot width, and lot area. Lot area is not an issue,
7 it's not part of the appeal. However, the two factors that are
8 being challenged have to do with the minimum lot width and the
9 minimum lot frontage and is the section that is shown on the
10 slide 14, Subtitle D-1302.1 for the subject zone, which is the
11 R-21 Zone. Those standards are specified. There's a minimum lot
12 width of 75 feet. There's a minimum lot frontage as defined as
13 the percentage of the minimum lot width, which actually results
14 in the figure of 56.25 feet of linear frontage.

15 MR. GREEN: Okay. Thanks, Mr. LeGrant. Sorry. Mr.
16 Young, could you go to the next slide.

17 Again, now, we're on lot width. Mr. LeGrant, can you
18 help us understand how these are relevant to the appeal, these
19 two --

20 MR. LEGRANT: Right.

21 MR. GREEN: -- regulations. Thank you.

22 MR. LEGRANT: Certainly. The lot in the first provision
23 shown on the slide is the definition of lot width, which is set
24 forth in the Definitions Section -- in Subtitle B, Section 101,
25 and the definition there of lot width. What is, I believe

1 | determinative here is the actual regulation that specifies how
2 | lot width is to be measured. That is set forth in Subtitle C-
3 | 301 and specifies for what a lot is an interior lot, which is
4 | the case here. And I think prior testimony helped establish that
5 | the seven lots in question are all interior lots. Lot width is
6 | to be determined as follows: there's a set of steps which I'll
7 | read. A) establish two points by measuring along each side lot
8 | line, a distance of 30 feet from the intersection point of each
9 | side lot line and the street lot line; B) measure the distance
10 | of a straight line connecting those two points described in
11 | paragraph of this subsection; and C) the distance of the straight
12 | line connecting the two points described in paragraph B of the
13 | subsection shall be the lot width of the lot.

14 | MR. GREEN: Thanks, Mr. LeGrant.

15 | Mr. Young -- so what I want to do right now is just if
16 | you would walk me through to the lots. And obviously, employing
17 | the criteria that you've just previously identified to help us
18 | understand how this obviously is examined in terms of
19 | interpretation.

20 | So Mr. Young, could I ask you to go down to which would
21 | be slide No. 5. It has lot 5. There it is, right there.

22 | So in this way, we're looking at 847. So, Mr. LeGrant,
23 | based on what you had just identified as the governing regulations
24 | and there's color codes here of, I guess (audio interference).
25 | Can you help explain how the significance of this as it relates

1 | to those both lot into the zoning regulations.

2 | MR. LEGRANT: Certainly. So in the prior section again,
3 | which instructs how to measure lot width, the -- we took the
4 | subdivision that is subject to the appeal in each of the seven
5 | lots, starting with lot 847 to -- the color codes, which I think
6 | are very helpful, is the first.

7 | The green indicates the lot frontage and that is the
8 | portion of the lot (audio interference) upon the road from the
9 | street, the public street. And then the 30-foot dimensions going
10 | along the side property lines from the intersection to the public
11 | street. And then as we get up the 30 feet of each of those side
12 | lot lines, then -- as set forth in Subsection C of the section
13 | I've just reviewed, in the pink or purple there -- I'm not sure
14 | what pink is, is the width and that sets forth the dimensions
15 | that are -- we have examined in light of the regulation that
16 | determines both the frontage and the lot -- minimum lot width.

17 | MR. GREEN: And so just for clarification again, the
18 | magenta line, purple, sorry, magenta whatever -- where we have
19 | the lot width, that the reason why, I guess just to explain, to
20 | reiterate, that line there is the lot width based on the distance
21 | from the lot. Sorry. I want to cite correctly. The measuring
22 | distance from the street lot line, correct?

23 | MR. LEGRANT: Correct. Yeah.

24 | MR. GREEN: Okay. So I don't know. For the purposes
25 | of this and to the rest of the slides, I mean I don't think it

1 | would be necessarily -- well, I'll just ask you. Is that -- so
2 | this is employed with respect to the remainder of -- this exercise
3 | was done with the remainder of the lots, correct, for --

4 | MR. LEGRANT: Right. And I don't know if you want to
5 | just scroll through those quickly. But the analysis had to be
6 | done for each lot, not only, of course, the subject of the lots
7 | of this appeal, but any subdivision that comes in front of my
8 | office has to be, for whatever particular zone, those criteria
9 | have to be looked at: area, street frontage, and minimum lot
10 | width.

11 | CHAIRPERSON HILL: Mr. Young, can you hear me?

12 | Can you just kind of flip through those? I mean we
13 | have the slide deck in front of us; or Mr. Green, if you just
14 | want to kind of have an opportunity to scroll through them.

15 | MR. GREEN: Sure. So again, I just want to quickly
16 | kind of go through them while viewing it. So Mr. Young has gone
17 | through it. This is 844.

18 | Again, Mr. LeGrant, the same exercise was done in terms
19 | of lot width, frontage and -- under 304.1?

20 | MR. LEGRANT: That's correct. And so that also
21 | illustrates and color coded, those key dimensions of the
22 | frontage, the side lot lines that are employed in the 30-foot
23 | distance from the intersection of the street frontage, and then
24 | the resultant lot width.

25 | MR. GREEN: Again, Mr. Young, if you could go to slide

1 No. 7, it's shaded -- 842. It's lot 842. Again, the same
2 questions, Mr. LeGrant.

3 MR. LEGRANT: All right. It's also, I could see -- the
4 dimensions are also mentioned. So as a test against the minimum
5 standard from the frontage, the minimum is 56 point --

6 MR. GREEN: Again, the lot --

7 MR. LEGRANT: -- 2 remainder -- yeah.

8 MR. GREEN: I'm sorry, Mr. LeGrant, if I stepped on
9 your words.

10 Again, Mr. Young, I'm trying to -- the next slide should
11 be -- Mr. Young, if you could advance one more slide.

12 843. Same questions.

13 MR. LEGRANT: Right. So again, it illustrates the lot
14 width, the frontage. The green, side lot lines 3-feet away from
15 the frontage and then the lot width, resultant lot width.

16 MR. GREEN: Mr. Young, could you advance one more slide,
17 please?

18 Okay. Again, 845, same questions, Mr. LeGrant.

19 MR. LEGRANT: It's correct. The same analysis again,
20 showing conformance with the frontage and width -- I mean lot
21 frontage and minimum lot width.

22 MR. GREEN: Okay. Let me go back. Thanks a lot, Mr.
23 Young. You can certainly keep that up.

24 But Mr. LeGrant, with respect to lot frontage, the
25 appellant claims that C-303.2 was never intended to apply to

1 irregularly shaped lots. Is that a correct statement?

2 MR. LEGRANT: No. The regulations, and I think this
3 came out in prior questions to the appellant's witness, is there's
4 no direction that says, oh, if this is a irregular -- an
5 irregularly shaped lot, you do something different. If it's a
6 quote unquote "regular lot" you do some other standard. It's a
7 broad standard that applies to all lots.

8 And in this case, you have to figure out like category
9 of lot as set forth in zoning regulations. And if it's an
10 interior lot, then the standards that have been employed here
11 were applied.

12 MR. GREEN: Thanks, Mr. LeGrant.

13 Again, the appellant as well as Mr. Bello testified to
14 their calculations on calculating average lot width. I believe
15 the statements there are four methods, and I'll read them: ten-
16 foot interval, average, mean depth, and greatest depth methods.
17 Are you familiar with those methods?

18 MR. LEGRANT: Can you repeat that one more time? I am
19 having trouble hearing. Sorry.

20 MR. GREEN: Yes. In the pre-hearing statements and the
21 testimony and -- that we've seen was that in terms of calculating
22 average lot width, the claim has been made that there are four
23 approved methods: the ten-foot interval, average, mean depth,
24 and greatest depth method. So my question is, are you familiar
25 with those methods, Mr. LeGrant?

1 MR. LEGRANT: I am.

2 MR. GREEN: So can you help us understand the
3 relationship to those -- do those methods have any bearing with
4 respect to this appeal? Can you help us understand your position
5 on that?

6 MR. LEGRANT: Absolutely. So prior to ZR-16, the Zoning
7 Regulations did not specify how lot width was to be measured and
8 the regulations were silent. And the BZA determination under ZR-
9 58, the zoning administrator at the time had, as a practice,
10 developed those standards, those methods. One of them, which was
11 illustrated was the ten-foot interval method. And I think -- I
12 can't remember if there was an application or appeal that the key
13 for the Board -- this is again, over a decade ago, that the Board
14 endorsed that -- those methodologies as a proper way for the
15 zoning administrator to develop a practice to approve those or
16 to apply those to subdivisions.

17 Now, that went out the window with ZR-16, because
18 ZR-16 then came up with a specific method, as enumerated and that
19 we have described in C-304.1, how to measure lot width. And
20 since that point in time, not only for this subdivision, for
21 every other subdivision that has come before my office, we employ
22 the standards set forth in the regulation of how to determine the
23 lot width.

24 MR. GREEN: A couple more questions, Mr. LeGrant. One
25 of the issues raised by the appellant is that the irregularly

1 | shaped lots violate the zoning regulations. The fact that these
2 | are irregularly shaped, is that accurate -- is it an accurate
3 | statement?

4 | MR. LEGRANT: It is not.

5 | MR. GREEN: And can you just explain why you think it's
6 | not accurate?

7 | MR. LEGRANT: So at the risk of repeating myself, the
8 | standards of the zoning regulations set forth for lots is the
9 | area, frontage, and width. So as to the actual shape, they do
10 | not -- the regulations are silent. So, in the (indiscernible)
11 | configurations that are brought before us, and I think that
12 | everyone here obviously knows that the vast majority of lots that
13 | are set forth in a normal -- a rectangular block in the city's -
14 | - most areas of the city, we end up with were rectangular lots,
15 | and it's a pretty straightforward exercise.

16 | Nonetheless, in other portions of the District as well
17 | as illustrated here, because of the curvilinear roads in a
18 | historical log arrangement, you cannot always do a rectangular
19 | lot. The standards that I have not again, area, width and
20 | frontage, are the only standards that the regulations prescribe.
21 | So even if it's irregularly shaped, as long as it meets those
22 | standards, I believe I have no discretion to say, "No, I don't
23 | like this lot. It doesn't look right." I don't need basis to
24 | deny such an arrangement or subdivision.

25 | MR. GREEN: Thanks, Mr. LeGrant. The last question

1 that is, based on your review and interpretation, you believe
2 that building permits and lots conform to the zoning regulations?

3 MR. LEGRANT: That's correct. Each lot that was
4 presented to us in this arrangement did conform with the
5 applicable standards. I will say when it first presented to me,
6 I had to look at this very carefully to ensure that those
7 standards were met because it is a bit of an anomaly in terms of
8 subdivisions come before us, but at the end of the day, I had
9 concluded that they meet the applicable prescribed standards and
10 therefore, my office had no discretion not to approve the subject
11 building permits.

12 MR. GREEN: Okay. Thank you, Mr. LeGrant.

13 Mr. Chairman, I have no further questions for Mr.
14 LeGrant. We'd certainly open it up to the Board and we would
15 just reserve the right to offer rebuttal questions.

16 CHAIRPERSON HILL: Yeah. Can you leave that one up,
17 Mr. Young?

18 Yeah, Mr. LeGrant, the only question I had for you Mr.
19 LeGrant, I mean, this whole thing about absurd results, right,
20 and that, you're not looking at the lot in that way. I mean
21 obviously, the people that are putting together their lot are
22 trying to meet the regulations, so that they are going to have a
23 lot which meets the regulations. And so you don't look at
24 something as an absurd, not absurd, you base it on the regulations
25 as to whether or not they meet the lot width requirements, right,

1 and frontage, and you just went over that. "I can point out this
2 one. It's a little bit peculiar the way it's put together, but
3 yeah, it's meeting the regulations."?

4 MR. LEGRANT: So if I understood your question, right
5 if (audio interference), the assertion is made that it is a
6 certain result, I don't have -- that's not criteria that I can
7 say, "Well, on that basis, I can approve it." As I stated, does
8 it meet the standards; the area, width and frontage set forth in
9 the regulation. If it does, then again, my office would then be
10 -- would be deemed to have to approve that because it's -- they
11 have no other criteria to employ.

12 CHAIRPERSON HILL: Okay. That's all I got.

13 Mr. Young, can you pull the slide deck down so I can
14 just see my colleagues?

15 Does the Board have any questions for DCRA?

16 COMMISSIONER MILLER: I do, Mr. Chairman, but I think
17 I'd rather wait until I hear property owners to -- I need to hear
18 -- I want to hear the property owner's testimony first and then
19 I'll come back if I have a question.

20 CHAIRPERSON HILL: Okay.

21 Okay. Ms. Moldenhauer, do you have any questions for
22 DCRA?

23 MS. MOLDENHAUER: I just have one question.

24 Mr. LeGrant, Chairman Hill asked you the question about
25 kind of an absurd result. Did you -- you said there's three

1 requirements, right? Lot frontage, lot width and lot area; is
2 that correct?

3 MR. LEGRANT: That's correct.

4 MS. MOLDENHAUER: And so when you looked at these
5 properties, did you also look to see how they met the lot area
6 requirement?

7 MR. LEGRANT: Yes.

8 MS. MOLDENHAUER: And in your opinion, did that create
9 a close call in regards, it just barely squeaking over the line
10 for the lot area, or were they more than ample in regards to lot
11 area creating a large size lot?

12 MR. LEGRANT: Well, because it's not the subject of the
13 appeal, I will go (indiscernible) -- go back and double check the
14 figures, but that was not an issue. At the time we reviewed
15 that, did the lot meet the area requirements, and it was found
16 to do so, I believe beyond the minimum lot area that is
17 prescribed in the subject R-21 standards.

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

19 CHAIRPERSON HILL: Thank you, Ms. Moldenhauer.

20 Mr. Brown, do you have any questions?

21 MR. BROWN: Yes, Mr. Chairman.

22 Mr. LeGrant.

23 MR. LEGRANT: Yes, please.

24 MR. BROWN: Good to see you. In your -- the zoning
25 determination letter you wrote back in November of 2018, and I'm

1 quoting it. One, you stated that these lots were irregularly
2 shaped; is that correct?

3 MR. LEGRANT: I believe so.

4 MR. GREEN: And then I'm quoting from the letter under
5 the lot width discussion in the letter. "In the case of an
6 irregularly shaped lot or angular lot line, the Zoning
7 Regulations provide no specific clarity," end quote. Do you
8 recall that part of the letter?

9 MR. LEGRANT: Yes, I believe so.

10 MR. GREEN: In making that statement, were you aware
11 of the definition of lot width, or did you disregard the
12 definition of lot in the regulations?

13 MR. LEGRANT: I did not disregard the regulation for
14 lot width, and in making that statement, I am aware of the
15 applicable lot width standards.

16 MR. GREEN: So you said you did not accept or adopt the
17 guidance provided by the definition of lot width?

18 MR. LEGRANT: Well, the definition of lot width that's
19 set forth in regulations provides information. But then, I
20 believe I testified, the specific measurement of lot width that's
21 set forth in the regulations. So let me clarify a little bit.
22 I was aware of the definition? Yes, I was. Did I -- what did I
23 ultimately rely on? I relied on the Regulation, C-304.1.

24 MR. GREEN: That's all I have, Mr. Chairman.

25 CHAIRPERSON HILL: Okay. All right. Let's see now.

1 So we'll go ahead and go to the property owner.

2 Ms. Moldenhauer, whenever you like, you can go ahead
3 and present.

4 MS. MOLDENHAUER: Good afternoon, Chairman Hill, and
5 members of the Board.

6 This matter has been long outstanding, and we look
7 forward to the Board making a resolution. Before I present my
8 argument, I would like to introduce Mr. Bender, a representative
9 of the property owner, who will make a brief statement.

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

11 MR. BENDER: And say well, that's not where you -- wait
12 a minute.

13 CHAIRPERSON HILL: We can hear you, Mr. Bender.

14 MR. BENDER: Well, we got a glitch over here.

15 CHAIRPERSON HILL: We can hear you.

16 MR. BENDER: Okay.

17 CHAIRPERSON HILL: And see you.

18 MR. BENDER: Pardon me?

19 CHAIRPERSON HILL: We can hear and see you.

20 MR. BENDER: I had something typed that I thought they'd
21 have in the other room.

22 Well, I've been the owner of this property for -- I
23 thought it was between 15 and 20 years. And I have been growing
24 old normally as a result of it. Every time I turn around, I hear
25 objections from the neighbors. And I told the architect to meet

1 the requirements of the -- whatever you call it, regulations.
2 And I don't want to play with people. I'm not trying to play
3 with them; I'm just trying to develop the property. And I
4 listened to the witnesses on behalf of the appellants, and I just
5 shake my head and say, this Board would be busy 10 years, maybe
6 20 years of litigation on issues that you are arguing about.

7 The people that make the determination, not me, it's
8 the District government. And they found what we were proposing
9 met all the rules and regulations. And I read and talk to people;
10 how can there be so many interpretations of it. The head of the
11 BZA, the administrator, he's the last man on the pole. And this
12 thing goes on forever and ever and ever.

13 I would hope that this would be the last shot before I
14 die to get approved and develop some nice homes within the
15 neighborhood. And there were certain people in the neighborhood
16 that came to me, a member of the association, and said they agree
17 with me, but they didn't want to get in the middle of a battle.
18 I don't want a battle. I just want what's fair to me. And I'd
19 like to -- if I could erase the last 15 years or 20 years that
20 I've owned the property, I might be tempted to just give it back.

21 Let's see. And one thing that has nothing to do with
22 what I've said is the existing school building that the neighbors
23 ran before I even closed down the property and got tagged as
24 direct building, that's why it's not at issue here. It was
25 already determined what -- how big the lot was going to be and

1 | how big the building was going to be.

2 | Let's see. We live in a very unique country, and
3 | everybody has this shot at back. And I think these people have
4 | had more than a shot at back. It's like a vendetta against me.
5 | That's all I have to say. I hope you'll find in our favor. And
6 | if you don't, I'll have to scratch my head and say what we do
7 | next. Thank you.

8 | CHAIRPERSON HILL: All right. Mr. Bender. Thanks for
9 | your testimony. I don't know what we're -- I don't know whether
10 | it's going to happen one way or the other. What's going to happen
11 | one way or the other. You were here the last time you said you
12 | were too old, and you were going to make it and you're still
13 | here, apparently, so you seem to be hanging in there. So you
14 | still keep hanging in there.

15 | MR. BENDER: Not a problem.

16 | CHAIRPERSON HILL: Well, I'm just telling you, you look
17 | good. That's what I'm trying to say.

18 | MR. BENDER: I'll give you a laugh. I have a
19 | foundation, and I was doing stuff with the Catholic Charities of
20 | the metropolitan area, and I was with the priest who is head of
21 | it. And I said, "You guys got to get with this faster if we're
22 | going to do this thing that we want to do." And he says, "Why
23 | is that?" I said, "I got less days in front of me than I got
24 | behind me." He says, "Oh, no." He said, "You're going to be
25 | around for a long time." I said, "How's that?" He says, "God's

1 not through -- God's not finished using you for his work." I
2 said, "Will you give me a letter for that?"

3 CHAIRPERSON HILL: We should all get a letter.
4 Everybody on this little screen should get a letter, Mr. Bender.
5 All right. Okay.

6 Ms. Moldenhauer.

7 MS. MOLDENHAUER: Yes. I'd asked Mr. Young to pull up
8 Exhibit 28 which is our PowerPoint.

9 Next slide. So DCRA Counsel has already argued, and
10 the Zoning Administrator properly interpreted the zoning
11 regulation.

12 Next slide. And that this appeal, we believe should
13 be dismissed. We believe the Board has three specific points
14 that they can rely upon in determining to dismiss this appeal.
15 One, that the zoning administrator applied the plain language of
16 the Zoning Regulations; two, that the Zoning Regulations under
17 ZR-16 have a specific section which is new, which was not
18 previously in the ZR-58 version of the Zoning Regulations, which
19 are the rules of measurement. These rules of measurement provide
20 specific and clear direction as to how to measure both lot width
21 and then lot frontage under the Subdivision Section. The
22 appellant here provides no specific sections or support to
23 overturn the building permit.

24 Next slide. More importantly, the appellant and the
25 Preservation Committee and their counsel continue to reference

1 the Murray case, which talks about an "absurd result." It seems
2 impossible that you would have these seven tax lots, lots 831 to
3 839, which collectively are 142,876 square feet of land area,
4 that is over three acres of property. There are not many
5 three-acre properties within the city. To believe that this
6 extremely large property, and its sheer size as a collective
7 group of tax lots, could not be subdivided into a meter (audio
8 interference) lots seems quite rational and supported by both
9 public policy and basic common sense and reason.

10 Next slide. The Murray case that was referenced by Mr.
11 Brown and the Preservation Committee argues that when a decision
12 is against or potentially absurd or irrational, that the zoning
13 administrator of this Board can reverse it. I would say that as
14 the zoning administrator stated, there are three criteria in
15 evaluating whether a lot can be subdivided: lot width, lot
16 frontage and lot area.

17 At the end of the day here, we are creating lots that
18 almost more than double and sometimes, in some instances, as you
19 can see, are 200 percent larger than the minimum lot requirement
20 in this area. This is an evidence of the totality of review of
21 these lots that they are more than rational and not absurd, but
22 rather meet the requirements substantially.

23 Moreover, in Subtitle D under the Zoning Regulation for
24 Zone R-21, 1302.1 states that the Preservation Committee created
25 and supported the overlay district here, which indicates that any

1 new law not created by from July 20th, 1999, has to be 9,500
2 square feet. Other older lots that exist in the surrounding
3 neighborhood can be as small as 7,500 square feet.

4 So here, there already is a protection to subdividing
5 lots that was created by the Preservation Committee in their
6 lobbying of the Zoning Regulations. As you can see, all of the
7 lots that we have here are 43 percent larger than that larger
8 requirement. Even lot 844 is 32,000 square feet, over 237 times
9 larger than the requirement.

10 Next slide. Additionally, the Zoning Regulations as
11 of the old regulations from ZR-58, when the Murray case and other
12 methods were used, did not have a specific rule of measurement.
13 Now, under the regulations, under 304.1, which was referenced by
14 the zoning administrator, it states that "where a lot is an
15 interior lot, the lot width shall be determined as follows."

16 This does not give the zoning administrator the
17 flexibility, but it specifically requires that the lot width be
18 measured in this specific way. As stated by the zoning
19 administrator, these are all interior lots. Interior lots are
20 defined in the Zoning Regulation, and there is no question that
21 these lots meet the interior lot definition. Thus, this section
22 must apply and must apply over any other questions.

23 Next slide. Unlike in the petition's reference Murray
24 case that interpreted ZR-58 Regulations, the Court of Appeals in
25 that case stated that at the time neither the court nor the Board

1 held a single rule of measurement, which must be used in all
2 circumstances.

3 Now, as stated, we have specific section Subtitle C-
4 304.1, which directs a singular type of measurement for interior
5 lots in all zones. The language provides clear direction and no
6 ambiguity that it shall, it uses the word "shall," giving the
7 zoning administrator the obligation to apply that section.
8 Additionally, Subtitle C, under ZR-16, adds its specific rules
9 of measurement and states that it "shall apply and be applicable
10 to all zones unless otherwise stated in this title." The holdover
11 language in regard to the definition does not apply.

12 And if you go to the next slide. Court of Appeals
13 cases, the Court of Appeals specifically has given the Board
14 guidance and said, if you did determine that they were conflicting
15 statutes, that the court said that you have to follow the more
16 specific statute which governs the more, than the more general
17 one, and you look to the latter that supersedes the earlier.

18 Here, we know that the definition was a holdover from
19 the '58 Regulations, but the rules of measurement is what is
20 earlier in time. And that provides also -- so based on George
21 Washington University v. the Board of Zoning Adjustment, you
22 would follow the rules of measurement because not only is it more
23 specific and provides a clear language, it was enacted later in
24 time under the ZR-16 Regulations.

25 Next slide. Lot frontage, lot frontage under the

1 Subdivision Regulations provides a very specific requirement for
2 75 percent of the minimum lot requirement. The street lot and
3 the street lot is a lot line that abuts a street. Therefore, as
4 was shown by the zoning administrator in the colored images, the
5 zoning administrator followed the clear requirements of the
6 Zoning Regulations and found that they met -- each property, met
7 the requirements of the 56.25 feet.

8 I would also note that given the fact that we are
9 reviewing the building permits for the apiaries, that that is the
10 proper section, but I would note that down the road, if these
11 lots are turned into single family homes and a single-family home
12 permit is applied for the sections, the lot frontage section
13 under Subtitle C-303.4 allows that for a single-family home,
14 which would be the overall intent of these developments down the
15 road, can actually be 40 percent of the lot width, which would
16 actually be 30 feet.

17 So again, looking at this in the totality and the
18 question of does this create an "absurd result," no, it does not.
19 Again, we are looking at it actually right now under the more
20 restrictive requirement for any other use, thus, the 75 percent
21 requirement. But if it was a single-family home under C-303.3,
22 then it would only have to be 40 percent and would thus be more
23 than ample in regards its compliance.

24 Next slide. The lot frontage, the zoning administrator
25 followed the plain language of the regulations. Furthermore, as

1 | stated by the zoning administrator and also as stated by the
2 | witness or the Preservation Committee, there's nothing in the
3 | Zoning Regulations that bar stem lots and there is nothing in the
4 | regulations that have a specific rule of measurement under
5 | Subtitle C for irregularly shaped lots. The Preservation
6 | Committee cites no regulation and points you to no specific zoning
7 | section that should apply.

8 | Next slide. As you can see here, this is an image of
9 | the overall proposed lots as the zone administrator went through.
10 | I'm not going to go through them in detail, but I'd like to go
11 | to the next slide, please. And this goes to the question of kind
12 | of what is the overall intent and result of these lots and are
13 | they in keeping with the kind of the character of the surrounding
14 | area, and do they create a rational, reasonable, and not absurd
15 | result, and I think the answer is clear that they do.

16 | We can start, if you look at the image on the upper
17 | right-hand corner, where it says Square 1425, you can see under
18 | that there's lot 808, which is a similarly designed lot and that
19 | (audio interference) put them to the south of lot 808, you can
20 | see lot 825, which is the co-chair of the Preservation Committee's
21 | home, Mr. Arthur Watson. That lot 825 is also a similarly
22 | designed and laid out properly.

23 | If you then move kind of to the south of our lots, you
24 | can see lot 865, and as well as then kind of further down, you
25 | know, lot 7, which are also lots that are similarly shaped and

1 have similar configuration. So this just shows that the lots
2 proposed here are one, as required -- as identified in the Zoning
3 Regulations under Subtitle D-1300.1(a) developed as potentially
4 large lots that more than meet the requirements and are similar
5 to those that are in the surrounding neighborhood.

6 Thank you very much. That concludes our presentation.
7 Based on that, we believe that the Board has ample ability to
8 dismiss this appeal and allow this development of a six-acre
9 property to be subdivided into seven lots and allow the permits
10 to continue.

11 Chairman Hill, I believe you were muted.

12 CHAIRPERSON HILL: Thank you, Ms. Moldenhauer. Thank
13 you for your presentation.

14 The only question I had, on that last slide, and you
15 don't have to bring it up unless you can tell me kind of where
16 it is. I see what you're talking about with the surrounding
17 area, and then I just don't know where that parcel that your
18 client owns is in relationship to this surrounding area.

19 Now, you're on mute.

20 MS. MOLDENHAUER: Sorry, I muted to try to not create
21 background noise.

22 It's right in the middle. So it's in the middle on the
23 right-hand side of the --

24 CHAIRPERSON HILL: Okay. Mr. Young, can you pull up
25 that last one then? I'm sorry. No. 12.

1 MS. MOLDENHAUER: If you give me permission to
2 annotate, I can just -- I can help. Last.

3 Okay. So these are our properties, and I pointed out
4 that this is the co-chair of the Preservation Committee, and
5 these are other properties that have similar layouts.

6 CHAIRPERSON HILL: All right. You have your properties
7 in there, right?

8 MS. MOLDENHAUER: My property is circled now. I've
9 circled ours and checked the other ones.

10 CHAIRPERSON HILL: Yeah. Okay. All right. Great.
11 Thank you.

12 Okay. Mr. Young, you can pull that down if you like.

13 Okay. Does the Board have any questions for the
14 property owner?

15 MR. MOY: Mr. Chairman.

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: Excuse me for interrupting. For the record,
18 is it possible that Ms. Moldenhauer can reintroduce her marking
19 on that plat for the record, in which she identified certain
20 lots?

21 CHAIRPERSON HILL: I understand.

22 Ms. Moldenhauer, do you understand what is being asked?

23 MS. MOLDENHAUER: Yes, Chairman Hood and Mr. Moy, we
24 will reannotate that and submit that to the record later on today.

25 CHAIRPERSON HILL: Ms. Moldenhauer, I love when you

1 call me Chairman Hood, but --

2 MS. MOLDENHAUER: I'm sorry.

3 CHAIRPERSON HILL: It's all right. It's the H, I
4 know. And we look so much alike, I know.

5 MS. MOLDENHAUER: All right. Chairman Hill.

6 CHAIRPERSON HILL: That's all right. Let's see. Okay.
7 So it's good, and you'll put that in the record.

8 Okay. So I'm looking at my fellow Board members. Does
9 anybody have a question for the property owner?

10 COMMISSIONER MILLER: I might, Mr. Chairman. But
11 again, I think I'll hear the cross-examination of by the appellant
12 and DCRA, if they have any, and then and I'll try to formulate a
13 question.

14 CHAIRPERSON HILL: All right, Commissioner Miller. You
15 know how much I love cross-examination. I mean, the word "cross-
16 examination" just brings joy. All right.

17 Mr. Green, do you have any questions of the property
18 owner?

19 MR. GREEN: No, DCRA has no questions of the property
20 owner. Thank you.

21 CHAIRPERSON HILL: Okay. Mr. Brown, do you have any
22 questions of the property owner?

23 MR. BROWN: No questions, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. All right. Let's see then.
25 Am I missing anybody? No, that's it. We got that. All right.

1 Then I guess let's try to see if there's any other questions from
2 the Board.

3 Mr. Miller. Commissioner Miller.

4 COMMISSIONER MILLER: Okay. Well, thank you all for
5 your presentations and questions. And I -- that slide, that 12
6 -- Ms. Moldenhauer, that was helpful because that was going to
7 be one of my questions about other lots with this pipestem
8 configuration like the three in the area that's before us in this
9 case.

10 I don't know if anyone knows the answer to this
11 question, but are those other three -- those other lots that you
12 checked that are pipestem, were they also assessment and taxation
13 lots as opposed to record lots created by the Department of
14 Finance and Revenue, I guess, and not by DCRA or any zoning
15 process? Were they assessment and taxation lots as well, Ms.
16 Moldenhauer? Do you know?

17 MS. MOLDENHAUER: Yes. So Commissioner Miller, some
18 of them are, like lot 825. Those that front on Chain Bridge,
19 because Chain Bridge is the street that is subject to the highway
20 plan, are assessed in the taxation lots. But there are others,
21 there's about three others or four others that are in the
22 neighborhood that are actually front on Eskridge Terrace N.W.,
23 that actually front on another street, but are in obviously the
24 same community and have record lots. So there is both the
25 combination of flag lots that are tax lots based on the fact that

1 | they front on Chain Bridge, which has the Highway Plan, as well
2 | as record lots that front on the opposite side of the street.

3 | COMMISSIONER MILLER: Okay. Thank you. So I guess the
4 | DCRA record lots weren't available to be created in this case
5 | because they're in the Highway Plan. The 1893 Highway Plan,
6 | which includes many highways and streets that never will be built.
7 | So the owner in this case went to another agency to create
8 | assessment and taxation lot because record lots aren't, I guess
9 | statutorily allowed, but you can answer that question.

10 | What is it that prevents record lots from -- that are
11 | in the Highway Plan from being subdivided it? Is it the Highway
12 | Plan statute that it -- does it? And so anyway, the A&T lot is
13 | obviously a workaround. It's a workaround from the Highway Plan
14 | and DCRA has made a determination at some point that A&T lots
15 | could be developed. Or has that always been the interpretation
16 | of DCRA, A&T lots are -- are A&T lots part of (audio
17 | interference)? Is that your interpretation? They can be part
18 | of a subdivision, or has this interpretation of A&T lots can be
19 | built on? I should know this because I think we've seen (audio
20 | interference).

21 | MR. LEGRANT: Commissioner, I'll take a stab at
22 | answering your question, if I may. You're correct that the
23 | property owner is unable to obtain record lots because the
24 | encumbrance of the Highway Plan along Chain Bridge Road, and the
25 | Zoning Regulations themselves set forth in the Subtitle A-301.3,

1 which I'll paraphrase. You got there. You are right about the
2 Highway Plan, 1893, "Except as provided in building lot control
3 regulations for Residence Districts in Subtitle C and Section 5
4 of An Act, to amend an Act of Congress approved March 2, 1893,
5 entitled, An Act to provide a permanent system of highways in
6 that part of the District of Columbia and lying outside of
7 cities," and then it goes on. That's the exemption -- exception
8 from being having to do a record lot, and that's why they did
9 instead, the ATT lots from the Office of Tax and Revenue.

10 COMMISSIONER MILLER: And this has been done in many
11 cases for how many years?

12 MR. LEGRANT: Well, as long as I've been zoning
13 administrator, when a subdivision -- what happens is, the process
14 is, an applicant applies for a building permit. They have to
15 submit a plat. The plat is reviewed and prepared -- initially
16 prepared by the DCRA, Office of the Surveyor. The surveyor will
17 identify if it's -- it has a Highway Plan encumbrance, and if
18 so, then that tells us all the aspects of DCRA. "This is a lot
19 that is encumbered by a Highway Plan and therefore, it was unable
20 to get a record lot subdivision." And then we can proceed,
21 instead of the tax lot, assessment and taxation lot that's
22 prepared by the Office of Tax and Revenue in lieu of a record
23 lot for development purposes.

24 COMMISSIONER MILLER: So I think I asked this maybe in
25 the last iteration of this case, and it may not be that relevant

1 to what was before us, but I'm still trying to understand. This
2 alternative process to going to the Council or the Mayor and the
3 Council to get legislation to amend the Highway Plan, because I
4 know when I was on the Council staff over probably dozens of
5 Highway Plan amendments or abandonments, removals were enacted
6 in order to permit development of property. Why isn't the Highway
7 Plan -- tell me again why isn't the Highway Plan an impediment
8 to the development of the A&T lot?

9 MR. LEGRANT: It's Section A-301.3 says, you have to
10 have a record lot, unless you are coming by the Highway Plan,
11 and that gives the exception. So okay, with that exception,
12 that's carved out in the Zoning Regulations, an applicant can
13 proceed without a record lot and instead use an A&T lot.

14 COMMISSIONER MILLER: Okay. And Ms. Moldenhauer, why
15 in this case, I can see the rationale for proceeding with an A&T
16 lot development scheme, not scheme, I'm not meaning to put a
17 negative connotation on it, but the process for development. Why
18 was not the legislative abandonment of the Highway Plan process
19 sought for this area or (audio interference) considered it?

20 MS. MOLDENHAUER: Well, considering that we're here
21 today arguing over whether the lot width and lot frontage
22 requirements comply, we believe that since we can move forward
23 with development on A&T lots as the zoning administrator
24 identified here, it would not be the best process to pursue
25 another public entitlement process. That would just be another

1 opportunity for the Preservation Committee to appeal and
2 stonewall us to that process. So since the Zoning Regulations
3 allow development on A&T lots, we've gotten those A&T lots and
4 now we are moving forward to just try to develop this property
5 with the seven lots.

6 COMMISSIONER MILLER: And remind me Mr. LeGrant, you
7 may have said this, or Ms. Moldenhauer, how long had the Zoning
8 Regulations allowed that accepted A&T lot (audio interference)
9 record lot is in existence? Is that in there in '58 or is it
10 (audio interference)?

11 MR. LEGRANT: Yeah.

12 COMMISSIONER MILLER: When (audio interference) in
13 there?

14 MR. LEGRANT: The language was in the ZR-58 Regulations
15 that all the time as I have been zoning administrator, 16 years,
16 it was present. It was brought over in whole, that exact phrase,
17 to ZR-16 as to whether it started in 1958 or approved in 1958, I
18 do not know. But from approximately 2006 onward, that language
19 has been there.

20 COMMISSIONER MILLER: Okay. Well, thank you for those
21 responses.

22 I'm sorry, Mr. Chairman to delay the proceeding. I
23 just was trying to understand this process in the A&T (audio
24 interference) how long that's been permitted. So that's useful
25 information for me at least to know that it's been there awhile,

1 | it's been applied awhile. And it's also useful to know that
2 | there are these other pipestem lots that had been developed that
3 | apparent -- that lead the other zoning requirements according to
4 | zoning administrator in this neighborhood and elsewhere. So it's
5 | interesting. Thank you.

6 | CHAIRPERSON HILL: All right. Commissioner Miller.
7 | Thank you. I've learned that Mr. LeGrant's been there for 16
8 | years, which is a long time.

9 | All right. Let's see. So now, Mr. Brown, you'll have
10 | an opportunity for -- and Ms. Nagelhout, you can correct me again,
11 | because it's been a little while on the appeals.

12 | Ms. Brown, I mean, Mr. Brown, you'll have an
13 | opportunity for rebuttal, then people will have an opportunity
14 | to ask questions on the rebuttal and then you will have an
15 | opportunity for a conclusion.

16 | So, Mr. Brown, do you have a rebuttal for us?

17 | MR. BROWN: Two things, Mr. Chairman. Can we take a
18 | 5- or 10-minute break? And then I want to confer with Mr. Bello
19 | and also personal needs. And then we'll make our rebuttal and
20 | try to wrap this thing up quickly.

21 | CHAIRPERSON HILL: Sure. That works for me. Let me
22 | just -- let's take a 10-minute break. Okay.

23 | MR. BROWN: Thank you.

24 | CHAIRPERSON HILL: Thank you.

25 | (Whereupon, the above-entitled matter went off the

1 record and then resumed.)

2 CHAIRPERSON HILL: We're all back. I don't know if I
3 got Mr. Blake, Mr. Smith. All right. Okay. Let's see.

4 Mr. Brown, can you hear me? You're on mute, Mr. Brown.

5 MR. BROWN: Yes, I can.

6 CHAIRPERSON HILL: Okay. Perfect. Yeah, Mr. Brown
7 then -- so and I was --I went -- I had time to kind of go over
8 again the order. So what will happen now is you'll have an
9 opportunity to give rebuttal, then people have an opportunity to
10 ask questions about rebuttal, and then we will have a closing
11 from everyone actually. And the order of the closing is -- it's
12 going to go. The appellant goes first, the second is the property
13 owner, and third is DCRA and the closing. So that is how we're
14 going to go.

15 And then, Mr. Brown, you can go ahead and give your
16 rebuttal.

17 MR. BROWN: Very good, Mr. Chairman.

18 Mr. Bello should be out there and coming online.

19 CHAIRPERSON HILL: Yeah. I saw Mr. Bello.

20 MR. BELLO: I'm here.

21 MR. BROWN: I'd also ask Mr. Young, if you could pull
22 up the PowerPoint presentation from DCRA. At some point, Mr.
23 Bello is going to want to refer to that.

24 CHAIRPERSON HILL: Okay. Mr. Young, do you know which
25 one was that exhibit? I think it's -- yeah. Maybe -- go as far

1 as I can get. Or wherever you want -- is the first one good,
2 Mr. Brown?

3 MR. BROWN: Yeah. And well, we'll get to it, we'll
4 scroll back and forth to find.

5 CHAIRPERSON HILL: Okay. All right.

6 MR. BROWN: But that's generally the -- if I could just
7 speak before we start. And I think hopefully to respond to or
8 to give some level of understanding or additional comfort to Mr.
9 -- Commissioner Miller. For purposes of what we're doing today
10 --

11 CHAIRPERSON HILL: Give me one second, Mr. Brown.

12 All right. Mr. Young, can you drop the slide deck
13 then, so I can see everybody.

14 All right. Mr. Brown, go ahead again.

15 MR. BROWN: Again, responding to Commissioner Miller
16 that these lots were created as A&T lots is a function of the
17 Highway Plan and the regulations that prohibit record lots. But
18 for purposes of applying the Zoning Regulations to those lots,
19 it's irrelevant.

20 The zoning administrator will apply the same rules to
21 an A&T lot in this case that he would if they were record lots.
22 Maybe that clarifies it, maybe it doesn't, but I thought it was
23 worth mentioning.

24 Mr. Bello, go ahead.

25 MR. BELLO: I just wanted the Board to take another

1 look at the PowerPoint presentation of DCRA to reemphasize the
2 point of these lots being contrived to essentially create
3 irregular lots.

4 Mr. Young, if you can -- the first one, I think it's
5 one that's lot 846.

6 So for purposes of the straight line that's supposed
7 to be drawn inwards towards the property lot line for a distance
8 of 30 feet. If you look at what the subdivision refers to as
9 part of this side lot line, that line is almost parallel and
10 could actually be considered to be part of the front property lot
11 line where it fronts on a public street. And this is sought for
12 several of the other lots 844, 847.

13 So this goes back to my earlier testimony where the
14 intent of those rules of measurement was to limit -- if even
15 there was a part of the lot that was the one could deem to be a
16 stem, that stem lot would travel inwards onto the property for
17 no distance greater than 30 feet. And clearly, if that were
18 followed here, these subdivisions would not be possible, so I
19 just wanted to emphasize that point.

20 The second point I want to emphasize because the
21 intervenor presented like lots in the neighborhood, there should
22 be context to that. Some of those lots were in existence prior
23 to the adoption of the theoretical lot subdivision and may very
24 well have been the reason for the Zoning Commission adopting --

25 MS. MOLDENHAUER: Objection, foundation. This is pure

1 conjecture.

2 MR. BELLO: Well, here's what I'm saying.

3 MR. BROWN: Mr. Chairman, it directly responds to the
4 property owner's presentation and falls within rebuttal. To be
5 honest, I don't believe that the map that was shown was presented
6 previously. Oh, yes, I guess it was. But we have the right to
7 respond to it whether the Board agrees or disagrees. I certainly
8 myself have firsthand knowledge about this block because I was
9 involved in a property that was at pipestem that gave rise to
10 the theoretical lot regulations back in 1987.

11 MS. MOLDENHAUER: But Mr. Brown, I mean you're an
12 attorney. You're not providing testimony. Mr. Bello was
13 specifically asked if he did any research (audio interference).

14 CHAIRPERSON HILL: Okay. Give me please --

15 MS. MOLDENHAUER: He has no foundation to provide that.

16 CHAIRPERSON HILL: Give me a second, give me a second.
17 Is my mic working? Is my mic on?

18 MR. BROWN: Yes.

19 CHAIRPERSON HILL: Can you guys hear me?

20 MR. BROWN: I can.

21 CHAIRPERSON HILL: Are you sure you guys can hear me?
22 Are you positive? Can you all hear me?

23 MR. BROWN: Yeah.

24 CHAIRPERSON HILL: Okay. Do my Board members hear me?
25 Okay. Just checking.

1 UNIDENTIFIED MALE SPEAKER: Yes.

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

3 I'm going to let these people do -- these people. I'm
4 going to let rebuttal happen. Then there's questions after
5 rebuttal. Okay. Let's get through rebuttal. Let's have
6 questions upon rebuttal. Okay.

7 And what you're saying Ms. Moldenhauer is they're
8 providing additional testimony to what you've presented earlier
9 in terms of the surrounding neighborhood. Is that what your
10 statement is, or your objection is?

11 MS. MOLDENHAUER: My objection is that they have no
12 foundation to basis because Mr. Bello, in response to my direct
13 question, said that he had not done research, and now, he is
14 providing conjecture as to how those lots were created because
15 he hadn't done the research previously. And so I am objecting
16 to his testimony because he has no foundation to provide those
17 statements.

18 CHAIRPERSON HILL: Okay. Ms. Nagelhout? Ms.
19 Nagelhout, I know I think about --

20 MS. NAGELHOUT: Yeah, I'm here.

21 CHAIRPERSON HILL: That's all right. I always get a
22 confused with this, like objection, not objection. I'm not a
23 lawyer. I'm not a judge. So I don't know exactly what objections
24 or objections are. I mean I feel like saying "overruled" or
25 whatever, using another word I saw on TV. And so -- and I'm not

1 denying Ms. Moldenhauer her statement. I just don't know how to
2 get through this stuff half the time. So is there -- I mean what
3 am I supposed to do?

4 MS. NAGELHOUT: You could hear the testimony if you
5 find it relevant and germane. And then the property owner can
6 raise questions about it on cross. Like ask, does he have a
7 foundation for it; or she could attack it in her closing or say
8 something in her closing statement. It's up to the Board. You
9 have a lot of leeway about what sort of testimony you hear so
10 long as it's relevant.

11 CHAIRPERSON HILL: Okay. Okay. Well, that's the
12 problem. I guess it seems like at every turn there's a different
13 question that I'm not capable of answering.

14 So I hear what Ms. Moldenhauer is putting forward. I
15 guess your objection is heard, and Mr. -- I don't know who --
16 then Mr. Brown responded to that. And so maybe why don't we just
17 go ahead and hear everybody's rebuttal, then everybody can go
18 ahead and ask their questions, and then we can get to the next
19 part. Okay.

20 Mr. Bello, if you can continue with your rebuttal, and
21 we'll go from there, and we'll see what happens next.

22 MR. BELLO: Thank you, Mr. Chairman.

23 The only point that I just wanted to make was that the
24 context of the existence of all the pipestem lots has to be
25 considered under whether they were created under the ZR-16 or

1 not, which I believe they are not because the intervenor did not
2 put a date on the creation of those lots.

3 CHAIRPERSON HILL: Okay. Going back to the pipestem
4 lot stuff. Okay. All right. Okay. All right. Sorry. Go
5 ahead, Mr. Bello.

6 MR. BELLO: That's it. That's all the point I want to
7 make. Those lots probably predated the ZR-16 and probably with
8 theoretical lot subdivisions.

9 CHAIRPERSON HILL: Okay. You don't know for a face,
10 but okay. Great.

11 All right. Mr. Brown, do you have any more rebuttal?
12 You're on mute, Mr. Brown.

13 MR. BROWN: I don't think Mr. Bello was finished on his
14 rebuttal.

15 CHAIRPERSON HILL: Got them. Mr. Bello.

16 MR. BROWN: I think Mr. Bello was going to testify
17 about interior lots and the relationship between an interior lot
18 and an irregularly shaped lot.

19 MR. BELLO: Correct. It has been mentioned that there's
20 no specific definition for a triangular or irregularly shaped lot
21 in the Zoning Regulations. But going by the Definition section
22 for lot width obviously, an interior lot can be an irregularly
23 shaped lot. And the Definition section with respect to a
24 regularly shaped lot is more specific than Subtitle C, Section
25 304.1, which is the rules of measurement.

1 MR. BROWN: And the responsibility in applying the
2 regulations would to be to apply the more specific rule?

3 MR. BELLO: Absolutely, yes.

4 MR. BROWN: And the fact that the 1958 Zoning
5 Regulations were repealed in their entirety, correct?

6 MR. BELLO: That's correct. Right.

7 MR. BROWN: And ZR-2016 was enacted in its entirety,
8 correct?

9 MR. BELLO: That's correct.

10 MR. BROWN: So at the time ZR-2016 was created, the
11 definition of lot width was on an equal plane time wise as the
12 general rules set forth in C-304.1?

13 MR. BELLO: That is correct.

14 MR. BROWN: And --

15 CHAIRPERSON HILL: Hey, Mr. Brown.

16 MR. BROWN: Yes?

17 CHAIRPERSON HILL: And I'm kind of getting a little
18 confused. Like, I don't know whether we're doing new -- whether
19 we're taking -- you seem like you're questioning Mr. Bello's for
20 testimony. So I'm just trying to get -- and I know that I think
21 this thing got all disjointed after whatever the plan was after
22 the break. But like -- and I know we're not in a room together,
23 which makes it very difficult to do this stuff, right. So I'm
24 just trying to -- and you -- and the other thing is, like, I'm
25 the only one person on this Board that's talking by the way.

1 All the other people on this Board are very smart
2 people. Thank God. They're going to be able to figure out all
3 this stuff as well. And I'm just trying to get the testimony of
4 everybody, get the rebuttal of everybody and do what I'm supposed
5 to do, right. So I guess I'll let you continue on with what
6 you're doing, Mr. Brown, but I'm a little -- I just don't really
7 know what exactly your rebuttal is about just yet.

8 MR. BROWN: Well, I was using -- and again, because
9 we're not in the same place, it's a little more difficult. I
10 was trying to elicit testimony, rebuttal testimony from Mr. Bello
11 rather than just -- we didn't have the ability to have a seamless
12 presentation. That's all I was doing. And if I added confusion,
13 that's my fault.

14 CHAIRPERSON HILL: Okay. All right.

15 MR. BROWN: And I think unless Mr. Bello wants to add
16 something for the time being, we're done.

17 CHAIRPERSON HILL: Okay. Actually, I'm getting -- I
18 just got a kind note from someone that like, you know. So I
19 guess you can offer witnesses in rebuttal. So I guess now, he's
20 your witness in rebuttal. Is that correct, Ms. Nagelhout, or is
21 that not correct?

22 MS. NAGELHOUT: That is correct.

23 CHAIRPERSON HILL: Okay. All right. So I take it
24 back, Mr. Brown. And I -- normally, when we're all in person, I
25 can stand up and go over and ask Ms. Nagelhout and come right

1 back. So now, I just have to do it in this completely disjointed
2 way. All right.

3 So Mr. Brown, please continue with your questioning of
4 your witness, which is Mr. Bello. I apologize for throwing the
5 disjointment out there.

6 MR. BROWN: Well, I think just to close the loop.

7 Mr. Bello, having determined that these are irregularly
8 shaped lots, then based on the Zoning Regulations and the specific
9 guidance provided in the lot width definition, the zoning
10 administrator was required to calculate lot width based on an
11 average calculation?

12 MR. BELLO: That is correct, sir.

13 MR. BROWN: And the calculations of this lot width you
14 provided or show that, based on the chart, that many of the lots
15 don't comply with one or some -- all four of the calculation
16 methods?

17 MR. BELLO: That is correct.

18 MR. BROWN: I think the -- and the last thing is the
19 Murray case, (indiscernible) in the pre-2016 regulations, in the
20 1958 Regulations. Is its scope limited to beyond the 1958
21 Regulations? Does it still apply to today under the ZR-2016?

22 MR. GREEN: Sorry, Chairman. Can I just object to the
23 form of question? I don't even know what the question is. Can
24 you rephrase it, Mr. Brown? I don't even know what you're asking.

25 CHAIRPERSON HILL: Okay. Mr. Brown, I don't know --

1 can you re-ask your question?

2 MR. BROWN: Mr. Bello, is the guidance provided by
3 Murray to avoid absurd results, it is -- is it applicable under
4 ZR-2016?

5 MR. BELLO: Well, yes, it is. Insofar as the same
6 definition upon which that decision was based still exists today
7 in ZR-16.

8 MR. BROWN: And would Murray also apply not just --
9 Murray rules in the lot width calculation, but would it also
10 apply in the lot frontage question?

11 MR. BELLO: I'm not so certain of that because that -
12 - lot frontage provision that existed for (audio interference)
13 it was just 40 percent, or reason to believe that that would be
14 the case to, yes.

15 MR. BROWN: Mr. Hill, I'm done.

16 CHAIRPERSON HILL: All right. So now, since I have
17 gotten myself a little confused and I stopped the flow of things,
18 you guys can ask all the questions you all want. Okay. Please
19 ask questions the way -- I want everybody to get their fair shot
20 and everybody getting their questions answered. We just had
21 whatever rebuttal we just had. And thank God, the Board has
22 heard all kinds of evidence, and they're able to figure out stuff
23 beyond just me.

24 So I'm going to start with you, Mr. Green. Do you have
25 any questions upon rebuttal?

1 MR. GREEN: Yes, I have one question, Mr. Chairman.

2 And all I would ask is that if Mr. Young could pull up
3 DCRA slide No. 2 and when I get (audio interference), I can ask
4 Mr. Bello the question.

5 CHAIRPERSON HILL: Okay. I'm just -- because I don't
6 --you're going to ask a question upon rebuttal, correct, Mr.
7 Green?

8 MR. GREEN: Yes. It's directly related to --

9 CHAIRPERSON HILL: Okay.

10 MR. GREEN: It's directly related to what he testified
11 to.

12 CHAIRPERSON HILL: Okay.

13 MR. GREEN: I'm fine.

14 Okay. Here is my statement, Mr. -- here is set up, Mr.
15 Bello. Thank you for your testimony.

16 So you have stated -- so I'm directing your attention
17 to Subtitle C-304.1. Can you see that, Mr. Bello?

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

19 MR. GREEN: Okay. You had testified that you -- and
20 I'm paraphrasing, you must take a 90 -- you must go 90 degrees
21 and take a perpendicular line. My question is this. There is
22 no -- isn't it correct there is no requirement for either 90
23 degrees or perpendicular line in that particular provision,
24 correct?

25 MR. BELLO: That's correct. But when you have the side

1 | lot line intersecting a street lot line, that relationship is
2 | usually perpendicular --

3 | MR. GREEN: Thank you.

4 | MR. BELLO: -- by construct.

5 | MR. GREEN: Thank you. But again, just to clarify,
6 | there is no 90-degree requirement or perpendicular line in that
7 | definition, correct?

8 | MR. BELLO: Not expressly stated.

9 | MR. GREEN: Okay. That's all I have. Thank you. No
10 | question. No further questions for Mr. Bello. Thank you, sir.

11 | CHAIRPERSON HILL: Okay. Thank you. I love your
12 | answer, Mr. Bello, "not expressly stated," that that's one that
13 | I'm used before at home.

14 | Okay. Let's see. Ms. Moldenhauer, do you have any
15 | questions for rebuttal?

16 | MS. MOLDENHAUER: Yes, I do. Actually, Mr. Young can
17 | pull back up that same image that Mr. Green had asked.

18 | Mr. Bello, looking at the Definition Section, there is
19 | a portion of the first sentence that says, "The lot shall be an
20 | average distance." Are you saying that that is more detailed
21 | than the bottom section, which has three separate specific
22 | requirements for how to measure a lot width? That one line is
23 | more detailed than the three subparts in 3401.1?

24 | MR. BELLO: I'm sorry. The rules of measurement, they
25 | are also general in nature. But with respect to the specifics

1 of an irregularly shaped lot, which is controlled by the
2 Definition Section, I think that is more specific because it has
3 case law that backs it up, and it also has methodologies that
4 were established under those case law.

5 And since that definition is the exact same definition
6 that existed in the '58 Regulations, my testimony is that the
7 case law and those methodologies are still applicable
8 notwithstanding this.

9 MS. MOLDENHAUER: Would you agree that the Zoning
10 Commission though, did not adopt that case law in writing in the
11 Zoning Regulations?

12 MR. BELLO: Well, yes. I agree they did not, but then
13 that raises the question --

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

15 CHAIRPERSON HILL: Okay. All right.

16 Okay. Let's see. So conclusion -- okay. We're going
17 to go conclusion. Appellant, property owner, and then DCRA.

18 Mr. Bello. I'm sorry. Mr. Brown, could you give us
19 your conclusion concerning your case?

20 MR. BROWN: Certainly.

21 I think we start from what I think is undisputed. These
22 are irregularly shaped lots. The BZA, in its Order 20221
23 specifically referenced them as irregularly shaped lots and
24 pipestem lots. So that matter is established and certainly
25 consistent with Mr. LeGrant's zoning determination letter and the

1 position he took. And arising out of the zoning determination
2 letter, Mr. LeGrant was correct that they were irregularly shaped
3 lots, but he was incorrect when he said that the Zoning
4 Regulations don't provide any clarity on the issue of irregularly
5 shaped lots as it relates to lot width.

6 As it's clear, the Zoning Regulations provide specific
7 guidance that go beyond the general rule, specific both as to
8 irregularly shaped lots and the method of calculation. That
9 definition is on the equal plane as the general rules were adopted
10 simultaneously. The specific overrides the general rules. And
11 also, the argument that somehow the 1958 definition is old and
12 should be issued for something new is incorrect because the two
13 again, the '58 Regs were repealed in their entirety and ZR-16,
14 as Mr. Miller was involved in, were adopted simultaneously as a
15 single contemporaneous document.

16 So that, as to lot width, these lots need to be judged
17 on an average lot width calculation absent from Mr. LeGrant's
18 testimony or the property owner's, is any discussion of average
19 lot width calculations having been performed. On the other hand,
20 Mr. Bello has provided detailed drawings and calculations showing
21 under all four lot width methods how each lot is judged.

22 And again, if you look at the average lot width
23 calculations in relationship to the lots, and the lots that
24 failed to meet average lot width are the most irregularly shaped,
25 absurdly shaped lots, contrived, artificial with no relationship

1 to the street or the size of the lot and utilizing pipestems.
2 And that's certainly not what was intended both under the ZR-16
3 and the theoretical lot regulations which were created under '58
4 but given life in the ZR-16.

5 And in my presentation, you see the Murray case and the
6 lot width and what the Board, which clearly has the authority
7 under Murray, whether it's under the '58 or ZR-16 has the right
8 to find absurd results in violation of the Zoning Regulations.
9 And the court was clear, stated otherwise, "the Board must have
10 authority to reject subdivided lots that reach minimum lot width
11 requirements only by unnatural application of an otherwise valid
12 method of measurement."

13 And that case is, you know, 31 years later is right on
14 point to this situation and still valid law. That applying as
15 it's been done for these lots, it's an otherwise valid method
16 except for superseded by the average lot width calculation, and
17 you get with an unnatural result. You can see that on its face.
18 And the same is true for lot frontage. And particularly, if you
19 take lot frontage in conjunction with the irregularly absurd
20 results of lot width. They compound (phonetic) each other to
21 reach what -- I don't think anybody should dispute is just an
22 artificial result, kind of a zoning Rorschach test, where the
23 lots bear no relationship to the size or the street lines,
24 maximizes the number of lots in a way that is utilized as
25 pipestems and really reaches an unnatural result, so I think I'll

1 | leave it at that.

2 | One last thing, and this point was made early on. I
3 | don't know who made it. The Board may not have the authority to
4 | revoke the A&T plat. Certainly, the Board has the authority to
5 | revoke the building permit which, as part of that, include the
6 | lot width and street frontage determinations.

7 | CHAIRPERSON HILL: Okay. Thank you, Mr. Brown.

8 | Ms. Moldenhauer.

9 | MS. MOLDENHAUER: Good afternoon, Chairman Hill, and
10 | members of the Board. There has been much use of the term
11 | "irregularly shaped." We could describe a property as a heart
12 | shape, a rectangular shape, or a trapezoidal shape. The term
13 | "irregular" only describes how the property is where the lot is
14 | configured. It is not a specific type of lot that has specific
15 | rules of measurement.

16 | It has been confirmed by Mr. Bello and by Mr. LeGrant
17 | that this property falls under the interior lot definition. It
18 | is not a corner lot and is not a triangular lot. And therefore,
19 | under the Zoning Regulations, it is an interior lot. And interior
20 | lots are specifically identified as a type of lot and then has a
21 | specific type of rule of measurement for your lot width. There
22 | are statements that this -- that Maret the case actually still
23 | applies. Maret identified under ZR-58 and specifically said that
24 | at that time neither the Board nor the court had approved or held
25 | that a single measurement must be used in all circumstances.

1 That is not the case today.

2 ZR-16 did change the Zoning Regulations from ZR-58 to
3 create one single rule of measurement for interior lots. That
4 is a new statute that did not exist under the Maret case.
5 Therefore, Mr. Bello's statement that it could still be
6 applicable, and Mr. Brown's argument are incorrect legally that
7 the new regulations were not interpreted under Maret, and that
8 the court may have come to a different conclusion.

9 That being said, we believe that the regulations are
10 clear and that there is a -- they're plain language. Because
11 the language is plain, the Zoning Commission and the Board of
12 Zoning Adjustment and the zoning administrator must apply the
13 plain language. In Citizens' Association v. the Board of Zoning
14 Adjustment, they state that when the meaning of a statute is
15 clear based on plain language, the statute must be enforced
16 according to its terms, and there is no need to engage in analysis
17 of legislative intent.

18 However, all that the petitioner, the appellant has
19 been saying is the intent, the intent, the intent of the
20 regulations, pointing not to any specific language in the rules.
21 However, they also -- even though you do not need to go to the
22 intent, because the language is clear and plain, they provide no
23 basis. I heard no quote from either the Office of Planning, no
24 quote from any Zoning Commission hearing where these regulations
25 were put into effect to try to identify that this intent that

1 they so ardently articulated and put forward is actually based
2 in something, because it is not.

3 There is nothing in the regulations that bar certain
4 shape. If I wanted to build a heart-shaped lot because I wanted
5 my spouse to have a heart-shaped lot, I could do that. There's
6 nothing that bar how you design or shape a lot. And the zoning
7 administrator here properly complied with the Zoning Regulations,
8 which are more detailed, have a three-part requirement and we're
9 not copied or we're not part of the older Zoning Regulations in
10 ZR-58.

11 We believe that there is nothing unnatural about the
12 proposed design. As we showed you from the surrounding
13 neighborhood. the design of these lots are very similar to the
14 other character of lots in the area. We also put forward that
15 the Preservation Committee and the co-chair is hypocritical in
16 challenging flagstem lots given the fact that many of their
17 members and even their co-chair actually have a lot of that same
18 design and shape, and that nothing in the Zoning Regulations
19 limit that.

20 We believe that the Board has ample information in this
21 record to make a decision today and to deny this application and
22 allow all of the building permits to stand on their face as for
23 lot width and lot area.

24 CHAIRPERSON HILL: Okay. Great. Thank you, Ms.
25 Moldenhauer. Thank you for your presentation.

1 Mr. Green.

2 MR. GREEN: I'll take a few minutes, if I could. Thank
3 you. By the way, thanks to all those witnesses, the parties, as
4 well as the Board for your indulgence today. I know it's -- I'm
5 certainly grateful for your (audio interference) conditions.

6 So there's a couple of things I just wanted to add to
7 echo what Ms. Moldenhauer had said. And what is glaring, if you
8 will, in the appellant's brief as well as the testimony today is
9 really a lack of citation to the Zoning Regulations themselves.
10 What I heard was irregular shaped, method of calculation, people
11 (audio interference), average lot width, all certainly the
12 rhetoric that the appellant wishes the Board to see as persuasive;
13 however, it isn't -- there is nothing there. It's very clear.

14 And very briefly, the citations to Subtitle C-303.2 as
15 well as C-304.1, again, we're talking about lot frontage as well
16 as calculations for lot width in terms of an interior lot, as
17 has been stated by the property owner's counsel, was evident, it
18 was clear, it was demonstrated.

19 Mr. LeGrant provided the testimony, showed the slides
20 in which how those particular provisions were in play with these
21 particular lots and ultimately with the building permits. So
22 although the appellant's claim to some older case law and
23 certainly the ZR-16 language in basis, I don't think they really
24 have a genuine case here. I understand that you're frustrated
25 with the shape of the lots, but that alone does not invalidate -

1 - does not invalidate in and of themselves. And the zoning
2 administrator properly determined both the lot and the permits
3 in this case. So respectfully, we would ask that the Board deny
4 this appeal, and I want to thank you very much for your time.

5 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Green,
6 and thank you for your presentation.

7 Does the Board have any final -- anything before I
8 close the hearing and the record?

9 Okay. Well, I thank you all very much for your
10 participation. It's been now four hours, something like that,
11 which is not that bad for an appeal, and so thank you very much.
12 And I'll excuse all of you, and I will close the hearing and the
13 record and come back to my Board members.

14 Okay. This is what I propose. I was going to propose
15 we take a 10-minute break, okay, and gather our thoughts and
16 decide -- I might actually have to reload my computer. It seems
17 to be lagging. And then decide whether or not we are ready to
18 deliberate to this today. I mean the record, I think was very
19 bold to begin with, and I actually went over everything in the
20 record as I know all of you did. And then we heard now four
21 hours of testimony.

22 And while it's fresh in my mind, I would prefer to take
23 a stab at deliberation, and so that's what I would like to do.
24 However, I will give all of you ten minutes to kind of think
25 about what you either want to start to talk about during

1 | deliberation and/or if you think you need more time. Okay. And
2 | so let's go ahead and take 10 minutes. It's 3:30. At 3:40,
3 | we'll come back. Okay. I'm going to log off and log back on,
4 | and then we'll see if we can deliberate and/or if we need a
5 | postpone, but I'm leaning towards deliberation at this point.
6 | Okay. Thank you.

7 | (Whereupon, the above-entitled matter went off the
8 | record and then resumed.)

9 | CHAIRPERSON HILL: Mr. Moy, can you hear me?

10 | Do you need anything from me, Mr. Moy? No. Okay.

11 | Mr. Blake, are you there? Okay. I got Mr. Blake.

12 | All right. Can everyone hear me? Okay.

13 | All right. So I don't know what your thoughts are. I
14 | think that I'd like it like -- I would like to at least take a
15 | crack at deliberations and then see -- and this is the circle.
16 | I'm going to go around, and if you all don't mind, just so you're
17 | prepared. I'm going to go with me, Mr. Smith, Vice Chair John,
18 | Mr. Blake, and then Commissioner Miller. Okay. And so that's
19 | kind of the order. I really would like to have an open discussion
20 | in this and see kind of where we get.

21 | Since I tend to run -- well, since I have to run the
22 | hearing, I don't have an opportunity to write down as clearly the
23 | things that I'm thinking about, so it might be a little jumbled,
24 | but I'll try to do my best. I also would like to state for the
25 | record that sometimes I get a little frustrated, and I apologize

1 | for getting frustrated during the hearings, and just wanted to
2 | make sure that that's also on the record for any future stain on
3 | my reputation. So let's see.

4 | I think that to me, it seems clear. I mean I do
5 | understand the appellant and what they're trying to do, which it
6 | seems to me I'm a little confused by is keep a big lot of land
7 | open. I don't understand exactly what the intent here is. I
8 | mean I would understand that that people don't want, I guess new
9 | development right next to their home. However, I think that
10 | seven houses on 3.58 acres does not seem like a great level of
11 | density to me. However, I can understand if you wanted to or
12 | had an opportunity to try to prevent this from happening, and
13 | also have this ability that I don't see why I wouldn't necessarily
14 | try to do that as well to preserve the -- what I had hoped was
15 | going to be, I guess forest land, indefinitely. I'm not exactly
16 | clear on that angle, however, that's not what we're charged with.
17 | It's whether or not in the appeal, the zoning administrator had
18 | erred in issuing those permits. And to me, it seems very clear
19 | that ZR-16 made a single rule of measurement. And as was given
20 | in testimony, there's plain language to that estimate. I mean
21 | no one was questioning the lot area. I mean they're extremely
22 | large lots, right, so no one's questioning that. How is the lot
23 | width being (audio interference) and how is the lot frontage
24 | being defined, right?

25 | So in Subtitle B 101.2, it defines lot width, which was

1 the testimony. In Subtitle C-304.1, if it's an interior lot, the
2 lot width shall be determined as follows: A, B and C, right?

3 Then the zoning administrator testified how he complied
4 with A, B and C, and then showed those in each individual lot.

5 Then there was a discussion of -- and I don't even know
6 whether or not the appellant made an argument that the zoning
7 administrator necessarily made an error. It's just that they
8 thought it was absurd, that how the zoning administrator came to
9 that decision was absurd, because of Murray, right? And Murray
10 was before ZR-16. So ZR-16, I believe, is trying to fix Murray,
11 right. It's giving the zoning administrator clarity as to how
12 he or she is supposed to determine the lot width.

13 And they have been given out plain language in the
14 regulations on how they're supposed to do that. Whether that
15 looks weird or absurd or odd in terms of the configuration of
16 the lot doesn't matter, because that's what is in the regulations
17 now, and that's how the zoning administrator is supposed to
18 interpret those regulations. There's not a part of the
19 regulations that says if you think it looks a little funny, or
20 if you think they're trying to manipulate it, then you don't have
21 to approve the permit. That's not what it says. It says this
22 is how you're supposed to determine the regulations, and I believe
23 the zoning administrator did that.

24 To the argument that again, it's absurd, I will even
25 go -- and I did think that it was helpful that the property owner

1 had supplied that plat or overview, whatever it is, of the
2 different other lots in that surrounding area. And that to me,
3 again, it was more absurd to say that you're only supposed to
4 like again, out of 3.78 acres of land, you can't have seven homes
5 with that. And then I have to look at the square footage that
6 they provided in the presentation as to each lot and how each
7 lot, the size of each lot, I mean, it's beyond even what is in
8 that area, right. That there's 142,876 square feet, and I think
9 it's a little absurd that you can't get seven homes out of that
10 much square footage, right?

11 And then if you look at the -- again, slide 12 of the
12 property owner's lawyer and their Cozen O'Connor, which is
13 Moldenhauer, to the last slide deck, there's plenty of pipestem
14 lots all around there. And a pipestem lot is not that odd a lot,
15 I mean, it's normal, right?

16 But getting back to -- and I'm jumping around, and I
17 might even have other things to add as we kind of get through
18 this, but I don't think the zoning administrator made any error.
19 I don't even think it's necessarily that the appellant says that
20 he necessarily made an error. They just don't think that -- they
21 think that the conclusion was absurd. And there's nothing in the
22 regulations that say that the conclusion -- that the zoning
23 administrator gets to say whether something is absurd or not.

24 In fact, that would be way too much power for one person
25 to have. They can just decide that something is absurd, and they

1 don't want to grant the permit.

2 So I think that the appellant did not make their case.
3 I don't think that the zoning administrator made an error. I
4 think the zoning administrator did what they were -- he was
5 supposed to do in issuing the permits. And so I will be voting
6 to deny the appeal at this point.

7 And Mr. Smith, if you're prepared to at least help with
8 further clarity, even if you repeat it, it would be helpful
9 because this is going to probably get contested again. And
10 unfortunately, this is going to go on and on and on perhaps.

11 BOARD MEMBER SMITH: Okay. So I believe I know what
12 the central question is on the part of the appellant. So the
13 question is, is the configuration of the lot absurd as you said,
14 Chairman Hill. And I believe that the argument of the appellant
15 is that irregular implies absurd. And if so, the BZA, the zoning
16 administrator error in there -- in approving the irregular shaped
17 lots. So I'll first I'll say irregularly shaped does not mean a
18 lot is non-conforming.

19 A lot would be considered non-conforming if it did not
20 meet the criteria of measurement as defined within the Zoning
21 Regulations. And as you stated, Chairman Hill, per the ZR
22 Regulations in evaluating the subdivision of interior lots, the
23 zoning administrator shall, the word -- the keyword is "shall,"
24 apply the standards of Subtitle C-304.1 for lot width.

25 The provision states shall and does not provide the

1 zoning administrator with flexibility. The language is clear and
2 plain. He shall apply those provisions. And any other
3 interpretation by the zoning administrator trying to apply some
4 form of intent other than the plain language of the Zoning
5 Regulations of C-304.1, to me, could be considered arbitrary and
6 capricious on the part of the zoning administrator, which is,
7 that's a lawsuit in and of itself.

8 Also, the ZR states that the zoning administrator must
9 apply the standard -- Subtitle C-303.2 for a minimum lot width.
10 All the lots as presented, while they may be irregularly shaped,
11 in the context they are not rectangular in nature, and a lot of
12 lots in this particular area, and I will say on a cul-de-sac are
13 not rectangular in nature. And they are -- they may be irregular,
14 but they are legal conforming lots.

15 And I believe that the zoning administrator did not
16 err, based on that information did not err in his interpretation
17 of those two primary provisions in granting the creation of these
18 lots and the issuance of building permits for this. So based on
19 the testimony today, and I agree with you, Chairman Hill, I am
20 not in support of the appeal.

21 CHAIRPERSON HILL: Okay. Thank you.

22 And then I would also point out that the zoning
23 administrator was clear as to how he was being compliant with the
24 lot frontage. (Audio interference) that is another issue that I
25 do not think it held water with the -- from the appellant.

1 Vice Chair John.

2 VICE CHAIR JOHN: So you both did such a good job of
3 summarizing the issues, and so I really don't have a lot to add.
4 I agree with everything you said. I think that the more specific
5 provision of C-304 controls, and as Board Member Smith says, it's
6 mandatory. Shall means "shall, and that's the rule of measurement
7 that the zoning administrator has to apply for interior lots.

8 And so I think that the line of cases on the ZR-58 are
9 simply not relevant here because this particular provision was
10 not in ZR-58. And I believe that the property owner's attorney
11 stated the correct rule in statutory interpretation in looking
12 at conflicting provisions in the statute and that the more
13 specific provision should control.

14 And in that vein, the regulation speak to interior
15 lots, exterior lots, triangular lots. Let's see. Alley lots,
16 through lots, and there is very little mention anywhere of an
17 irregular lot except for this provision and one other provision.
18 So I believe the application of C-304 is the more reasonable
19 provision granted the structure of the regulation and the fact
20 that it did not exist under ZR-58.

21 Now, if -- the appellant argues if the lot width is
22 inaccurate, then the lot frontage, which requires in this
23 particular case, 75 percent of lot width, is also inaccurate.
24 And because I believe that the lot width was calculated correctly
25 under C-304, then I believe the lot frontage is correct.

1 And so in summary, I do not believe the administrator
2 erred, and I agree with the notion that the administrator does
3 not have the authority to decide what's absurd and what's not.
4 And as he said, if the lot complies with the area requirements,
5 the frontage and the lot width, there is very little discretion
6 to deny the permit. So in summary, I don't believe there is any
7 error on the part of the zoning administrator.

8 CHAIRPERSON HILL: Thank you, Ms. John. And also thank
9 you for help with the discussion about the frontage.

10 Mr. Blake.

11 BOARD MEMBER BLAKE: You guys have covered a great deal
12 in that. ZR-16 clearly provides the definitions to specifics
13 about dimensions and detailed measurement standards for the R-21
14 Zone. As I look at it, it's pretty clear that the zoning
15 administrator executed the measurement as detailed in the ZR-16
16 provisions.

17 What was striking to me, and certainly I agree with
18 everything that's been said to this point, but to me, at the
19 outset, Mr. Bender pointed out that he had decided to do what
20 needed to be done to get this done.

21 In other words, he said that the regulations determine
22 the design of these lots. It wasn't that he designed the lots
23 and then said, let's do something. So he basically said, let
24 the regulations determine these lots. So they -- to the letter
25 of the regulations designed the lots such that they fit, and the

1 | measurements were accurate based on the design -- the prevailing
2 | regulations. Had the regulations been different, the lots would
3 | have been designed differently. So I think from that perspective,
4 | I fully believe that whether the result was absurd or not, the
5 | result was the reflection of what was consistent with the
6 | regulations and everything from the measurement required
7 | standards, the definitions of what is an interior lot, the lot
8 | frontage, the dimensions, all that are clearly articulated in ZR-
9 | 16. And I recognize all the other issues between '58 and this,
10 | and I'm clearly comfortable that ZR-16 rules in this case. And
11 | so from my perspective, I feel very comfortable that the zoning
12 | administrator did not err in his calculations, and I'll be
13 | prepared to deny the appeal.

14 | CHAIRPERSON HILL: Okay. Thank you, Mr. Blake, and
15 | also thank you for pointing that out.

16 | I mean the property owner said regulations govern.
17 | They were like, you know, told the architect design it the way
18 | the regulations say you're supposed to design it. So that's very
19 | clear as well, I think, testimony.

20 | Commissioner Miller.

21 | COMMISSIONER MILLER: Thank you, Mr. Chairman. And
22 | thank all my colleagues and you for your comments, which I concur
23 | with.

24 | I think the property owner may have designed it to
25 | maximize the number of lots that could be developed. But I think

1 | it is consistent with the Zoning Regulations both with the
2 | irregularly configured lots are permitted, and it complies with
3 | the zoning regulations on the lot width and lot frontage that are
4 | specifically at issue in this case when you read the plain
5 | language of the Zoning Regulations that are in existence at this
6 | time.

7 | So I agree that the building permit, the appeal should
8 | be denied based on compliant lots, albeit very irregularly
9 | shaped, but as you pointed out, Mr. Chairman not uncommon -- I
10 | think Mr. Smith pointed out, not uncommon on cul-de-sacs or in
11 | this neighborhood even adjacent to this property. So I think the
12 | regulations have been complied with in terms of lot frontage and
13 | lot width, and I would support denial of the appeal along with
14 | all of you. Thanks.

15 | CHAIRPERSON HILL: Okay. Thank you and thank you all
16 | very much for your help and support during this deliberation and
17 | also this process.

18 | I'm going to make a motion to deny appeal No. 20402 as
19 | captioned and read by the Secretary, and ask for a second, Ms.
20 | John.

21 | VICE CHAIR JOHN: Second.

22 | CHAIRPERSON HILL: Thank you, Ms. John.

23 | Mr. Moy, the motion has been made and seconded. Could
24 | you please take a roll call?

25 | MR. MOY: Thank you, Mr. Chairman.

1 When I call each of your names, if you would please
2 respond with a yes, no, or abstain to the motion made by Chairman
3 Hill to deny the appeal. The motion was seconded by Vice Chair
4 John.

5 Zoning Commissioner Rob Miller.

6 COMMISSIONER MILLER: Yes, to deny the appeal.

7 MR. MOY: Mr. Smith.

8 BOARD MEMBER SMITH: Yes, to deny.

9 MR. MOY: Mr. Blake.

10 BOARD MEMBER BLAKE: Yes, to deny.

11 MR. MOY: Vice Chair John.

12 VICE CHAIR JOHN: Yes, to deny.

13 MR. MOY: Chairman Hill.

14 CHAIRPERSON HILL: Yes, to deny.

15 MR. MOY: Then staff would record the vote as 5-0-0,
16 and this is on the motion made by Chairman Hill to deny the appeal
17 (audio interference) decision. This motion to deny the appeal
18 was seconded by Vice Chair John. Also, in support of the motion
19 to deny the appeal is Zoning Commissioner Rob Miller, Mr. Smith,
20 and Mr. Blake. The motion carries, sir, on a vote of 5-0-0.

21 CHAIRPERSON HILL: Okay. Great. Thank you.

22 All right. Thank you so much for all your help today.

23 And Mr. Moy, is there anything else required of the
24 Board?

25 MR. MOY: Nothing from the staff today, sir.

1 CHAIRPERSON HILL: Okay. Then we stand adjourned,
2 everyone. Thank you.

3 (Whereupon, the above-entitled matter off the record
4 at 4:07 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 07-21-21

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
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