

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 1, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:08 a.m. EST, Lorna John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA JOHN, Vice Chair
CARL BLAKE, Member
CHRISHAUN SMITH, Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chair
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
MATT JESICK
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the
Regular Public Hearing held on December 1, 2021.

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

10:08 a.m.

VICE CHAIR JOHN: Let's move into the first hearing case. And I believe Zoning Commission Chairman Hood is joining us now.

ZC CHAIR HOOD: Good morning, everyone.

VICE CHAIR JOHN: Good morning, Chairman Hood.

When you're ready, Mr. Moy.

MR. MOY: All right. Here we go. So this is Case Application Number 20449 of PD 236 Properties, LLC. This application, Madam Vice Chair, is amended. And, if you recall, this is a bifurcated application as follows.

This is a request for special exception for the rear yard requirements of Subtitle E, Section 306.1, pursuant to Subtitle E, Section 5201, and Subtitle X, Section 901.2, and special exception from the lot occupancy requirements, Subtitle E, Section 304.1, pursuant to Subtitle E, Section 5201; Subtitle X, Section 901.2, or -- this is where the bifurcation comes in -- or for an area variance from the lot occupancy requirements of Subtitle E, Section 304.1, pursuant to Subtitle X, Section 1002.

This would partially raise the existing attached principal dwelling unit and to construct a third-story addition with both roof deck and roof deck additions, as well as a cellar and a carport below the rear deck addition in the

1 RF-1 Zone. The property is located at 1173 3rd Street,
2 Northeast, Square 773, Lot 274.

3 As the Board will recall, this was last heard at
4 the Board's public hearing on October the 6th. My final
5 remark, Madam Vice Chair, is that there is a filing in the
6 record within the 24-hour block where there is a withdrawal
7 letter from Cozen O'Connor, who originally, or up to this
8 point, had represented as the Applicant's Counsel. So I ask
9 that the Board allow that into the record.

10 VICE CHAIR JOHN: Thank you, Mr. Moy. I'll allow
11 that into the record.

12 And is there also a PowerPoint presentation of
13 Exhibit 82 from the ANC? Yes or no?

14 MR. MOY: Yes, I believe there is. I believe
15 there is, and I can ask Mr. Eckenwiler to confirm that.

16 VICE CHAIR JOHN: Okay. It's already in the
17 record. Okay.

18 MR. MOY: Yes.

19 VICE CHAIR JOHN: So can you let the parties in,
20 please? Oh, I already see Mr. Eckenwiler. Mr. Young, can
21 you let the parties in?

22 MR. YOUNG: Everyone is in.

23 VICE CHAIR JOHN: Okay. So it's my screen, then.
24 Okay. I can see everyone.

25 Will the parties introduce themselves for the

1 record, please? I'll start with you, Mr. Nguyen.

2 MR. NGUYEN: Hi. I'm the owner of the property
3 for 1173 3rd Street, Northeast. I'm here to represent myself
4 since I no longer have Counsel.

5 VICE CHAIR JOHN: All right. And could you also
6 give your address?

7 MR. NGUYEN: My address is 455 Massachusetts,
8 Northwest, 3368.

9 VICE CHAIR JOHN: Thank you.

10 Mr. Eckenwiler?

11 ANC COMMISSIONER ECKENWILER: Good morning, Madam
12 Chair, members of the Board. Mark Eckenwiler here on behalf
13 of ANC 6C.

14 VICE CHAIR JOHN: Okay. Thank you.

15 So, Mr. Nguyen, can you fill us in on where we
16 are?

17 Oh, let me go back to Mr. Eckenwiler. Is your
18 presentation already in the record?

19 ANC COMMISSIONER ECKENWILER: Yes, Madam Vice
20 Chair. It's, I think, Exhibit 82 or 83.

21 VICE CHAIR JOHN: Okay. Thank you.

22 So, Mr. Nguyen, if you can just fill us in on
23 where we are after -- in terms of your presentation and what
24 happened since our last hearing.

25 MR. NGUYEN: I apologize for missing the deadline

1 to seek an extension, but there was some miscommunication
2 between myself and my former Counsel. So I am here today to
3 request an extension, and I don't have any presentation. I
4 don't have anything prepared other than that.

5 VICE CHAIR JOHN: Okay. And your request is based
6 on the need to secure counsel? Is that what you're saying?

7 MR. NGUYEN: Yes. It's to secure to new counsel
8 and strategy, yes.

9 VICE CHAIR JOHN: Okay.

10 I wanted to hear from the rest of the Board. Does
11 anyone have any comments?

12 Oh, before I go to the Board, I should go to Mr.
13 Eckenwiler to see if he opposes that request.

14 ANC COMMISSIONER ECKENWILER: Thank you, Madam
15 Chair. Yes, I think it's appropriate for this case to go
16 forward today. Let me explain why briefly.

17 If you recall, this case has already been heard
18 twice before, on July 28th -- that was continued to October
19 6th. Both of those were full hearings. At the conclusion
20 of the October 6th hearing, the Board closed the record
21 except for two certain discrete requested items. The Board
22 gave the Applicant five weeks to file those.

23 So the Board has already had the issues and the
24 facts in this case aired to it very fully. The Board's
25 request last time was just for a very small supplemental

1 filing. That was not made by November 13th for whatever
2 reason, but the Applicant had five weeks to do that. During
3 that period, he still did have Counsel.

4 And I'm ready to go forward. The ANC is ready to
5 go forward. And I think the Board should proceed with the
6 case now.

7 VICE CHAIR JOHN: Thank you, Mr. Eckenwiler.

8 I'd like to hear from the Board. Anyone have
9 anything to add? I don't see any hands up.

10 Chair Hood?

11 ZC CHAIR HOOD: I'll let Board Member Blake go
12 first, Madam Chair. I'll follow his lead.

13 (Simultaneous speaking.)

14 ZC CHAIR HOOD: I thought his hand was up.

15 VICE CHAIR JOHN: Oh, was your hand up?

16 MEMBER BLAKE: My hand's up. Thank you very much,
17 Commissioner.

18 This is a tough situation because this case has
19 lingered for quite a period of time, but it's a very
20 challenging situation because it has some very interesting
21 questions, even though it's got the variance in it as well
22 as the special exceptions. And there are a lot of issues
23 that come up in this that should be addressed.

24 I think the not having appropriate counsel at this
25 point is a factor, and it may have contributed to the late

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1 filings. But I'd like to hear that, obviously, from the
2 Applicant if that is the case.

3 But this certainly is something that we could
4 possibly decide today, but I think that if the Applicant
5 would want to submit some revisions that more appropriately
6 fit the parameters of what we're asking for, that would be
7 very helpful.

8 As you can recall, we did not receive any
9 submissions, but we did express concerns about the variance
10 in our last hearing, and we also realized that we were
11 talking a lot about the character of the -- and pattern of
12 houses and so forth and the appearance of the facade. And
13 none of those issues were addressed.

14 Obviously, there may be reason for that, but I
15 think it would be attractive to have the Applicant have an
16 opportunity to address these issues. But I think it is clear
17 that we should make clear what issues we do have, if any.

18 And I would like also for Mr. Eckenwiler, if
19 possible, to give us a sense of where the hard points were
20 for -- and maybe that's in his presentation that you have for
21 us today, but I'd like to get a better understanding, if we
22 do provide the opportunity to continue the case, to make it
23 crystal clear what our expectations would be going forward.
24 That's my thought.

25 VICE CHAIR JOHN: Chairman Hood?

1 ZC CHAIR HOOD: Thank you, Madam Chair. I was
2 coming from a pretty much similar angle, but I will say that
3 I was going to ask Mr. Nguyen if he had had conversations
4 with Mr. Eckenwiler because Mr. -- and the ANC's presentation
5 to us -- there's a heavy lift as far as I'm concerned, and
6 I think Boardman Blake was alluding to some of that as well.

7 But I just think that -- and I'm actually trying
8 to say I think it's Nguyen -- Mr. Nguyen, is it? Am I
9 pronouncing your name correct?

10 MR. NGUYEN: Nguyen.

11 ZC CHAIR HOOD: I'm actually trying to say --

12 MR. NGUYEN: It's like a W-I-N-N sound.

13 ZC CHAIR HOOD: Okay. Mr. Nguyen. So I heard you
14 say you're going back after counsel. And I think if you can
15 follow -- if you look at this -- if we can come within the
16 regulations, you wouldn't have to pay that money to counsel.
17 And I'm not trying to get in your pocketbook and into your
18 money, but I'm just trying to help you.

19 And I think if the discussion -- I'm not sure if
20 you've had a discussion with Mr. Eckenwiler and the
21 Commission to find out what their concerns are. There could
22 be a happy medium, and we could make this work. But right
23 now, I think you have a heavy lift, especially with the
24 presentation I'm looking -- especially when it comes to E
25 5201.

1 But I think I would suggest that you have that
2 conversation with Mr. Eckenwiler. You may have already have,
3 but I would suggest you do and here's the thing.

4 MR. NGUYEN: I have not, so I --

5 (Simultaneous speaking.)

6 ZC CHAIR HOOD: Okay. I also -- because I think
7 that could be very helpful if they're willing, and that will
8 save you from having to go get a counsel. Then you can come
9 back before us. You all are holding hands. We all agree
10 with saving the character of the neighborhood, and go from
11 there.

12 So that's just my suggestion. And thank you,
13 Madam Chair.

14 VICE CHAIR JOHN: Thank you, Chairman Hood.

15 MR. NGUYEN: Thank you, Chairman Hood.

16 VICE CHAIR JOHN: Mr. Smith? I saw your hand
17 raised.

18 MEMBER SMITH: Yeah.

19 VICE CHAIR JOHN: Go ahead.

20 MEMBER SMITH: Sure. Just to piggyback on what
21 my other colleagues have stated, I do agree with Mr. Blake
22 that not having counsel could be -- the reason for us to
23 grant your request for an extension.

24 And I do agree with him and Mr. Hood, and if
25 providing some additional information on probably a little

1 bit of where we stand from this standpoint -- so today,
2 without this time extension, I would say that I was not
3 willing to grant the variance for this deck. And I believe
4 we kind of made that clear in the last hearing, so I guess
5 that's the reason for the bifurcation.

6 And I do also agree with Mr. Hood, but I do
7 believe as it stands in its current design that this is a
8 heavy lift for me regarding even the special exception
9 because currently, I think based on the size and scale of
10 this project, it may not meet the criteria of E 201.4,
11 specifically -- shall specifically see where shall not
12 substantially or visually intrude upon the character, scale,
13 and pattern of houses.

14 So there, that information, and given where the
15 ANC stands -- we can hear from Mr. Eckenwiler if we need
16 additional clarification on where the ANC stands -- it is a
17 heavy lift for me.

18 So, if we do grant this time extension, I just
19 wanted to give you that information going forward. And you
20 can use that information to weigh any decision that you may
21 go forward with after this hearing, whether you would reduce
22 the size of your proposed addition or, as Mr. Miller stated,
23 not seek variance or special exception.

24 So I just wanted to make my opinion known.

25 VICE CHAIR JOHN: Thank you, Mr. Smith. So --

1 MR. NGUYEN: Thank you, Mr. Smith.

2 VICE CHAIR JOHN: So, Mr. Nguyen, I'm inclined to
3 grant the request to postpone. And I really don't think it's
4 reasonable to expect you to go forward without having an
5 attorney present because this case has a lot of significant
6 issues, as you've heard.

7 MR. NGUYEN: Yes.

8 VICE CHAIR JOHN: And please bear in mind that we
9 were prepared to move ahead today and decide the case, and
10 each time we postpone, it means the Board and everybody who
11 touches this case has to review it again. So, hopefully, the
12 next time you come before us, it will be the last time.

13 MR. NGUYEN: I hope so, too.

14 VICE CHAIR JOHN: Okay. Thank you.

15 So let me turn to Mr. Moy.

16 Mr. Moy, I don't believe we have to make a motion
17 on this and that the Board can continue the case without
18 voting on it. So what is your schedule like, Mr. Moy? Are
19 we looking at April?

20 MR. MOY: What would be accommodating for the
21 Board? Because of the caseloads, which have been challenging
22 of late, I would suggest, Madam Vice Chair, returning on this
23 application on March 9th, which I believe would accommodate
24 Zoning Commission Chair Anthony Hood.

25 If not March 9th, then as you suggested, Madam

1 Vice Chair, a date in -- or it could be -- I could probably
2 -- without prolonging this any longer, March 23rd. So,
3 again, March 9th or March 23rd.

4 VICE CHAIR JOHN: Thank you, Mr. Moy.

5 Mr. Eckenwiler, if you're still here -- so do
6 those dates work for you?

7 ANC COMMISSIONER ECKENWILER: Madam Chair, just
8 a point of information on the first date, March 9th, the ANC
9 meets on that evening. So the latest that we could have the
10 Applicant come in with revisions would be our meeting cycle
11 in February.

12 I don't know how much time Mr. Nguyen anticipates
13 needing in order to attain counsel and contemplate revisions,
14 but our Zoning Committee meets on February 2nd, and then the
15 full ANC meets on the 9th. So if those dates are not going
16 to be agreeable to him, then -- if he can't get it done by
17 then, basically, then I think March 9th is probably not a
18 good idea.

19 I will tell you that I personally have foreign
20 travel scheduled for March 23rd. Obviously, that may or may
21 not change depending on what's happening in the world, but
22 right now I'm not available that date.

23 VICE CHAIR JOHN: Okay. Thank you, Mr.
24 Eckenwiler.

25 So, Mr. Nguyen, what's your preference, March 9th

1 or March 23rd?

2 MR. NGUYEN: Either works for me.

3 VICE CHAIR JOHN: Okay. Mr. Moy, let's set it for
4 March 9th.

5 Okay. Thank you. So, Mr. Nguyen and Mr.
6 Eckenwiler, this case is continued to March 9th, and we have
7 not closed the record. So I'll see you then. Thank you.

8 ANC COMMISSIONER ECKENWILER: Madam Chair, if I
9 may, can I suggest that the Board perhaps do what it did at
10 the October meeting and set a schedule for filings to be
11 made?

12 VICE CHAIR JOHN: Sure.

13 Mr. Moy, can we work back and see how to
14 accommodate Mr. Eckenwiler's request?

15 MR. MOY: Yeah. So I'm glad Mr. Eckenwiler raised
16 that. That thought had occurred to me as well. Let's -- I'm
17 pulling up my calendar. Okay. March 9th, working backwards.

18 If the ANC and other parties, if there are any
19 other parties to the application other than the ANC as well
20 -- including the ANC; maybe that's the way I should say that
21 -- if that can be filed in the record by -- let's see. March
22 9? February 28, which is a Monday, Mr. Eckenwiler.

23 And if the Applicant can make their filing by two
24 weeks prior to that, which would be February the 14th. But
25 --

1 (Simultaneous speaking.)

2 ANC COMMISSIONER ECKENWILER: So, Mr. Moy --

3 MR. MOY: Yeah.

4 ANC COMMISSIONER ECKENWILER: -- the difficulty
5 here, potential difficulty, is that if those materials are
6 not filed until the 14th, then the ANC's meeting cycle will
7 have already concluded for February. I'm just trying to
8 throw a date out for your consideration --

9 MR. MOY: Yeah. I'm glad you brought that up
10 because I forgot your dates that you gave me earlier because
11 these have to be prepared in time for your ANC meeting and
12 your Zoning Committee meeting.

13 ANC COMMISSIONER ECKENWILER: So what would work
14 for us, if the materials were filed by Monday, January 31st,
15 that's two days before the Zoning Committee meets. I think
16 that's ample time for the Committee to ingest that new
17 filing, and then the ANC meets a week after that. So that
18 would certainly work for us.

19 MR. MOY: Okay. So --

20 ANC COMMISSIONER ECKENWILER: And then we can get
21 our filing in pretty much anytime after February 9th.

22 MR. MOY: Okay. Okay. Okay. So, then, the
23 Applicant should submit their filings in the record, and
24 straightaway to the ANC of course, by January 31st. Then
25 responses, including response from the ANC, by February the

1 28th. And then continued hearing on March the 9th.

2 So those are the dates, Madam Vice Chair.

3 VICE CHAIR JOHN: Thank you, Mr. Moy. And the
4 Office of Planning's response would be due --

5 MR. MOY: Would be due Monday, February 28th.
6 Well, actually, let me think about it. It should -- the
7 benefit of the ANC's response.

8 ANC COMMISSIONER ECKENWILER: Mr. Moy, I'm happy
9 to move up the date for the ANC's filing if that would make
10 this work. I can't remember when the holiday is in February,
11 but around the 21st or the 18th of February, we can get our
12 submission in.

13 MR. MOY: Okay. All right. Let's do -- yeah, the
14 holiday, Presidents' Day, is February 21st, which is the
15 Monday. So if you want to submit that by Friday, February
16 18th, that would work. Is that good? Is that too early?

17 ANC COMMISSIONER ECKENWILER: No, that's fine.

18 MR. MOY: Okay.

19 VICE CHAIR JOHN: Good morning, Mr. Jesick. Mr.
20 Jesick?

21 MR. JESICK: Good morning, Madam Vice Chair,
22 members of the Board.

23 VICE CHAIR JOHN: I just wanted to give you an
24 opportunity to weigh in on the date of the 28th, which is
25 when OP's response would be due.

1 MR. JESICK: Thank you. Yes, the 28th will be
2 fine for OP.

3 VICE CHAIR JOHN: All right. Thank you.
4 Thank you, Mr. Moy.

5 So, if there's nothing further, this case will be
6 continued to March 9th.

7 Oh, one more thing, Mr. Nguyen?

8 MR. NGUYEN: I just want to ask Board Member
9 Smith, could you expound more on -- you were talking about
10 reducing the size of the project? I just wanted to have a
11 better understanding on that.

12 MEMBER SMITH: Specifically height, for me.

13 MR. NGUYEN: All right.

14 (Simultaneous speaking.)

15 MR. NGUYEN: -- by right height, it's too high or
16 it's too tall for the neighborhood?

17 MEMBER SMITH: I do believe that the size, the
18 height and the scale of it, is out of character as designed.

19 MR. NGUYEN: Is out of scale for the block?

20 MEMBER SMITH: Yes.

21 VICE CHAIR JOHN: So I see your hand up, Mr.
22 Blake. I am not sure that I'm okay with the back and forth
23 with the Applicant because I think the record is fairly
24 clear. And if your attorney should review the record, he or
25 she should be able to see how your application comes within

1 what's required in the regulations. And, certainly, you
2 should meet with the Office of Planning.

3 I don't really want -- well, this --

4 MR. NGUYEN: Oh, no. I mean, I was fully aware
5 of -- I'm aware of the zoning and the OP supporting it. I
6 just wanted clarification because he did say that it was a
7 heavy lift, so for me to proceed, I just wanted the
8 clarification as to some of the pushback on the project. So
9 that's all. I was just asking about clarification.

10 VICE CHAIR JOHN: So the record is really quite
11 clear, Mr. Nguyen, in this case, especially with respect to
12 the variance. And so the issue, the outstanding issue, is
13 the character, scale, and pattern of houses on that street
14 --

15 MR. NGUYEN: Okay.

16 VICE CHAIR JOHN: -- not the larger context, but
17 we can discuss that when we deliberate. But that's what the
18 record said. The record says -- I'm sorry. The regulations,
19 if you look at them again, say require compliance with the
20 character, scale, and pattern of houses along the street.
21 Okay?

22 MR. NGUYEN: Okay. Thank you.

23 VICE CHAIR JOHN: Thank you so much, and we'll see
24 you on March 9th.

25 MR. NGUYEN: Thank you.

1 VICE CHAIR JOHN: Okay.

2 Mr. Young, will you excuse the parties, please?

3 Thank you.

4 ZC CHAIR HOOD: Madam Chair, I think that's it for
5 me. You all have a great, long day.

6 VICE CHAIR JOHN: You're leaving us, Mr. --

7 ZC CHAIR HOOD: Yes, I am. Thank you, though.
8 You all have a good day.

9 VICE CHAIR JOHN: Okay.

10 ZC CHAIR HOOD: See you all later.

11 VICE CHAIR JOHN: See you next time.

12 ZC CHAIR HOOD: All right. You all enjoy.

13 VICE CHAIR JOHN: Okay. You're welcome.

14 So do we need to take a five-minute break, five-
15 or ten-minute break? Mr. Miller, Mr. Blake, Mr. Smith?
16 Okay. Let's take a five-minute break. Thank you.

17 (Whereupon, the above-entitled matter went off the
18 record at 10:33 a.m. and resumed at 10:43 a.m.)

19 MR. MOY: Yes. All right. The Board is back in
20 its public hearing session after a quick break, and the time
21 is at or about 10:43 a.m.

22 The next case application is Number 20543 of
23 Crystal and Jeffrey Cargill. This is an application for
24 variance relief in the matter of right uses in Subtitle U,
25 Section 301.1.

1 This would convert an existing three-story
2 attached principal dwelling unit and a two-story accessory
3 building to a three-unit apartment house in the RF-3 Zone.
4 The property is located at 316 2nd Street, Southeast, Square
5 0763, Lot 21.

6 There are preliminary matters in this application,
7 Madam Vice Chair. The first is there is a motion from the
8 Applicant to postpone and continue the case, number one.
9 Number two, there is a request for party status and
10 opposition. And I believe the name is Carol Howell,
11 H-O-W-E-L-L, represented by, I believe, David Hall.

12 And what else, what else, what else? I think
13 that's all I have. I think from the party status requester,
14 there was the following submitted within a 24-hour block.
15 So I would ask the Board address that, to allow it into the
16 record or not.

17 VICE CHAIR JOHN: Thank you, Mr. Moy. So it's not
18 in the record yet.

19 So, Mr. Young, would you let the parties in,
20 please?

21 Oh, okay. I see you. Thank you. Can you
22 introduce yourself for the record, Mr. Hall?

23 MR. HALL: Yes. This is attorney David Hall. I
24 represent Carol Howell, who's seeking party status in this
25 proceeding.

1 VICE CHAIR JOHN: Okay. Is there something in the
2 record? Did you submit something to the record, Mr. Hall?

3 MR. HALL: We had submitted an application for
4 party status quite some time ago. There was an additional
5 filing which was made yesterday of some photographs that
6 would be important if this matter is going forward. They
7 were submitted yesterday because there was some confusion as
8 to whether or not this matter was going to be continued
9 because there was a continuance that was being sought.

10 We also have two expert witnesses waiting in the
11 wing, if this matter is not continued, to testify, and also
12 an additional neighbor who has testimony, who lives on the
13 block.

14 VICE CHAIR JOHN: Thank you. So my question
15 really was whether or not you had submitted a letter of
16 representation.

17 MR. HALL: Yes, that was quite some time ago. The
18 appropriate form for party status with my representation on
19 it was submitted -- oh, it's been more than a month ago.

20 VICE CHAIR JOHN: Okay. Thank you. Okay. So
21 please give me a minute to get myself organized.

22 Okay. Thank you. I have too many papers in front
23 of me. So --

24 MR. HALL: It was actually November the 5th, I
25 believe, or November the 3rd, that the party status request

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1 was submitted. It's in the record, and it's marked.

2 VICE CHAIR JOHN: Okay. It's --

3 MR. HALL: I don't know the exhibit number.

4 VICE CHAIR JOHN: That's fine, Mr. Hall. It was
5 in my notes, and I just had to find it. So let's go ahead
6 and deal with the party status request first. And can you
7 tell us why your client should be granted party status?

8 MR. HALL: Yes, and she, I think, would like to
9 testify some to fill out what I'm saying.

10 She's seeking party status because she's an
11 abutting, adjoining neighbor. They share a party wall.
12 She's concerned about her light, her view, her privacy, and
13 her airspace.

14 She's also concerned about the horizontal nature
15 of the addition that is proposed. There's a very large
16 addition that's proposed, and if you'll look in the record,
17 you'll notice that the application that was filed basically
18 says that there's no intended construction or addition on the
19 principal house.

20 That, in fact, is not the case. There was a
21 building permit issued, and subsequently, that building
22 permit -- there was a Stop Work Order issued when it was
23 found out that the carriage house was in fact an apartment
24 that was illegal. There were extensive architectural plans
25 submitted for the addition to the main house, which I believe

1 either has two or three units in it now. Those were
2 submitted to DCRA.

3 Now, those plans were never submitted for the
4 variance to the Zoning Commission. They were never submitted
5 to you. In fact, what was submitted was a statement that
6 there was no intention for any addition or construction on
7 the main house.

8 So we have some concerns about the initial
9 application submission and the fact that the plans were not
10 submitted, and they were not -- my client did not receive
11 copies of those plans either that were submitted DCRA to get
12 permitting to do the addition on the main house.

13 So what's before you right now is an application
14 that does not include the plans for construction, and that's
15 why the Office of Planning, I believe, basically said the
16 application is lacking in critical information needed prior
17 to the Office of Planning finalizing the recommendation.

18 And the critical information is clarity on the
19 extent of construction to the principal building and the
20 accessory building, and provide dimensional architectural
21 plans and elevations for all work proposed on the property,
22 along with zoning compliance information for the principal
23 building and accessory building -- also to address the RF-3
24 special exception criteria found in Subtitle E, Section 5202,
25 and to demonstrate how the dwelling unit in the accessory

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1 building meets the criteria of U 301.1(c)(4) with respect to
2 access by providing a dimensional plat depicting the alley
3 width.

4 So, number one, my client would like party status
5 for the reasons I've given, and number two, it's clear that
6 the application that was submitted was incomplete and should
7 not have been processed.

8 VICE CHAIR JOHN: Okay. So thank you, Mr. Hall.
9 So, really, what the Board would like to hear is, how is your
10 client likely to be more significantly, distinctively, or
11 uniquely affected by the project? You --

12 MR. HALL: Yes.

13 (Simultaneous speaking.)

14 VICE CHAIR JOHN: -- to say something about being
15 the next-door neighbor.

16 MR. HALL: Yes. I'll address that, and my client
17 would like to testify about it. There have been photographs
18 submitted that show that the addition that is planned, which
19 looks like a three-story addition, is going to drastically
20 diminish the light that my client will receive on her
21 adjoining small property next door.

22 It's also going to block her view of D Street.
23 She'll have no view. It will block windows in her existing
24 structure so that light cannot be allowed in those windows.
25 And there's a proposed pergola and also deck on the property

1 which will allow an invasion into her privacy because anybody
2 on that pergola deck will have direct eyesight into the
3 windows in the rear of her property.

4 Also, the addition that is being proposed, which
5 Zoning has not been made aware of, is outside of the
6 horizontal character of the neighborhood and is not
7 characteristic of the pattern of homes there. And, also,
8 there's apparently going to be underpinning, which would also
9 potentially affect my client's structure, which is attached
10 to the subject property.

11 And my client would like to expand further on why
12 she should be granted party status.

13 VICE CHAIR JOHN: So, Mr. Hall, I don't know if
14 any other Board member needs to hear specifically from Ms.
15 Howell, but I believe you've represented her interests very
16 well and shown why she is more significantly and distinctly
17 or uniquely affected than any other person in the community
18 or the general public. And so I think I'm prepared to grant
19 her party status because she's the next-door neighbor.

20 Did you want to say something?

21 MR. CARGILL: Yes. We'd like to state our
22 opposition to that. Hi. My name's Jeff Cargill. We live
23 next door, 316 2nd Street. We're the Applicants for this.
24 Reviewing the --

25 (Simultaneous speaking.)

1 VICE CHAIR JOHN: Mr. Cargill? Mr. Cargill?

2 MR. CARGILL: Yes.

3 VICE CHAIR JOHN: Are you a party in this case?
4 Did you request party status?

5 MR. CARGILL: We're the original Applicants for
6 the BZA zoning adjustment.

7 VICE CHAIR JOHN: Okay.

8 MR. CARGILL: And we understand --

9 (Simultaneous speaking.)

10 MR. CARGILL: I'm sorry.

11 VICE CHAIR JOHN: I don't understand what you're
12 saying. Please explain why the Board should hear from you
13 at this time. You don't have to get into the merits of the
14 case. We're not hearing the merits, just whether or not Ms.
15 Howell, who lives next door, should be granted party status.
16 And you're not a party, so I don't believe that you're
17 allowed to -- oh -- oh, you're the Applicant.

18 MR. CARGILL: Yes. Yes.

19 VICE CHAIR JOHN: I'm so sorry.

20 MR. CARGILL: No problem. No problem.

21 VICE CHAIR JOHN: Okay. Please introduce yourself
22 for the record --

23 MR. CARGILL: Hi --

24 VICE CHAIR JOHN: -- and state your name and
25 address.

1 MR. CARGILL: I'm Jeff Cargill. I'm at 316 2nd
2 Street, Southeast. We are the next-door neighbors of the
3 client of the attorney who just spoke. We're the Applicants
4 for the zoning adjustment.

5 VICE CHAIR JOHN: Okay. So would you please
6 address why Ms. Howell, who lives next door, is not more
7 significantly, distinctively, or uniquely affected by the
8 project?

9 MR. CARGILL: Yes. So our application to the BZA
10 for the use adjustment and for the special exception details
11 only with the carriage house that's on the property of 316
12 2nd Street. We are not attempting to do any kind of
13 construction or any kind of physical change with the carriage
14 house itself. We simply wanted to bring it under color of
15 law and to proceed in the appropriate manner.

16 The comments made by Counsel about the impacts of
17 the proposed development, of what we're attempting to do with
18 the project itself -- her attorney's proffer as to how this
19 would impact her, while that may be salient to the
20 development itself, the question here, as I took from the BZA
21 website, is that the Applicant for party status need to
22 clearly demonstrate that his or her interest will be more
23 significantly, distinctly, or uniquely affected by the
24 proposed zoning action.

25 And as the matter before BZA is simply only the

1 zoning action, the status of living next door, the status of
2 the impact of the proposed developments, all the other things
3 that have been brought up to Counsel, we don't believe puts
4 our next-door neighbor in a position that they're
5 significantly, distinctly, or uniquely affected by this as
6 opposed to anyone else in the neighborhood or anyone else
7 looking for -- having an interest in that zoning
8 continuation.

9 And, additionally to that, we understand that when
10 our application is heard and it's ruled on, we understand
11 that if there is an opposing party status that we would
12 suffer deleterious impacts on future efforts or maybe efforts
13 down the line to revive the issue if there -- because we need
14 to wait on a written decision, and then I believe we'd have
15 an extended period of time before we could apply for another
16 attempt down the line.

17 So, for those reasons, we believe that our
18 next-door neighbor, based on what we are asking, the proposed
19 zoning action, is not significantly, distinctly, or uniquely
20 affected. And we would rest on that proffer. Thank you.

21 VICE CHAIR JOHN: Okay. Thank you, Mr. Cargill.
22 I will just say that the threshold for granting party status
23 is fairly low, and there's a presumption that the next-door
24 neighbor will be uniquely affected by anything that goes on
25 next door.

1 But I'd like to hear from the rest of the Board.

2 MR. HALL: Madam Chairman?

3 VICE CHAIR JOHN: Yes.

4 MR. HALL: Before you hear from the rest of the
5 Board, could I interject one thing as a point of
6 clarification?

7 VICE CHAIR JOHN: Who is speaking?

8 MR. HALL: This is Attorney Hall.

9 VICE CHAIR JOHN: Mr. Hall --

10 (Simultaneous speaking.)

11 VICE CHAIR JOHN: -- this does not need to be a
12 drawn-out hearing.

13 MR. HALL: Okay.

14 VICE CHAIR JOHN: But go ahead.

15 MR. HALL: No, I just wanted to try to address a
16 point of clarification because the project before the Zoning
17 Board is to convert an existing three-story attached
18 principal dwelling unit and two-story accessory building to
19 three-units apartment house in RF-3 Zone. Am I missing
20 anything, Madam Chairman?

21 VICE CHAIR JOHN: I think -- did you say a
22 two-unit?

23 MR. HALL: A two-unit attached dwelling --

24 VICE CHAIR JOHN: Yes, that's what it is.

25 (Simultaneous speaking.)

1 MR. HALL: -- principal house, and the third unit,
2 which is a carriage house. It was my understanding from Mr.
3 Cargill now that that's not what's before the Zoning Board,
4 and the only thing before the Zoning Board is whether or not
5 the carriage house is going to receive a certificate of
6 occupancy. So I'm just confused.

7 VICE CHAIR JOHN: Thank you. So I intend to get
8 to that issue, but perhaps this is a good time to discuss it
9 because it is not quite clear what the Applicant is
10 requesting and whether the Applicant has cited the
11 appropriate provisions.

12 And so I'd like to bring in the Office of -- well,
13 first, let's go back to the party status request. As I
14 mentioned, the threshold is really quite low for granting
15 party status. So, basically, the next-door neighbor gets
16 party status.

17 And so I am inclined to go ahead and grant party
18 status, and I would like to hear from the rest of the Board.

19 MEMBER SMITH: Vice Chair John, I agree with your
20 analysis. We have a fairly low threshold to grant party
21 status. The person requesting party status is indeed a
22 next-door neighbor who would be one of the most impacted
23 properties in relation to this request. So I am also
24 inclined to grant the party status request.

25 VICE CHAIR JOHN: Okay. Thank you.

1 Mr. Blake?

2 MEMBER BLAKE: I would agree with that assessment
3 as well.

4 VICE CHAIR JOHN: Commissioner Miller?

5 COMMISSIONER MILLER: Thank you, Madam Vice Chair.
6 I also would agree with that assessment, and I suggest that
7 we just make a determination on the party status and discuss
8 any other issues that we want to discuss, maybe the context
9 of the postponement request because that's where we're going
10 to need additional information. We don't have to get all
11 that information today, necessarily.

12 VICE CHAIR JOHN: Thank you. Thank you.

13 So I don't believe I need to take a poll on this,
14 so I'll go ahead and grant the party status request because
15 I don't hear any objections from the Board.

16 Is that correct, Mr. Moy? Okay. So --

17 MR. MOY: Madam Vice Chair, I would also remind
18 you -- whenever you want to address it, but I believe in Mr.
19 Hall's filing that he was also proffering two expert
20 witnesses.

21 VICE CHAIR JOHN: Yes. I was about to address
22 that next, and then we will get to the other issues.

23 So I have reviewed the résumés of Mr. Robert
24 Eitel. That's in the record at Exhibit 37. And I believe
25 he's qualified in civil engineering, and I'm inclined to

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1 grant that request unless a Board member objects by raising
2 your hand so I can see that you object.

3 Okay. Seeing none, I'll move on to Mr. Donald
4 Libscomb. So the party in opposition is requesting expert
5 status for Mr. Donald Libscomb as an architect. And I've
6 read his Exhibit 37 and believe he's qualified as an
7 architect, and I will grant the request unless a Board member
8 objects by raising your hand. And seeing none, I will grant
9 the request.

10 And so now we will go to the motion for
11 continuance. And I'd like the Applicant now to address the
12 request for continuance and why it's necessary.

13 MR. CARGILL: Yes. Thank you so much. So, when
14 we applied for this hearing and submitted our application,
15 we reached out as best we could to all of the relevant
16 parties, our ANC, the BZA, asking everyone if what we
17 submitted was sufficient for the hearing.

18 We believe that there may have been some
19 miscommunication, as my email, I think, was initially
20 recorded by Government employees as my full first name, dot
21 last name, email address. So there was a delay in time until
22 we heard back from the Office of Planning.

23 Shortly after the deadline for us to be able to
24 submit materials for this hearing, the Office of Planning
25 reached out to us and let us know a number of factors that

1 they said would be considered by this tribunal and that we
2 would need for appropriate consideration of the entirety of
3 our application.

4 Frustratingly, that was also past our deadline to
5 submit additional information. We wrote -- we brought our
6 architect in. We spoke about all the matters, and we have
7 responses for them. And we would have more materials for the
8 BZA specific to what the Office of Planning was asking for,
9 but we would ask for a later hearing to be able to fully
10 verse ourselves in these, represent them to the BZA, and to
11 have every document that would be needed so that our
12 application has the best presentation.

13 VICE CHAIR JOHN: Okay. Thank you. I have read
14 the Office of Planning's report. I don't think it's
15 necessary to hear from the Office of Planning. And I think
16 the reasons you suggested are reasonable, or the issues you
17 suggested are reasonable.

18 I wanted to hear from Mr. Hall.

19 MR. HALL: Yes, Madam Chair. I would --

20 VICE CHAIR JOHN: Just a moment. Are you choosing
21 not to use your video? Because it helps me to know who I'm
22 --

23 MR. HALL: No. No, I'm not choosing not to use
24 it. That's just an oversight. Let me see if I can --

25 VICE CHAIR JOHN: Thank you.

1 MR. HALL: Now here we go. Can you see me, Madam
2 Chair?

3 VICE CHAIR JOHN: There you are. Yes. Thank you.

4 MR. HALL: I'm sorry about that.

5 VICE CHAIR JOHN: Okay. So you were saying?

6 MR. HALL: In the application that was filed in
7 the Statement of Compliance with review standard within
8 Subtitle X, Section 1002 and 901, which was filed by Mr.
9 Cargill, and it's Exhibit 14 -- it stated in that exhibit
10 that there is no intended construction or additions.

11 So now Mr. Cargill is requesting time for
12 continuance to provide architectural plans, which OP is
13 requesting and which in fact were necessary to complete the
14 application for it ever to be processed. It's a
15 contradiction to me.

16 Now, there are architectural plans. They were
17 provided to DCRA to get a building permit. The architectural
18 plans were not provided to your office, although the
19 Applicant full well knew that they were going to put on a
20 fairly significant addition to the main structure, which
21 houses two units. And the architectural plans, although
22 requested three different times by my client, were never
23 provided to my client. She, in fact, had to go to DCRA and
24 obtain the architectural plans from there.

25 Now, I agree with OP that they need to see the

1 architectural plans. I agree with OP that there has to be
2 a demonstration of how the dwelling unit in the accessory
3 building meets U 301.1(c)(4), and I agree that they need a
4 statement from the Applicant about the extent of the
5 construction to the principal building -- that's the row
6 house; that's not the carriage house -- and to the accessory
7 building -- that's the carriage house -- and provide
8 dimensional architectural plans and elevations for all work
9 proposed on the property, along with zoning compliance
10 information for the principal building -- that's the main
11 structure -- and the accessory building.

12 So I think what Mr. Cargill is trying to do is
13 have it one way in front of DCRA but then skirt the issue of
14 the fact that he's seeking three units and he's going to put
15 on a major addition to the main house -- skirt that issue and
16 not provide the information to the Office of Zoning, which
17 he could have provided a long time ago in the original
18 application.

19 The application was incomplete, and by law, the
20 application should not have been processed.

21 VICE CHAIR JOHN: Thank you, Mr. Hall.

22 I want to bring in Ms. Vitale. Ms. Vitale, can
23 you hear me? Ms. Vitale? Ms. Vitale?

24 So, while we're waiting -- hopefully we'll get a
25 chance to talk to the Office of Planning, but I believe that,

1 Mr. Hall, you stated some of the issues raised by the Office
2 of Planning fairly well. And I wanted to find out from Mr.
3 Hall, do you understand the Office of Planning's report and
4 how the Office of Planning is looking at the application and
5 the criteria for relief?

6 MR. CARGILL: That question is to me?

7 VICE CHAIR JOHN: Yes. That was to you, Mr.
8 Cargill.

9 MR. CARGILL: So I spoke with Ms. Vitale. After
10 she sent the email asking for more information, I had a
11 conference call with her and our architect. And we expressed
12 some of our reactions to the request and the reasons why some
13 of these requested materials weren't turned over, because we
14 just -- no one ever said anything or made any mention why
15 these other considerations would be relevant to the limited
16 nature of the request of what we're asking for.

17 But if the Office of Planning and if the BZA would
18 like it, we don't want to foreclose any of it. But that was
19 just our understanding. We'd spoken to her about each of the
20 requested items that she would like to see, and if given more
21 time, which we are humbly requesting today, we'd like to
22 provide those to all the relevant parties and show that we're
23 going about this under color of law.

24 VICE CHAIR JOHN: Okay. Thank you. So you do
25 understand you have two units in one building right now, and

1 there's a carriage house with an apartment.

2 MR. CARGILL: Correct.

3 VICE CHAIR JOHN: So there are currently three
4 units.

5 MR. CARGILL: Right.

6 VICE CHAIR JOHN: Okay. And so you need relief
7 for those three units.

8 MR. CARGILL: Right. Right.

9 VICE CHAIR JOHN: And is Mr. Hall correct that
10 you're also doing an addition?

11 MR. CARGILL: Yes. So the addition --

12 (Simultaneous speaking.)

13 VICE CHAIR JOHN: -- just wanted to clarify that.

14 MR. CARGILL: Oh. Yes. Yes. Yeah.

15 VICE CHAIR JOHN: So I want to go to Ms. Vitale
16 to see if she's been listening and if she has anything to add
17 to what the relief is, because there's a little confusion
18 between what the Applicant is saying, how Mr. Hall is
19 interpreting it, what the ZA's referral memo says, and how
20 the Office of Planning is looking at the application.

21 And I think it would be helpful for you to say how
22 you view the Applicant's statement, because it was a little
23 confusing to me as well.

24 MS. VITALE: Yes. Good morning, Madam Vice Chair,
25 members of the Board. Elisa Vitale with the Office of

1 Planning. I have been listening. Sorry it took me a minute
2 to get on.

3 As you've heard from the Applicant, I think we had
4 some confusion in reviewing the application because it was
5 not clear the full extent of the work that was being
6 proposed. I think now, based on additional information and
7 additional conversations with the Applicant, the Office of
8 Planning understands that the project does include exterior
9 renovations in addition to the principal building. That
10 proposed addition does meet zoning. As far as we understand,
11 the Applicant has worked with DCRA and is in the process of
12 securing permits for that addition.

13 I had a question about the lot occupancy. It
14 falls within the Zoning Administrator's two percent
15 flexibility. So that issue has been resolved. I did tell
16 the Applicant that the Office of Planning and the Board would
17 look at the property as a whole so that the statements in the
18 application that indicated that no additions were being made
19 posed a bit of a problem, that we did need to understand the
20 full scope of the project.

21 I think that is understood now. As we've noted
22 in the report, it would be helpful for the Applicant to
23 provide information, such as a Form 135, that is fully
24 complete that shows zoning performance for the entire
25 property, so the principal building, the accessory building,

1 providing dimension plans, a plat that indicates the alley
2 access/alley width.

3 So I think the characterization that there is
4 still additional information that would be helpful is
5 accurate. The Applicant is requesting a postponement in
6 order to be able to provide that information. Once that
7 information is in the record, OP would certainly review that
8 and provide a supplemental report if necessary.

9 Right now, the OPR report and the record indicates
10 that we're not able to make a recommendation. So we would
11 certainly supplement the record once additional information
12 is provided by the Applicant.

13 VICE CHAIR JOHN: Okay. Thank you, Ms. Vitale.

14 So, based on what we've heard so far, I'm inclined
15 to grant the continuance. And I wanted to see if any Board
16 member has any objection. Just raise your hand if you do.

17 Okay. Thank you. So now I'll go to Mr. Moy --
18 (Simultaneous speaking.)

19 COMMISSIONER MILLER: Madam Chair?

20 VICE CHAIR JOHN: Yes, Mr. Miller?

21 COMMISSIONER MILLER: I don't have any objection.
22 I just wanted to clarify the additional information that
23 we're seeking between now and the time that this is continued
24 to. I think the Office of Planning clearly stated in their
25 report the information that was necessary, and I think it's

1 still necessary that the Applicant and the party alluded to.

2 So the -- provide full architectural plans on
3 what's happening on the property, and address the RF-3
4 special exception criteria found in Subtitle E 5202. That's
5 the Capitol Hill Precinct -- architect for the Capitol
6 Precinct District.

7 And, three, demonstrate how the dwelling unit in
8 the accessory building meets the criteria of U 301.1(c)(4)
9 with respect to access by providing a dimension plan
10 depicting the alleyway. There's been a little allusion to
11 that, and that just needs to -- all of that needs to be
12 provided in the record.

13 In addition, the relief that's being requested --
14 we need to hear at the time we have the hearing the relief
15 that's being requested. The Applicant applied for a use
16 variance to convert two-family flat to a three-unit apartment
17 house.

18 Office of Planning reviewed the application under
19 different standards, which have been reviewed by the BZA in
20 similar cases in the past, and that instead of a use variance
21 to convert, a special exception to allow the conversion of
22 an existing residential building to an apartment house under
23 Subtitle U 320.2, when you're going from two to three units,
24 and an area variance -- variance from the density
25 requirements needed for approval of a special exception under

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1 Subtitle U 320.2(c).

2 That's the 900 square feet of land area per
3 dwelling required on the property. We're looking at the
4 property as a whole in this application, as the Applicant
5 knows and the party and opposition knows. And that's how we
6 want to view it, and we want the full information.

7 So I think there's a reasonable interpretation and
8 maybe a reasonable disagreement about the relief that's
9 required, whether it's a use variance or whether it's special
10 exception on the conversion.

11 I don't think we need to go into all that here,
12 but I think we need information on that so the BZA maybe can
13 make a determination in this case.

14 And then maybe they need a re-advertisement in the
15 alternative that includes the special exception conversion,
16 the area density 30 and 900 foot -- and the access so that
17 -- since we're postponing it anyway, there's time to re-
18 advertise, and then the alternative to have both the use
19 variance the ZA said most recently as opposed to what he said
20 in the past in other cases, that a use variance is required
21 for the conversion in this type of situation as opposed to
22 the special exception.

23 So that's all. I just wanted to clarify that we
24 need all that to happen, and now there's time for it to
25 happen and for the information to be provided, advertisement

1 to be made, and for us to get that information so we can make
2 a determination on the law and the facts when we hear it.

3 VICE CHAIR JOHN: Thank you, Mr. Miller. That was
4 excellent clarification, and thank you for adding that to the
5 record.

6 Yes, Mr. Cargill?

7 MR. CARGILL: I just had a very brief question.
8 The reason that we only -- in our statement to the BZA about
9 compliance, under the Statement of Compliance with the use
10 variance and the special exception, we only limited it to the
11 two that were mentioned because I was basing our response off
12 of our letter from the Board of Zoning adjustment in which
13 the only thing that it was indicating to us that we needed
14 to request was a use variance under 301.1, and then it made
15 mention on the next page about a special exception meeting
16 the minimum required lot areas.

17 We didn't mean to not address those in our
18 pleading. We just limited those to the two that we saw on
19 the BZA motion. But should this tribunal give us additional
20 time, we'd like to address all of those and put everything
21 before the tribunal.

22 VICE CHAIR JOHN: Okay --

23 COMMISSIONER MILLER: He meant the Zoning -- you
24 meant the Zoning Administrator, not the BZA letter.

25 MR. CARGILL: Yes. My fault.

1 COMMISSIONER MILLER: Okay.

2 VICE CHAIR JOHN: Okay. So, yes, I recognize
3 that. And so Commissioner Miller did an excellent recap of
4 what the Office of Planning advised. And so I would suggest
5 that you continue to talk with the Office of Planning to
6 fully understand how to amend your application and to get a
7 new notice out in time.

8 And I'd also recommend that you communicate with
9 the next-door neighbor, who has party status, because we here
10 at the Board have a good-neighbor policy. And if the
11 neighbor was not a party, we would also recommend that you
12 meet with the neighbor and let them know what's going on.

13 Okay. So I believe that's it for the continuance.
14 Now, Mr. Nicholas, with the -- or, Counsel, do you have
15 anything to add? I don't want to put you on the spot, but
16 I think we covered everything.

17 MR. NICHOLAS: I don't have anything to add.

18 (Simultaneous speaking.)

19 VICE CHAIR JOHN: Pardon?

20 MR. NICHOLAS: I don't have anything to add, no.

21 VICE CHAIR JOHN: Okay. Thank you. Just
22 introduce yourself, please, as OZ Legal Counsel.

23 MR. NICHOLAS: This is Ryan Nicholas, OZ Legal
24 Counsel. I do not have anything to add. Thank you, Madam
25 Vice Chair.

1 VICE CHAIR JOHN: All right. Thank you. Okay.
2 So, Mr. Moy, when can we have this application back up for
3 hearing?

4 And, Ms. Vitale, please think through what you --
5 I mean how much time you will need, because I assume you will
6 have to prepare a new Office of Planning report.

7 So when is the first time we can hear this, Mr.
8 Moy? I think we're in April.

9 MR. MOY: Yes, madam Vice Chair. I was going to
10 suggest to the Board that we continue this application to a
11 date, which would be April the 20th. I think that will
12 provide sufficient time for all the parties to prepare for
13 the hearing.

14 VICE CHAIR JOHN: Okay.

15 MR. MOY: With all the information that needs to
16 be submitted into the record. And all the meetings I suspect
17 that's going to have to be scheduled by the applicant with
18 all the parties.

19 VICE CHAIR JOHN: Okay. And did you want to give
20 them a schedule when to submit documents, working back from
21 April 20th?

22 MR. MOY: All right, Madam Chair, working
23 backwards from April the 20th, this is ANC 6B. And I don't
24 recall when the ANC meets in April. I don't recall whether
25 it's the second or third week in April.

1 So I think it would be helpful if the Applicant
2 can file their amended application as soon as possible, and
3 then make the additional filings that the Board had requested
4 into the record, and to supply that same information to the
5 party status.

6 So if the Applicant can do that, I would say, just
7 a second, I'm looking at my calendar. With amending the
8 application as soon as possible and then filing all the
9 required additional supplemental information by March. I
10 think a month ahead of time should be sufficient. So they
11 do that by March, let's say Friday, March 18th.

12 The Applicant submit all their supplemental
13 information by Friday, March 18th. And responses from the
14 parties by April, let's give it two weeks, so Friday, April
15 1st. And the continued hearing would be April the 20th.

16 VICE CHAIR JOHN: Okay. Thank you.

17 MR. MOY: Is that fine with you, Madam Vice Chair?

18 VICE CHAIR JOHN: Yes, that's fine with me. And
19 I assume it's fine with the Office of Planning. And the
20 Office of Planning would also respond by April 1st?

21 MR. MOY: Yes.

22 VICE CHAIR JOHN: Okay. All right. So I believe
23 that's it. And so I can go ahead and excuse the parties at
24 this time.

25 MR. CARGILL: Thank you very much for the

1 consideration and I'll see you soon.

2 VICE CHAIR JOHN: You're welcome.

3 MR. HALL: Thank you, Madam Chair.

4 VICE CHAIR JOHN: Thank you. You're welcome.

5 So, okay. So, Board Members, I believe we should
6 just go ahead and take the last case instead of taking a
7 break.

8 And so, Mr. Moy, would you like to call our last
9 case? When you get a chance.

10 MR. MOY: Okay, thank you, Madam Vice Chair. As
11 you said, this is the last case on the Board's open hearing
12 session and it is Case Application Number 20544 of Capital
13 Strategy Fund, LLC.

14 This application is a request for a variance from
15 the front setback requirements of Subtitle D, section 305.1.
16 This would construct two new, semi-detached, three-story,
17 principal dwelling units in the R-2 Zone.

18 And the property is located at 5042 through 5044
19 Meade, M-E-A-D-E, Street, Northeast Square 5202, Lots 49 and
20 50.

21 There was a PowerPoint submitted by the Applicant
22 within the 24 hour block, so I would suggest the Board
23 address that. And I think that's all I have. Yes.

24 VICE CHAIR JOHN: Okay, thank you, Mr. Moy. Good
25 morning, Mr. Bello. Would you introduce yourself for the

1 record please?

2 MR. BELLO: Good morning, Madam Vice Chair and
3 Board Members. Toye Bello representing the Applicant, 1917
4 Benning Road.

5 VICE CHAIR JOHN: Thank you. Do you have anyone
6 else here with you today?

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

8 VICE CHAIR JOHN: Okay. Thank you. So you filed,
9 Mr. Bello, you filed a PowerPoint submission in the record?

10 MR. BELLO: Yes, Madam Chair, but it's not
11 uploaded yet because it was filed late last night.

12 VICE CHAIR JOHN: Okay. So I think the Board
13 would like to see what's in your PowerPoint presentation, so
14 I'll ask Mr. Young to add that to the record.

15 And I see the Commissioner has also joined us.
16 Can you introduce yourself for the record please?

17 ANC COMMISSIONER HOLMES: Commissioner Antawan
18 Holmes, Chair of ANC 7C and Single Member District
19 Commissioner for 7C07.

20 VICE CHAIR JOHN: Thank you, Mr. Holmes. And I
21 believe, if I'm correct, the ANC also submitted a letter?

22 ANC COMMISSIONER HOLMES: Yes, Ma'am.

23 VICE CHAIR JOHN: And position. Okay, thank you.

24 Now, Mr. Bello, when did you file your revised
25 architectural plans?

1 MR. BELLO: That was also filed late. I believe
2 last week.

3 VICE CHAIR JOHN: Okay.

4 MR. BELLO: I don't remember the exact date.

5 VICE CHAIR JOHN: Can you tell us why it's late
6 and why we should accept it in the record?

7 MR. BELLO: Well, the Applicant got to find out
8 from DDOT that DDOT that would not make the curb cut, so we
9 had to revise the plans to eliminate the driveway and the
10 garage, indoor garage spaces, on the original filed plans.

11 VICE CHAIR JOHN: Okay. All right, thank you.
12 So, I don't believe there any other preliminary matters, so,
13 let's see. Mr. Bello, would you like to go ahead and fill
14 us in on what you're requesting and how your application
15 meets the criteria?

16 Let's see if we got the presentation. Let's see
17 if their presentation is in the record. Okay, it's there.
18 Did you want Mr. Young to pull it up?

19 MR. BELLO: If he would please. Thank you.

20 VICE CHAIR JOHN: Okay, thank you.

21 MR. BELLO: Next slide please. So the application
22 seeks variance from the front setback requirements on the
23 Subtitle D, Section 305.1. And that's the only relief the
24 application, the Applicant seeks.

25 Next slide please. The front setback requirement

1 is governed by this particular rule of measurement set forth
2 under Section 315.1. Such that a proposed building is
3 required to, must be further located beyond the block face
4 of adjoining properties or on the whole block.

5 Not much further back, as these sections will be
6 315.1(1)(A) and (B). And that's the relief the Applicant
7 seeks.

8 Next slide please. The property consists of two
9 lots. Square 5202, Lots 49 and 50. Subject property is
10 located in the R-2 zone district.

11 Applicant proposes two similarly detached
12 single-family dwellings. One on each lot. The proposed
13 project complies with all other applicable development
14 standards for its zone district location.

15 Next slide please. This is essentially the site
16 plan of the property. The Board would note the irregular
17 shape of the property with five standards lots that are
18 16-feet wide.

19 And these lots open wide to the rear of four lots
20 that abut Meade Street. So the stem is the only location in
21 which the lot abuts any street at all.

22 Next slide please. These are the two builder's
23 plats showing the location of each lot and each proposed
24 building.

25 Next slide please. The variance test requires

1 that a property exhibit a unique physical characteristic of
2 shape or size of lot. Subject lots exhibits unique physical
3 characteristic of shape of lot by virtue of the narrow
4 pipe-stem or panhandle portions of lot.

5 The subject lots are part of an eight lot
6 subdivision approved as a matter of right in March 1973.
7 Each lot, Lot 49 and 50, are narrow width lots with 16-feet
8 wide. But 49 and 50 are uniquely the only lots in their
9 square of location so shaped and so constrained.

10 Next slide please. This is a record of the
11 subdivision of the creation of the eight lots alluded to.
12 I know it's not so legible, but the date of approval is on
13 the subdivision. It's March 1973. So the lots were
14 subdivided as a matter of right, long before the adoption of
15 ZR-16.

16 Next slide please. Strict application of ZR-16
17 results in peculiar and exceptional practical difficulties
18 upon the owner.

19 Section 305.1, which now requires front setbacks
20 and the related rules measurements set forth under Subtitle
21 B, Section 315.1 was adopted under ZR-16 in 2016.

22 Lots 49 and 50 were created under subdivision
23 approved as a matter of right in March 1973. The narrow
24 pipe-stem or panhandle portions of the lots are 16-feet, are
25 100-feet of the 170-feet depth of lot.

1 In order to comply with Section 305.1 and 315.1(A)
2 and (B), the proposed buildings are required to locate within
3 the narrow panhandle portion of the lots in zone district
4 requiring a minimum of eight-feet side yard resulting in an
5 impractical and peculiar building width of eight-feet.

6 The foregoing also results in an exceptional
7 practical difficulties upon the owner.

8 Next slide please. Substantial detriment to
9 public good and substantial impairment of intent, purpose and
10 integrity of the zone plan.

11 The proposed semi-detached single-family dwelling
12 is submitted as a matter of right. Proposed projects comply
13 with all other applicable development standards in its zone
14 of location.

15 Project is constrained by pre-existing record lots
16 subdivision approved in 1973 as a matter of right, prior to
17 the adoption of front setbacks provisions in ZR-16.

18 Applicant has incorporated OP's recommendation of
19 a screening fence between subject properties and those
20 located to the south. Properties to the north as separated
21 by an unimproved public alley.

22 Building design is compatible with all other lots
23 that are part of the eight lot subdivision originally created
24 or established in 1973.

25 Each subdivided lot is in excess of twice the

1 minimum lot size prescribed for the underlying zone district.
2 Hence the light and air available to all or any adjoining
3 property is not unduly affected.

4 Next slide please. These are elevations of, these
5 will be the new elevations eliminating the garage doors
6 because the driveways will no longer be part of this project.

7 Next slide please. And these are the amended
8 floor plans that changes the indoor garage space to storage
9 space.

10 Next slide please. The site plan again of the
11 shape of the lot and the location of the buildings, which are
12 located where they reasonably can be.

13 Next slide please. These are photographs of the
14 existing buildings that abut the stem side of the lot. And
15 lots, two of the lots are under construction because those
16 one could be obtained as a matter of right.

17 Next slide please. Additional photographs.

18 Next slide please. Again, building elevations
19 showing that the building design is compatible and pretty
20 much similar to every other building that's on the eight
21 lots.

22 Next slide please. OP recommends unconditional
23 approval of the application. Applicant consents to OP's
24 recommendation for privacy fence as buffer to properties
25 located south of subject property, and has incorporated that

1 into site improvements and building design.

2 Next slide please. Applicant aggress with DDOT's
3 no objection to approval or relief sought, and that such
4 approval will have no impact on the District Transportation
5 network.

6 Applicant, however, disagrees with DDOT's
7 recommendation that Applicant pave the unimproved alley at
8 their own expense in order to create access to parking
9 located at the rear of subject lots.

10 Subtitle C, Chapter 7, Section 704 (1)(A) waives
11 the parking requirement for a single principal dwelling which
12 is what subject property is, if subject property does not
13 abut an improved public right-of-way of ten feet.

14 The alley that abuts this property is unimproved.
15 The public alley adjoining the subject property to the north
16 is unimproved. Applicant therefore invokes the foregoing
17 provision which exempts the subject property from providing
18 required parking without recourse to relief before the BZA.

19 Next slide please. Applicant appeared before the
20 affected ANC to present the proposed project on November
21 12th. And the ANC heard the case and approved the
22 provisional recommendation of approval subject to the
23 Deanwood Civic Association Benefit Program.

24 Applicant believes that this matter is beyond, or
25 outside of the purview, of the BZA hearing. Whatever

1 Applicant agrees to under the civic association public
2 benefit program is not within the purview of the BZA to set
3 as a condition of approval, in so far as it has no zoning
4 input.

5 Next slide please. I believe that's the end of
6 our presentation, Madam Chair.

7 VICE CHAIR JOHN: Thank you, Mr. Bello. It was
8 a good presentation, Mr. Bello, very clear. But I really had
9 difficulty reading it because of the black background.

10 And as I get older, my eyes are not that strong.
11 So maybe if you could just change that background in the
12 future I can follow along. I don't know if you noticed I was
13 sort of not looking at the screen.

14 MR. BELLO: Okay, Madam Chair, I'll take that
15 under advisement. Thank you.

16 VICE CHAIR JOHN: Okay. Thank you so much, that
17 would help.

18 So, do the Board Members have any questions for
19 Mr. Bello? I'll look to see if anybody has raised their
20 hand. No.

21 Mr. Miller?

22 COMMISSIONER MILLER: Just a quick question, Mr.
23 Bello. Thank you for your presentation, that was very clear.
24 Except for the reversal of the background and the print, as
25 Vice Chair said.

1 So on the pleading DDOT recommended the public
2 alley, you pointed out that there is a waiver if there's an
3 approved public right-of-way. Did you make some estimate of
4 what that would cost to the Applicant if we were to undertake
5 that effort?

6 I don't recall how long you have to pave it to
7 provide that access to those two properties.

8 MR. BELLO: We'd have to provide almost 100-feet
9 of paved alley from Meade Street. And for a single-family
10 dwelling project, that is so cost prohibitive that it will
11 make no economic sense for developing the property.

12 COMMISSIONER MILLER: Yes. See, I just didn't
13 have any idea of what the cost was of putting down the
14 asphalt, but I'll accept your conclusion that it's cost
15 prohibitive for this type of project. But I just didn't know
16 if there was a guestimate of what that dollar amount was.

17 VICE CHAIR JOHN: Thank you. Does anyone have any
18 other questions?

19 Mr. Holmes, can you introduce yourself again? I
20 believe you did, but do you have any questions at this time?
21 You can still provide your presentation later.

22 ANC COMMISSIONER HOLMES: Oh, absolutely. In the
23 presentation it was noted that we always do our request
24 conditional to going to the local affected civic associations
25 with citizen associations.

1 Not only just for CBAs, but to also get some of
2 the issues that may have occurred. I have heard from some
3 residents that are concerned about it. And I believe one may
4 be on the call today.

5 But more than that, with the changes that were
6 submitted, and I saw that they were, curb cut was rejected
7 and that, so that does now state that there is going to be
8 more parking. And looking at that project, in and of itself
9 you would think, oh, okay, it's two more houses. But I
10 believe the same builder is building another house exactly
11 on the other side of the other set of two houses on that same
12 street.

13 So there is more cars are going to be impacted on
14 a road that's already full of cars. So we do have some
15 concerns about that, how that's going to be addressed.

16 So that alleyway, which residents have been asking
17 for a lot, for a while to be improved, that does factor into
18 what some of the folks want to talk about in terms of how
19 this is an ongoing change and you need to kind of understand
20 how this is going to be corrected. Whether it is going to
21 be the Applicant who pays for it or is DDOT going to do the
22 request.

23 VICE CHAIR JOHN: Thank you. So, Mr. Holmes, this
24 was supposed to be questions to the Applicant.

25 ANC COMMISSIONER HOLMES: Yes, I know. I was

1 going to ask him a question about it but you already beat me
2 to it. To the paving of the sidewall.

3 VICE CHAIR JOHN: Yes.

4 ANC COMMISSIONER HOLMES: The paving of the
5 alleyway is the issue.

6 VICE CHAIR JOHN: Okay.

7 ANC COMMISSIONER HOLMES: As well as addressing
8 the privacy, I think he did. I think he did say something
9 about fences and stuff, but that's it. That's it. Sorry.

10 VICE CHAIR JOHN: You will still have time to do
11 your presentation, I just wanted to clarify that this is --

12 ANC COMMISSIONER HOLMES: Thank you.

13 VICE CHAIR JOHN: So, I'll go to the Office of
14 Planning. Now, Mr. Cochran, can you introduce yourself
15 please?

16 MR. COCHRAN: Thank you, Madam Chair and Board
17 Members. I'm Steve Cochran representing the Office of
18 Planning in case 20544.

19 The Applicant has submitted all of the information
20 that OP has requested. OP is in support of the requested
21 area of variance from the build to and setback requirements
22 of Subtitle D, Section 305.1. And that's for the plans that
23 they submitted on November 30th, which are included at
24 Exhibit 31. You just admitted them.

25 And other than that, OP stands on the record.

1 VICE CHAIR JOHN: Okay, thank you, Mr. Cochran.
2 Does the Board have any questions for Mr. Cochran?

3 COMMISSIONER MILLER: I have one question, Madam
4 Chair. Vice Chair.

5 VICE CHAIR JOHN: Go ahead.

6 COMMISSIONER MILLER: Thank you, Mr. Cochran for
7 your report. It's really not a question to you but I don't
8 think DDOT is here today, unless I'm wrong. I didn't really
9 check the attendees.

10 But if you can find out from your sister agency,
11 DDOT, what the cost is estimated to be of improving that
12 public alley that they're recommending be paid by the
13 Applicant, to DDOT. And I assume that it would have to be
14 improved to DDOT standards. So it's not just like throwing
15 down anything.

16 If we can get some kind of guestimate so we can,
17 I don't know if we're, this is only if we're not making the
18 decision today. I don't know if we're making the decision
19 today or not, I don't know where I am or where the Board is
20 about that.

21 But if the decision isn't today, if we're holding
22 the record open for anything, such as the Deanwood, whatever,
23 if we can get something on that from DDOT at the cost.
24 Estimated cost.

25 MR. COCHRAN: I would be happy to ask DDOT,

1 however, I think it would be more appropriate for the
2 Applicant to come up with the figures and possibly ask DDOT
3 rather than us.

4 COMMISSIONER MILLER: Well, that's fair. And
5 their cost might be different because of --

6 MR. COCHRAN: Yes.

7 COMMISSIONER MILLER: -- reasons.

8 MR. COCHRAN: It's possible. But I would note,
9 I just want to correct one thing the Applicant, that the
10 alley paving would be 100-feet. It would be at least
11 200-feet, if you look at the plat.

12 Because they have to go on an angle from Meade
13 Street back behind other properties and then presumably get
14 access to their property from the rear. So we're looking at
15 at least 200-feet of paving.

16 And DDOT, well, I've had conversations with DDOT
17 about their recommendation. They were not saying that they
18 are in support of it provided the Applicant does this paving,
19 they were saying they will not grant a curb cut, and
20 therefore if the Applicant wants to provide parking it should
21 do it via paving the currently unpaved alley. There is a
22 distinction.

23 COMMISSIONER MILLER: Okay, there is a
24 distinction. And is the OP recommendation for approval?

25 MR. COCHRAN: Our recommendation is not contingent

1 on the Applicant providing parking.

2 COMMISSIONER MILLER: Okay, thank you. That
3 clarifies it, thank you.

4 MR. COCHRAN: Okay. Sure.

5 VICE CHAIR JOHN: Any other questions from the
6 Board? Just one question, Mr. Cochran.

7 So, can you confirm that the Applicant does not
8 need to provide parking for the single-family residents?

9 MR. COCHRAN: That's correct. According to B, let
10 me just double check here. Sorry. D, 305.1.

11 VICE CHAIR JOHN: Okay.

12 MR. COCHRAN: If they can't get, if they don't
13 have a curb cut, can't get a curb cut and don't have a paved
14 alley that would provide access to the property, then the
15 zoning regulations do not require parking.

16 VICE CHAIR JOHN: Okay, thank you, Mr. Cochran.
17 Does the ANC have any questions?

18 I'm sorry, did I ask the Applicant? Mr. Bello,
19 do you have any questions?

20 MR. BELLO: No questions, Madam Vice Chair. Thank
21 you.

22 VICE CHAIR JOHN: Mr. Holmes, do you have any
23 questions for the Office of Planning? Okay. Thank you very
24 much.

25 So, Mr. Holmes, would you like to make your

1 presentation now? You can just say you've already given it
2 or you can add something else.

3 ANC COMMISSIONER HOLMES: Well, again, what we
4 were stating before, with all these changes that we saw with
5 the filing of the, so the curb cut is not happening, the
6 community is concerned.

7 Parking is going to be an issue that people have
8 concerns about on that street. And now you're saying that
9 it's not going to be at the house, it's actually going to be
10 on the street.

11 And we don't have any information from DDOT about
12 their schedule about how this alley is going to be managed.
13 What we like to see with some of those changes is to go back
14 and have that conversation with the Applicant, again.

15 Because they have another house that they're also
16 building next door to it, so that's even more parking that's
17 going to be on the street that has very little parking as it
18 is. And residents are concerned.

19 As well as the houses being back that far, being
20 two to three stories, and how much privacy you're getting
21 with the gate, which is six feet, but you still, looking out
22 from the third floor you can look all into other people's
23 backyards, et cetera. So, we have residents who are
24 concerned about that as well.

25 I know that the DCA has reached out to the

1 Applicant to get a meeting on the books for the 13th of
2 December, and was hoping that we could go ahead, we could
3 have that conversation so we can finish getting, figure out
4 how the rest of these issues are going to get resolved.

5 VICE CHAIR JOHN: Okay. Thank you, Mr. Holmes.
6 Does the Board have any questions for Mr. Holmes?

7 Does the Applicant have any questions for Mr.
8 Holmes?

9 MR. BELLO: No, Madam Vice Chair.

10 VICE CHAIR JOHN: Does the Office of Planning have
11 any questions for Mr. Holmes?

12 MR. COCHRAN: No, Madam Chair.

13 COMMISSIONER MILLER: Madam Vice Chair, I'm sorry,
14 I had one question for Commissioner Holmes. Thank you for
15 being here. And for all your work in the community.

16 Is that street, and surrounding neighborhood,
17 residentially, does it have an RPP parking restrictions?

18 ANC COMMISSIONER HOLMES: Two hours on certain
19 streets. But it's not uniform throughout the neighborhood.
20 On Meade, there are spots with two hours up there.

21 But another issue that we always have is, again,
22 you can have RPP all you want, but if they're not coming back
23 there frequent enough to do, to ticket, then it's still an
24 issue. And we've seen trucks be parked there on the sides
25 of the street and not taken care of after a while.

1 Especially being right there at, close towards
2 Eastern Avenue, a lot of stuff happens out there. So yes,
3 parking is an issue.

4 COMMISSIONER MILLER: Okay, thank you very much.

5 VICE CHAIR JOHN: Okay, thank you. So, Mr. Young,
6 is there anyone wishing to testify?

7 MR. YOUNG: Yes. We have two witnesses signed up.

8 VICE CHAIR JOHN: Could you admit the witnesses
9 in support? If you could, yes. Okay. So, what's the name
10 of the first witness?

11 I'm sorry, Mr. Holmes, did you have a question?

12 ANC COMMISSIONER HOLMES: Oh, witnesses were
13 calling me asking why they couldn't get on, that's why I was
14 getting phone calls.

15 VICE CHAIR JOHN: Okay. And so, the names of the
16 witnesses are Mr. and Ms. Endale (phonetic). And what's the
17 other one, Mr. Young?

18 MR. YOUNG: I had Ms. Burch also. And I just
19 brought them on but it looked like they just logged off.

20 VICE CHAIR JOHN: Yes. So could you bring in Ms.
21 Endale first, if you can get her.

22 MR. YOUNG: I did, and then it looked like they
23 just dropped off.

24 VICE CHAIR JOHN: Okay.

25 MR. YOUNG: I can have staff reach out to them.

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1 VICE CHAIR JOHN: Okay. If you can go ahead and
2 do that, thank you.

3 (Pause.)

4 VICE CHAIR JOHN: Okay, there is Mr. and Ms.
5 Burch. Ms. Burch on. Can you hear me, Ms. Burch? Hello?
6 Ms. Burch, are you there?

7 (Pause.)

8 VICE CHAIR JOHN: Mr. Young?

9 MS. BURCH: Can everybody hear me? This is Megan
10 Burch.

11 VICE CHAIR JOHN: Okay. We can hear you now, Ms.
12 Burch.

13 MS. BURCH: Oh my goodness.

14 VICE CHAIR JOHN: Yes.

15 MS. BURCH: I'm so sorry. I love technology.

16 VICE CHAIR JOHN: Welcome. Are you able to turn
17 your camera on?

18 MS. BURCH: Oh, I would love to but I have a
19 feeling if I try to do that I am going to lose you. And no
20 offense, but I've been listening since 9:30 so I really, is
21 it okay, Madam Vice Chair, that I, I'm struggling with this.

22 VICE CHAIR JOHN: That's fine. That's fine.
23 Please state your name and address for the record.

24 MS. BURCH: My name is Megan Burch. I live at
25 5040 Meade Street. So I am directly to, if you're looking

1 at the street, the left of the proposed property.

2 VICE CHAIR JOHN: Okay. And please go ahead and
3 give your testimony. And you have three minutes. And if you
4 can see the screen, there's three minutes on the clock.

5 MS. BURCH: I'm fine. So I have multiple
6 concerns. Thank you ANC Holmes for assisting with us.

7 My biggest concern is that there is, my biggest
8 concern is that there is no off-street parking. It is a
9 residential street. I already have issues with parking. I
10 live here.

11 And the cutting of the alleyway, to me, is not
12 acceptable. You have to do whatever you have to do to make
13 sure that you're not impacting, according to you, Madam Vice
14 Chair, and the rest of the group, that it is significantly,
15 uniquely and distinctly affecting the groups around us. And
16 it would.

17 I am a disabled vet. The fact that you won't have
18 any way to park off the street is, it, to me, is
19 unacceptable. There needs to be an adjudication to,
20 potentially, DDOT's recommendation.

21 A 100-feet, I already dug a trench because I have
22 rain drainage off from the adjacent property of Meade, so I
23 know what 100-feet is. A hundred feet would get to the back
24 of the property with substantial, additional measurements.

25 So, it's not just that. There is 16-feet. There

1 is two properties, three stories each within 16-feet.

2 (Laughter.)

3 MS. BURCH: Telling me that there is not going to
4 be somebody parking on this street, where are they going to
5 go?

6 That's also, how far are they from my window. I
7 believe there is only ten feet from my window to the next
8 adjacent building for fire hazard reasons. And I'm concerned
9 about that.

10 I don't know if there has been a study done, a
11 survey. I did not see, the gentleman who provided the
12 PowerPoint, I did not see that beforehand so I wasn't able
13 to even see what the variance is.

14 So my biggest concern, my biggest, biggest concern
15 is that you're building two, three-story buildings between
16 two adjacent three-story buildings within 16-feet. And there
17 is a slope, there is a runoff. There is no discernible
18 parking solutions. There is a reduction of light, health,
19 privacy.

20 Why is the, why is this plan being approved when
21 the back lot of the properties, and there are two but they're
22 combining them into one, there is two properties. That's
23 where the majority of the land is.

24 And I feel that this land is being rushed through
25 without the people that it's going to affect significantly,

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1 uniquely and distinctly, having a say to it. We did not get
2 the plans for what they were going to do until just now.

3 And so I'm hoping, with Mr. Holmes assistance, to
4 just have a postponement to the fact that we should be able
5 to, so peacefully and succinctly, express what our concerns
6 are to the Board Members.

7 And that's what really what I'm, I'm hoping and
8 expressing that you allow for it because I am very, this is,
9 I was up all night over this. I've been up all night for
10 many nights over this proposed plan. It affects my life.
11 I mean, I live here.

12 And I would just hope and impress upon the Board
13 that you will listen to me. And give us a chance to rebut
14 this proposed plan. Thank you.

15 VICE CHAIR JOHN: Thank you, Ms. Burch. Did you
16 go to the ANC meeting?

17 MS. BURCH: I haven't been able to, I'm so sorry.
18 They're in times where I have meetings at work so I was not
19 able to do that.

20 VICE CHAIR JOHN: That's fine. And just to be
21 clear, are you a next door neighbor?

22 MS. BURCH: I live right next to where this
23 proposed plan is going to happen.

24 VICE CHAIR JOHN: And how many, I mean, are you
25 the next door neighbor or are you a couple of --

1 MS. BURCH: I am the, the, next door neighbor.
2 I literally, I could, I'm looking at the lot right now from
3 my window.

4 VICE CHAIR JOHN: Okay. So the --

5 MS. BURCH: And it's feet from me. It's literally
6 feet from me.

7 VICE CHAIR JOHN: I just want to clarify, your
8 address is 5040 Meade Street?

9 MS. BURCH: Yes, ma'am. Yes.

10 VICE CHAIR JOHN: Okay.

11 MS. BURCH: Yes, ma'am.

12 VICE CHAIR JOHN: And the property address, I'm
13 trying to find it here, is --

14 MS. BURCH: 5042 and 5044.

15 VICE CHAIR JOHN: Okay. So you are adjacent to
16 --

17 MS. BURCH: Not adjacent, next door. So it goes
18 5040, and the other side is 5041, then 5042, the other side.
19 So I think this, I believe, from what I understand from
20 talking with my neighbors who have been here for a while,
21 that it's all even numbered. And the woman across the street
22 sold the lot, which also I have a question about. Eight
23 lots.

24 So, 5040, 42, 44, 46 is the next building to me.
25 Which is, I want to say, 30-feet from me. So 42 and 44 are

1 the land that they want to build on, which are between, on
2 the same side of the street. Yes, Ma'am.

3 VICE CHAIR JOHN: Okay, thank you. So thank you
4 for your testimony. Does anyone have any questions for the
5 Witness? Okay, thank you, Ms. Burch.

6 Mr. Young, you may excuse Ms. Burch. And please
7 bring in the next witness.

8 MR. YOUNG: I don't see the other witness. I was
9 told that they might be with Ms. Burch.

10 VICE CHAIR JOHN: Okay. All right, thank you.

11 So, Mr. Bello, did you have any closing
12 statements?

13 MR. BELLO: No, Madam Vice Chair, I rest on the
14 record.

15 VICE CHAIR JOHN: Okay. Does the Board have any
16 further questions of Mr. Bello or Mr. Holmes before I excuse
17 them.

18 Oh, Mr. Holmes, I'm sorry, did you have any
19 closing statement?

20 ANC COMMISSIONER HOLMES: I just wanted to
21 clarify. So, Ms. Burch, when she was calling, she is exactly
22 next door, that definitely gives her party status on this
23 case, correct?

24 VICE CHAIR JOHN: Well, she hasn't requested it
25 and it's too late to.

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1 ANC COMMISSIONER HOLMES: Okay. I just wanted to
2 make sure because she, yes, okay. All right, just trying to
3 make sure the neighbors understand what's going on.

4 VICE CHAIR JOHN: Right.

5 ANC COMMISSIONER HOLMES: And --

6 VICE CHAIR JOHN: So, go ahead.

7 ANC COMMISSIONER HOLMES: No, no, no, like I said,
8 the rest of my questions I can't ask because DDOT is not
9 here. So I'm going to have to go and write emails after
10 this.

11 VICE CHAIR JOHN: All right. So you are, so if
12 I'm facing the property --

13 ANC COMMISSIONER HOLMES: Yes.

14 VICE CHAIR JOHN: -- 5040 --

15 ANC COMMISSIONER HOLMES: Yes.

16 VICE CHAIR JOHN: -- would she be closer to the
17 street, you know, the pipe-stem is what, 60-feet long --

18 ANC COMMISSIONER HOLMES: So that walkway, the
19 walkway will go right beside her house.

20 VICE CHAIR JOHN: So the walkway is beside her
21 house?

22 ANC COMMISSIONER HOLMES: Yes. And then the house
23 would be behind her house, based on --

24 VICE CHAIR JOHN: Her house.

25 ANC COMMISSIONER HOLMES: Yes.

1 VICE CHAIR JOHN: Okay.

2 ANC COMMISSIONER HOLMES: So that's why she's
3 concerned because if I had somebody behind my house who could
4 see right in from that close, I'd have issues too.

5 VICE CHAIR JOHN: Okay. Does any of the Board
6 Members have any questions before I close the hearing and
7 excuse Mr. Holmes?

8 COMMISSIONER MILLER: Yes. Madam Vice Chair, I
9 have one question for Mr. Bello.

10 Mr. Bello, just following up on our previous
11 dialogue, and my dialogue with Mr. Cochran. If we do not,
12 if the Board does not make a decision today, for whatever
13 reasons, I would like you to provide information on the cost
14 of paving the alley that's behind these houses to provide
15 access for parking behind these houses.

16 The Office of Planning suggested that it would be
17 more appropriate for you to work with DDOT and to get
18 information to us, and so I'd like to have that information
19 if we are not making a decision today. If we are making a
20 decision today, that might not be relevant, or might be moot.

21 Well, might not be moot for the neighborhood, but
22 it would be moot for this case. So that's my request, Madam
23 Vice Chair.

24 VICE CHAIR JOHN: Okay, thank you. Does any --

25 MEMBER SMITH: I have a question, to Mr. Bello,

1 Madam Chairman.

2 VICE CHAIR JOHN: I'm sorry, Mr. Smith?

3 MEMBER SMITH: I said I have a question for Mr.
4 Bello.

5 VICE CHAIR JOHN: Yes, go ahead.

6 MEMBER SMITH: Before we get too far. So, again,
7 this question of the off-street parking access, if you were
8 to construct an alley, wouldn't it result, or would that
9 require you to redesign the proposed buildings because they
10 had front-load garages?

11 You know, I'm talking about your application,
12 would that result on a redesign?

13 MR. BELLO: Well, if I understand the question
14 correctly, the front-load garages have been eliminated in the
15 project because DDOT objects to the curb cut. So if the
16 alley were to be paved then there will be access to two
17 parking pads. Maybe access from the rear of the property.

18 MEMBER SMITH: Okay. Okay, thank you. Maybe I
19 missed that discussion.

20 VICE CHAIR JOHN: Okay. Do you have any
21 questions? Any other questions?

22 Okay, so I'm going to excuse everyone. And thank
23 you, Mr. Holmes, for coming to testify. And thank you, Mr.
24 Bello. And I'm going to close the record and excuse
25 everyone.

1 MR. BELLO: Thank you.

2 ANC COMMISSIONER HOLMES: Thank you.

3 VICE CHAIR JOHN: Bye. So addressing the Board,
4 are we prepared to deliberate today? I just want to see.
5 Raise your hand if you're prepared to deliberate. Or not.
6 Gosh.

7 Mr. Smith, are you prepared to deliberate today?
8 I'm putting you on the spot.

9 MEMBER SMITH: Yes, I'm prepared to deliberate.

10 VICE CHAIR JOHN: Mr. Miller?

11 COMMISSIONER MILLER: I'll defer to Mr. Blake and
12 then I'll speak.

13 VICE CHAIR JOHN: Mr. Blake.

14 MEMBER BLAKE: Yes, I am.

15 VICE CHAIR JOHN: Okay. So I'm prepared to
16 deliberate, Mr. Miller.

17 COMMISSIONER MILLER: Okay. I'm ready to
18 deliberate in terms to discuss. I'm not sure I'm prepared
19 to approve today, but we'll get there.

20 VICE CHAIR JOHN: Approval or deny. So we'll
21 discuss. So may I start with you, Mr. Smith, since Mr.
22 Miller, well, Mr. Smith, would you like to start?

23 MEMBER SMITH: Yes, we can deliberate on case.
24 You know, I would just go on the record and say that I am a
25 little concerned that we may be putting the cart before the

1 horse in the sense that, to channel Mr. Hood, I do believe
2 in a good neighbor policy.

3 And I do believe that the Applicant should go and
4 have more, especially with the Deanwood Civic Association,
5 especially in the light of this issue of where the Applicant
6 will land with whether they're going to improve the alley or
7 not.

8 It sounds like the Applicant has stated that if
9 they don't do the curb cut then they would just remove any
10 parking from the project.

11 But nevertheless, just deliberating on this
12 particular case, I do believe that the Applicant has
13 sufficiently demonstrated what may have met the criteria for
14 us to be able to bring the requested area variances. And I
15 will go through each prong, point-by-point.

16 The first one, exceptional condition of
17 properties. It allows for a legal plat in 1973 with 16-foot
18 wide pipe-stems that extend 100-feet back from the property
19 on Meade Street.

20 Because the zoning regulations require a building
21 to be setback within a certain, a narrow band between 15-feet
22 and 20-feet from the properties, and front yard setback along
23 Meade Street, it will render the properties virtually
24 unbuildable without requested variance.

25 The second prong, practical difficulty. The

1 zoning regulations create a huge practical difficulty, from
2 my standpoint, in development of the lots due to the side
3 yard setback requirements and the build to lines from the
4 front yard setback.

5 In order to construct and building as a matter of
6 right, the property owner would have to construct within the
7 pipe-stem itself. Which is only 16-feet wide.

8 The by-right building will only be, in that case,
9 eight-feet wide, if built to within the front setback range.

10 And third, no substantial detriment to the public
11 building zone regulations. I don't believe it will have a
12 substantial detriment to vary the development standards here.

13 The property zone R-2 was intent, is to allow the
14 developer for attached and detached dwelling units, of which
15 the proposed development would be. And with the proposed
16 conditions proposed by OP, I believe accepted by the
17 Applicant, I do believe that it does sort of mitigate the
18 privacy.

19 You know, this is a pipe-stem. There will always
20 be privacy concerns with the pipe-stem, I believe with
21 adjacent property owners.

22 But to speak to the question that came about, this
23 question was raised by the neighbor, given the size of the
24 building. What is being requested before us today is not a
25 question of the size, of the building I believe.

1 In the R-2 zone, a building can be built up to
2 40-feet. That's the reason why the property to the right of
3 Ms. Burch, I believe, the other side of the pipe-stem, is as
4 tall as it is because the R-2 zone does permit building up
5 to 40-feet.

6 The Applicant is proposing a building that is 36
7 and a half feet tall. So it is within the matter of right
8 height.

9 The question before us isn't necessarily about the
10 height, it's about whether the zoning regulations create an
11 undue hardship for them to use the property. And in this
12 particular instance, given the narrow setback requirements
13 and the length of that pipe-stem requiring any development
14 within the pipe-stem, I believe it meets, it is a hardship.
15 It is a hardship to develop on this pipe-stem in an R-2 zone.
16 So I do believe that it meets the requirements.

17 Now, should we approve it, given that I think they
18 need to have additional dialogue with the civic association
19 out there, you know, it's an open question and I would like
20 to hear from my fellow Board Members on that, but I do
21 believe it meets (audio interference) --

22 VICE CHAIR JOHN: Okay. Thank you, Mr. Smith.
23 Mr. Blake?

24 MEMBER BLAKE: I agree with Board Member Smith's
25 analysis of the variance conditions. To some extent,

1 obviously, the parking issue is real.

2 But without the curb cut and without an
3 understanding if we can do some type of access from the alley
4 if it is not paved, will they still effectively be able to
5 do some pervious surface or something that will allow for
6 that, I don't know. But it would be, it would seem
7 interesting if there was some way to access that. And we
8 haven't really studied that.

9 But according to the DDOT assessment and the
10 relief that we have given, they won't be able to do the
11 parking. So it's acceptable in that sense. So in that
12 sense, I suggest to the good. Public good.

13 The other concern with the privacy issue,
14 obviously we talked about the structure and massing of this
15 property, it's consistent with what's allowed in the area.
16 So it should not technically have impact on that. But a stem
17 property would unfortunately.

18 So, they're sympathetic to the next door neighbor
19 Lot 51's concerns. I do see where this could, is doable.
20 But I would be in a position to support this.

21 I do think the Deanwood Civic Association should
22 see this, however, I do not think our decision, necessarily,
23 would be reflective of that because it's unclear what
24 conditions may be, may come out of that. But I would
25 prepared to support.

1 VICE CHAIR JOHN: Thank you, Mr. Blake. Mr.
2 Miller?

3 COMMISSIONER MILLER: Thank you, Madam Vice Chair.
4 I concur with everything that Board Member Smith and Blake
5 have said.

6 I would be more that the variance standards have
7 been met. All three prongs. Even the third prong about
8 substantial detriment to the public good.

9 I think that we've heard evidence that there could
10 be adverse parking impact. They meet the waiver permission
11 under the zoning regulations for not doing parking, which
12 they only went for after the curb cut was indicated it was
13 going to be denied from DDOT from another point.

14 So I would be more comfortable, so I think they
15 meet the variance standard, the zoning developmental
16 standards. But I would be more comfortable, personally, that
17 there may not be concurrence with this.

18 To wait for Deanwood Civic Association, which the
19 Applicant is presenting in front of, December 13th I believe,
20 according to the ANC's letter that we just got today. The
21 ANC first supported this, but then they found out about
22 Deanwood hadn't yet weighed in and that the Applicant was
23 presenting before Deanwood on the 13th, 12 days away from
24 now.

25 And so, I'd be more comfortable waiting to see,

1 to give time for the parties, for Deanwood to submit
2 something to the record for ANC to react to that, if
3 anything. And for the Applicant to react to that.

4 And for the Applicant to provide information on
5 the cost to them of paving the alley behind the properties,
6 even though they'd be addressing, not only their impact of
7 those two properties, but an accumulation of impact which
8 we're not really supposed to look at in an individual case,
9 but we hear. We've heard testimony, and it's in the record
10 on this case, about the parking in the neighborhood.

11 So, that's where I am. I agree with that the
12 variance standards, the zoning standards have been met. I'd
13 be more comfortable with waiting, I guess until sometime
14 after December 13th, to get the Deanwood Civic Association
15 into the record.

16 That's been the ANCs, this ANC's practice, to
17 defer to the ANC. I'm not sure why it didn't happen before
18 the ANC took their action, but whatever. So that's where I
19 am, Madam Vice Chair. I'm not sure how I would vote if we
20 were to put it up for a vote.

21 VICE CHAIR JOHN: So, I think the Applicant has
22 met the variance, the criteria for granting the variance
23 request, which is all the Applicant is asking.

24 I think with the removal of the curb cut, so the
25 Applicant doesn't need to provide parking. And there is no

1 paved alley, so there is nothing else left for the Applicant
2 to do, and there is nothing left for the Deanwood Association
3 to react to because the property meets all of the development
4 standards.

5 But I'm prepared to vote today, but if the rest
6 of the Board feels that there is value in having the Deanwood
7 community weigh in again, and I agree with you, Commissioner
8 Miller, that the Applicant should have tried to meet with the
9 Deanwood Association before coming in.

10 I'm reluctant, I'm reluctant to continue the case
11 because their schedule is so bad. And as the Office of
12 Planning said, DDOT made a recommendation that the Applicant
13 should consider paving the alley, but it was not a condition
14 that they, you know, of DDOT's approval. So, I really don't
15 know how waiting to hear from the DDOT association regarding
16 the parking situation, which the Applicant cannot help.

17 The Applicant tried by putting in parking, which
18 the Applicant had to remove because DDOT said, remove the
19 curb cut. So the Applicant changed the drawings, removed the
20 curb cut, removed the parking. So I really don't know what
21 else there is for the Applicant to do at this point.

22 Now, because the ANC remains in opposition,
23 because the ANC supported the application conditioned on
24 meeting with the Deanwood Association. It's possible that
25 the ANC might remove its request, and the Applicant would

1 have a more streamlined process to get approval.

2 So, where is the rest of the Board? I can vote
3 today or not. But this is a democracy so I will see where
4 everybody wants to be.

5 And I'm in support of the application because it
6 clearly meets the variance standard, which is all the
7 Applicant is requesting. So I'll let the Board decide.

8 MEMBER SMITH: Madam Vice Chair, I completely
9 agree with your hitting on the points. Your analysis of this
10 particular situation that we're in.

11 According to the zoning ordinance is that there
12 is an improved alley. I mean, they're not required to have
13 parking.

14 They, the Applicant has revised their
15 architectural plans to remove the parking, remove curb cut,
16 and is still in compliance with the zoning regulations
17 because there isn't an improved alley there. And the
18 Applicant is not required to improve it.

19 You know, I am very sympathetic to the parking
20 concerns, but given what is before us today, the request, I
21 don't think that anything variance criteria could lead itself
22 to us requiring to improve the alley and provide a parking
23 pad.

24 So, with that I'm prepared to move forward with
25 this application.

1 I do agree with you. I do wish that the Applicant
2 did have a conversation with the Deanwood Civic Association,
3 but I don't think that conversation would change the fact
4 there that parking would be a requirement because there is
5 alley access currently. So, I'm prepared to move forward
6 with the vote.

7 VICE CHAIR JOHN: Mr. Blake?

8 MEMBER BLAKE: I have one point that I'm just not
9 clear on. Has the Applicant had a design review meeting with
10 DDOT and the Office of Planning to try to better resolve this
11 issue?

12 I just can't recall in our statements if that was
13 the case. Does anyone have a recollection of that?

14 VICE CHAIR JOHN: Nothing beyond the DDOT report,
15 which DDOT made a recommendation that the Applicant pave the
16 alley. But in my view, that's outside of this Board's
17 jurisdiction.

18 And once again, I don't want to repeat this again,
19 but DDOT can't tell a private party to pay for improvements
20 to public space. It can recommend it. And the applicant
21 decide, can choose to do it or not.

22 And DDOT has made it difficult for the Applicant
23 to provide parking by saying, you cannot have a curb cut for
24 their reasons, which is you limit on-street parking when you
25 allow private parties to have these curb cuts. So the

1 Applicant is between a rock and a hard place.

2 And this is a straightforward variance
3 application. There is nothing, there is really no quirks to
4 it.

5 It's a pipe-stem lot. The Applicant can't meet
6 the frontage, the setback, because it cannot build a useable
7 building in the distance and comply with the setback
8 requirements.

9 So I'm inclined to vote today. I don't see any
10 value, and I respect what you're saying, Mr. Miller, but
11 Applicant, in my view, is between a rock and a hard place.

12 And I agree with you. And it was suggested that
13 he should, the Applicant should most definitely have meet
14 with the Deanwood situation. And I hope if the Applicant is
15 listening, that the Applicant doesn't do this again.

16 But that said, I don't think we should penalize
17 the Applicant where it meets the criteria. Not penalize,
18 delay it. Because I don't know when Mr. Moy can get him back
19 on. So --

20 COMMISSIONER MILLER: Madam Vice Chair, you made
21 an allusion that this is a democracy.

22 (Laughter.)

23 COMMISSIONER MILLER: I can count what three votes
24 are. So I'm prepared to vote today.

25 VICE CHAIR JOHN: Okay.

1 COMMISSIONER MILLER: And in favor. And I just
2 would hope that the Applicant, property owner, would work
3 with their neighbors in the future, under the good neighbor
4 policy you referred to, to get the city and to pave that
5 alley behind those properties on Meade Street. If that would
6 help mitigate parking conditions, generally, in the
7 neighborhood. Thank you.

8 VICE CHAIR JOHN: Thank you, Mr. Miller. Is your
9 hand up, Mr. Blake?

10 MEMBER BLAKE: Yes, it is. I would also encourage
11 if there is some way that the Applicant could, again, meet
12 with DDOT to see if there is any potential solution that they
13 could work through, other than simply, as you pointed out,
14 asking them to pay money for public space. Just see if there
15 is a solution that could be worked out.

16 VICE CHAIR JOHN: Okay. And I hope the Applicant
17 is listening and is hearing this discussion.

18 So, I will then make a motion to approve
19 Application Number 20544 of 5042 to 5044 Meade Street
20 Northeast, as captioned and read by the Secretary, and ask
21 for a second? Mr. Smith?

22 MEMBER SMITH: Second. Including my condition.

23 VICE CHAIR JOHN: Thank you. And, Mr. Moy, would
24 you please take the roll call?

25 Oh, did I close the record? I believe I did. If

1 I didn't, it's closed.

2 (Laughter.)

3 VICE CHAIR JOHN: Please take the roll call, Mr.
4 Moy.

5 MR. MOY: Yes. Thank you. When I call each of
6 your names if you would please respond with a yes, no or
7 abstain to the motion made by Vice Chair John to approve the
8 application for the relief requested. A motion to approve
9 was seconded by Mr. Smith.

10 Zoning Commissioner Rob Miller?

11 COMMISSIONER MILLER: Yes.

12 MR. MOY: Yes to approve?

13 COMMISSIONER MILLER: Yes, to approve.

14 MR. MOY: Mr. Smith?

15 MEMBER SMITH: Yes.

16 MR. MOY: Mr. Blake?

17 MEMBER BLAKE: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes to approve.

20 MR. MOY: We have one board member not present and
21 not participating. Staff would record the vote as 4-0-1.

22 And this is on the motion of Vice Chair John to
23 approve the motion, which was seconded by Mr. Smith. Also
24 in support of the motion to approve is Zoning Commissioner
25 Rob Miller, Mr. Blake, Mr. Smith and Vice Chair John. Board

1 Member not present. Motion carries on the vote of 4-0-1.

2 VICE CHAIR JOHN: Thank you, Mr. Moy. Do we have
3 anything else before the Board today?

4 MR. MOY: There is nothing from the Staff, Madam
5 Vice Chair.

6 VICE CHAIR JOHN: And there is nothing from me.
7 And I don't see any hands raised. So thank you everyone.
8 And we're adjourned, I supposed. Is it adjourned, Mr. Moy?
9 I think so.

10 MR. MOY: Yes. Yes, you have the gavel. You have
11 the gavel.

12 VICE CHAIR JOHN: Thank you. And the virtual
13 gavel has been used. So have a great week and I'll see you
14 all next week, same place, same time. Thank you.

15 (Whereupon, the above-entitled matter went off the
16 record at 12:30 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: DC BZA

Date: 12-01-21

Place: teleconference

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