

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 15, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:30 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL BLAKE, Board Member
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER[S] PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
RYAN NICHOLAS, ESQ., Attorney Advisor
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
JONATHAN KIRSCHENBAUM
KAREN THOMAS
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on December 15, 2021.

C-O-N-T-E-N-T-S

Case Continuations	7
Application No. 20542 of Hossein Barekatain & Fardin Foroujan	8
Application No. 20573 of AT&T	53
Application No. 20578 of Naseem and Gregory Kourosh . .	74
Application No. 20579 of Alexis Chappell and Greg Kendall	81
Application No. 20553 of Income One, LLC	86
Application No. 20526 of 4248, LLC	106
Application No. 20354 of Cambridge Holdings, LLC . .	130

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

9:35 a.m.

CHAIRPERSON HILL: Ladies and gentlemen, the Board of Zoning Adjustment will please come to order. Today's date is 12/15/2021. My name is Fred Hill, and I am the Chairperson of the District of Columbia Board of Zoning Adjustment.

Today joining me is Vice Chair Lorna John, Vice Chair, Board Members Carl Blake and Chrishaun Smith, and Zoning Commissioner Peter Shapiro. Today's meeting hearing agenda available to you on the Office's website.

Please be advised this proceeding is being recorded by a court reporter and it is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office's website after today's hearing.

Accordingly, everyone who is listening on Webex or telephone will be muted during the hearing. Also, please be advised we do not take any public testimony at our decision meeting sessions.

If you're experiencing difficulty accessing Webex or with your telephone call, please call our OZ hotline number at 202-727-5471. It's also on the screen in front of you.

At the conclusion of the decision meeting session, I shall have a consultation with the Office of Zoning to hear

1 whether they debated the issue. A full order is required
2 when the decision contains adverse to a party including
3 affecting ANC, uphold ornamental if the Board's decision
4 differs from the Office of Planning's recommendation.

5 The Board favors the use of summary work whenever
6 possible and an Applicant may not request the Board to issue
7 such an order.

8 In today's hearing session, everyone who is
9 listening on Webex or by telephone will be muted during the
10 hearing and only people that have signed up to participate
11 will be unmuted at the appropriate time.

12 Please state your name and address before
13 providing oral testimony or a presentation. Oral
14 presentations should be limited to a summary of your most
15 important points.

16 When you are finished speaking, please mute your
17 audio so that your microphone is no longer picking up sound
18 and background noise.

19 All persons planning to testify either in favor
20 or opposition should have signed up in advance. They will
21 be called by name to testify and if this is an appeal, only
22 parties allowed to testify by signing up to testify.

23 All participants complete an oath or affirmation
24 as required by Subtitle Y 408.7.

25 Requests to enter evidence in timely online

1 virtual hearings such as in written testimony or additional
2 supporting documents other than live video which may not be
3 presented as part of the testimony may be presented with
4 Subtitle Y 103.13, provided that the persons made the request
5 to enter an exhibit explain how the propose exhibit is
6 relevant, the good cause it justifies to allow an exhibit
7 into the record, including the explanation of why they may
8 not be a private hearing pursuant to Subtitle Y 206 and how
9 proposed exhibit would not unreasonably prejudice any
10 parties.

11 The order of procedures for special exceptions and
12 variances are pursuant to Subtitle Y409. The order of
13 appeals is pursuant to Y507. At the conclusion of each case,
14 an individual who is unable to testify because of technical
15 issues may file a request for leave.

16 To file a written version of the planned testimony
17 to the record within 24 hours following the conclusion of
18 public testimony in the hearing.

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

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

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

5 Finally, District of Columbia Administrative
6 Procedures Act requires that the public hearing in each case
7 be held before the public, however, Section 405 be in 406 of
8 that Act.

9 The Board made consistent with its rules and
10 procedures and the act enter into a closed meeting of the
11 case for purposes of conceding legal Counsel on a case
12 pursuant to D.C. official code Section 2-575D4 and/or
13 deliberating a case pursuant to D.C. official code Section
14 2-575B13.

15 The only act providing the necessary public notice
16 to the case emergency closed meeting to the case called note.

17 Mr. Secretary, do we have any preliminary matters?
18

19 MR. MOY: Good morning, Mr. Chairman, Members of
20 the Board. We do. First of all, I'd like to announce for
21 the record the two case applications that are not on today's
22 docket. The first case application is 20538 of TG
23 management. This case has been continued and rescheduled
24 until March 9, 2022. The second case is 20584 of Kings Creek
25 LLC, also continued and rescheduled but until March 23, 2022.

1 Other than that, Mr. Chairman, as has been
2 customary, the Board's Staff would suggest that the Board
3 address any preliminary matters when I call a case.

4 That's all from me, Mr. Chairman.

5 CHAIRPERSON HILL: Thanks, Mr. Moy. Good morning,
6 everyone.

7 I have a hard stop at 12:15 p.m. I think, and so
8 what I'd like to do is go ahead and push the meeting cases
9 to after the hearing so that I can be present for most of the
10 hearing.

11 And then, Mr. Moy, you can go ahead and call our
12 first hearing, which I believe is 20542.

13 MR. MOY: Thank you, Mr. Chairman. The Board is
14 in its hearing session, and that first case is Application
15 20542 Hossein Barekatain & Fardin Foroujan. I know I'm not
16 pronouncing that correctly.

17 This is an amended self-certified application for
18 use variance from the maximum number of dwelling unit
19 requirements of Subtitle U Section 201.1 pursuant to Subtitle
20 X Section 1002. And for two areas, the first is the lot
21 dimension requirements of Subtitle D, Section 302.1 pursuant
22 to Subtitle X Section 1002.

23 And the penthouse maximum area restrictions are
24 Subtitle C Section 1500.3D pursuant to Subtitle X Section
25 1002. This would construct three new three-story with roof

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1 deck and cellar flats in the R3 zone. This is property
2 located at 2405 37th Street NW Square 1300 Lots 330 and 329.
3 And this is located in the R3 zone at -- well, I just gave
4 the address so I think that's it from me, Mr. Chairman.

5 CHAIRPERSON HILL: Mr. Dupont, can you hear me?

6 MR. MOY: Since you mentioned his name, Mr. Dupont
7 did submit this morning an updated statement for his
8 presentation. So, if the Board would allow that into the
9 record because of the 24-hour block, it might be helpful.

10 CHAIRPERSON HILL: I just lost Mr. Dupont it looks
11 like. Mr. Dupont, can you hear me?

12 MR. DUPONT: I had to quit and restart to unmute.
13 Can you see me? Yes, there I am. Nice to see you again.

14 CHAIRPERSON HILL: You as well, thank you. Could
15 you introduce yourself for the record?

16 MR. DUPONT: My name is Stephen Dupont and I am
17 here to present the Application 20542 for 2405 37 Street NW.

18 CHAIRPERSON HILL: You had something you wanted
19 us to add into the record, is that correct?

20 MR. DUPONT: I had written a presentation for this
21 morning and it's written using the OP comments as a scaffold.
22 It might be easier to follow if you had it in front of you
23 because it's color-separated. I gave it to Mr. Young.

24 CHAIRPERSON HILL: Unless the Board has any
25 issues, I'd like to allow that into the record. I don't see

1 anybody with their hands raised. Mr. Moy, could the Staff
2 put that into the record so we can take a look while Mr.
3 Dupont is going through his application and let us know when
4 they have it, and/or if they could also email it to us, I
5 guess?

6 MR. DUPONT: I also included an excerpt from the
7 zoning map that would make it easier to find the various lots
8 that I'm talking about.

9 CHAIRPERSON HILL: Is that what you had wanted to
10 pull up for your presentation or no?

11 MR. DUPONT: I don't need to pull that up, I can
12 just read it. It's just easier.

13 CHAIRPERSON HILL: So, that is what you're going
14 to do to make your argument though, correct?

15 MR. DUPONT: Yes, I also have, if you want, a 3D
16 model that I can show on screen. I can share my screen and
17 move it around.

18 CHAIRPERSON HILL: unfortunately, you're not able
19 to share your screen. Go ahead, Mr. Dupont, and Mr. Moy you
20 had something to say?

21 MR. MOY: I was going to say Staff just informed
22 me it's in the record so if you go to the record you'll be
23 able to follow Mr. Dupont with these.

24 CHAIRPERSON HILL: Mr. Shapiro?

25 COMMISSIONER SHAPIRO: Are we talking about

1 Attachments 1, 2, and 3?

2 CHAIRPERSON HILL: Those are blank as far as I
3 could tell. If you reset, Commissioner Shapiro, you can see
4 the new exhibit that is in there.

5 COMMISSIONER SHAPIRO: I'll do that, thank you.

6 MR. DUPONT: The attachments were simply the
7 receipts I got for uploading -- actually, never made it into
8 the database somehow.

9 CHAIRPERSON HILL: Mr. Dupont, I'm going to go
10 ahead and let you argue your case as to why you believe your
11 client is meeting the requested relief. I'm going to put 15
12 minutes on the clock just so I know where we are and you can
13 begin whenever you'd like.

14 MR. DUPONT: Thank you. First, I'd like to bring
15 your attention to the revised set of drawings and the revised
16 burden of proof. They were developed following a
17 presentation of this project on November 15th before the ANC
18 and uploaded to IZIS before Thanksgiving.

19 However, the upload severance somehow never made
20 it into the database. There were also several issues brought
21 up following the ANC hearing by the occupants of the
22 condominium building at Lot 555.

23 Our response to those questions were also
24 uploaded. Those were successfully added to the record.

25 CHAIRPERSON HILL: Mr. Dupont, could you just

1 pause for one moment? Someone is at my door so I have to just
2 open the door. I love this Zoom thing. Okay, one second.

3 Can I get everybody back again? Sorry about that.

4 MR. DUPONT: I had a sip of coffee.

5 CHAIRPERSON HILL: Please continue.

6 MR. DUPONT: The drawings after the ANC hearing,
7 the revision, is a very quick scan and I can answer questions
8 you might have about that.

9 The revised burden of proof of denser and I'd like
10 to use the comments from the OP report of 29th October of a
11 scaffolding by which we can both answer the OP concerns and
12 clarify issues from the revised burden of proof.

13 So to continue, my client has two abetting
14 properties, Lot 0330 is improved, Lot 329 is unimproved and
15 in fact has been unimproved for many decades. It may never
16 have been built on in fact.

17 We are here to request two variances, one is a use
18 to build flats rather than single family dwellings with
19 accessory apartments and area various as the existing lots
20 and proposed would be non-conforming for area and lot width.

21 With this, I enter into the OP report beginning
22 with the use variance issues. I'll be referring to the lots
23 by the number so having the zone map available will help.

24 Single I, this is relief from Subtitle D Section
25 201.1, maximum number of dwelling units, single I,

1 extraordinary exceptional situation or condition resulting
2 in exceptional or undue hardship to the owner. A, the
3 Applicants face the size, shape, and arrangement of lots in
4 existing zoning create the need for use variance.

5 In particular, the Applicant cites the proximity
6 of the R3 zone to the MU27 zone properties fronting on
7 Wisconsin Avenue.

8 OP notes the residential zones abut commercial
9 zones across the District and that does not demonstrate an
10 extraordinary or exceptional situation that would create the
11 need to develop the property as flats.

12 Comment, it is or used to be common to require an
13 ally buffer between our lots and commercial. In this case,
14 the hardship is exacerbated because all the commercial lots
15 are utilized and all the lots, commercial and residential are
16 small and tightly compressed between Wisconsin Avenue and
17 37th Street.

18 The exception of undue hardship, the Applicant has
19 not demonstrated an exception of undue hardship that would
20 create the need to develop property as three flats.

21 Lot 330 is currently improved with a semi-detached
22 building, one principal dwelling unit, and one accessory
23 dwelling unit.

24 Lot 329 could be developed in a similar manner as
25 a matter of right. Actually, semi-detached development is

1 not easily done here. 20 years ago I met with Mr. LeGrant
2 about these very lots.

3 0330 is arranged as if to be semi-detached on the
4 north but it has no partner. On the south, it fails to reach
5 as far as the property line. 329 to the south of 330 has no
6 abutter at all to attach to.

7 In addition to being 10 feet too narrow to be an
8 attached lot and 30 percent non-conforming for a detached lot
9 area, if a detached property was proposed it would lose 8
10 feet on each side for sign yards, essentially a 27-foot width
11 penalty for a detached single family dwelling.

12 To make plausible use of these lots would require
13 330 to be raised and 2 new homes to be built as semi-
14 detached, and even then, an area variance would be required
15 both for width and area.

16 Development of the lots as flats double I, no
17 substantial detriment to the public good. Development of
18 these lots as flats would not likely have a substantial
19 detrimental impact to the public good.

20 The buildings as proposed would have a bulk
21 similar to another area and the site is close to a commercial
22 corridor. However, although the zone does not allow flats,
23 it does allow by right two units providing, one is an
24 accessory apartment.

25 My comment is I often recommend single family

1 dwellings with accessory apartments. In fact, I have four
2 such homes in permanent review now for Anacostia, also in R3,
3 which were achieved through the variance process.

4 The effort of these is very suitable for family
5 use at that location, these lots being larger than these and
6 not having the commercial backdrop. However, they are still
7 non-conforming. The accessory apartments, of course, are
8 good for mortgage relief.

9 Our two lots or not attractive for single family
10 dwelling occupants, witness the current difficulty sounding
11 Lot 327. The specific objection by multiple suitors for that
12 property has been the proximity of the commercial uses.

13 On the other hand, the apartments in Lot 328 sold
14 out immediately and then new apartment houses just nearing
15 on completion on the through lot 0572, apartments do work
16 well here.

17 I would note there's a footnote on this page about
18 the Applicant is proposing a new curb cut from 37 Street NW
19 that would provide access to 9 underground parking spaces
20 located below the flats.

21 Actually, that curb cut is existing and in daily
22 use. We would make use of the existing curb cut and not have
23 to require a new one from the DDOT.

24 Subtitle I, no substantial impairment to the
25 intended purpose and integrity of the zoning regulations.

1 The preventions of the residential house R zones are intended
2 to discourage multiple dwelling unit development.

3 Two principal dwelling units per lot of record are
4 not permitted in the R3 and the requested use variance to
5 permit flats would not be consistent with the intent purpose
6 and integrity of the R3 zone.

7 That's our first permit as a matter of right in
8 the residential flat or RF zones. Discouraged does not mean
9 forbid. The very reason for the variance process to exist
10 is to address those various conditions a code cannot.

11 No code can anticipate every condition. The OP
12 report now addresses the area variance. Relief from Subtitle
13 D Section 302.1 Density and Lot Dimensions, I. Extraordinary
14 exceptional situation or condition resulting in particular
15 and exceptional practical difficulties to the property
16 owner.

17 The Applicant has not provided sufficient
18 justification to demonstrate an extraordinary or exceptional
19 situation or condition resulting in a particular duh-duh-duh.

20 OP finds there are no extraordinary or exceptional
21 situation or condition of the property that would lead to
22 practically difficulty to the property owner.

23 Other lots in 1300 exhibit a similar condition to
24 the subject lots, including absence of an alley and proximity
25 to MU27 Zone properties.

1 Furthermore, the requested subdivision could be
2 accomplished by a special exception through voluntary
3 inclusionary development standards in Subtitle Section 302.5,
4 which would permit lot widths of 16 feet and a minimum lot
5 area of 1600 square feet in the R3 zone.

6 My comment, actually, I could not find other lots
7 in Square 1300 with an absence of alley and proximity to
8 MU27.

9 We have considered the IZ option of course,
10 however, the IZ would in the case of three row homes with an
11 accessory apartment to require that one of them by IZ thus
12 requiring 33 percent of the gross floor area as a
13 contribution.

14 A typical IZ development will require about eight
15 to ten percent of the net floor area. It is therefore not
16 really an attainable option. A, extraordinary exceptional
17 situation. The Applicant asserts that the area suffers from
18 a lack of improvements.

19 This assertion does not demonstrate an
20 extraordinary exceptional situation. The Applicant has
21 matter of right development options available that would not
22 preclude investment in and upgrades to the property.

23 We respond, it is because of the way the adjoining
24 lots are being used and the likelihood these uses will not
25 be changing that represents the lack of improvements. That

1 has contributed to my client's through lots languaging.

2 Lots 553 and 815 are split zone lots where the R3
3 portion is providing valuable service to their commercial
4 other half. These intrusive uses, combined with our
5 compressed relationship to commercial betters creates the
6 extraordinary situation.

7 For example, the owner of 332 has offered hundreds
8 of thousands of dollars for an easement through my client's
9 property. His building is still standing empty after at
10 least two years and is for sale.

11 This lack of buffer and service access is actually
12 equally as difficult for the commercial owners as
13 residential.

14 It would seem obvious that properties facing
15 Wisconsin should be commercial, yet one even sees a large new
16 residential apartment house being completed at Lot 572, which
17 is another through lot in the MU27.

18 It appears the rear there will remain empty as
19 parking. B, exceptional practical difficulties, the
20 Applicant has not made a case for exceptional practically
21 difficulty directly arising from the extraordinary condition
22 of the property.

23 As previously stated, the Applicant could develop
24 329 as a matter of right with once principal dwelling and one
25 accessory dwelling unit.

1 The Applicant also could pursue voluntary
2 inclusionary development as a special exception to subdivide
3 the two lots to three lots, each with a vogue building, one
4 of which could be required to be an IZ unit.

5 And our response is, it is true that the practical
6 difficulty does not arise. The option suggested by OP exists
7 and we happily suggested use these options where appropriate.

8 But these are not good solutions in this case.
9 The difficulty here arises from the awkward and unpleasant
10 conjunction of these small residential properties against
11 their commercial neighbors.

12 Further, the fact that more single family
13 dwellings will not be built on the nearby land undermines the
14 psychological support from neighbors that future occupants
15 would need. Apartment configurations have been proven to
16 work, single family dwellings have been proven to be
17 unsuccessful here.

18 No substantial detriment to the public good, II.
19 In this instance, granting a variance for the three lots
20 would likely not result in substantial detriment to the
21 public good.

22 The resulting lots would not be particularly out
23 of scale with those in the area and would result in buildings
24 that would not be out of scale with the street scape.

25 In fact, these three lots would be just a little

1 bigger than the 10 lots that are directly across the street
2 and would provide better parking and outdoor space as well.

3 III, no substantial impairment to the intent,
4 purpose and integrity of the zoning regulations. While the
5 OP is typically supportive of appropriate planned
6 developments providing the housing, this proposal would not
7 be consistent with the purpose and intent with the R3 zoning
8 regulations.

9 Proposed subdivision would take two conforming
10 lots and create three non-conforming lots that would fail to
11 meet the minimum lot width and lot area requirements for the
12 R3 zone.

13 Predation of three non-conforming lots would not
14 be consistent with the intent of the zoning regs and would
15 therefore cause harm to the integrity of the zoning
16 regulations.

17 Response, in fact, the existing two lots are not
18 conforming for either detached or semi-detached development.
19 At 5410 total square feet and less than 60 foot total width,
20 they lack sufficient area and width for either.

21 This is one reason we find in Subtitle C Section
22 204.9B Page 6 of our burden of proof to be interesting,
23 although not totally analogous. It allows non-conforming
24 uses in the R zones to be placed with other non-conforming
25 uses by a special exception.

1 We feel this is another reason why the integrity
2 of the zoning regulations will not actually be harmed. So,
3 in conclusion, let me observe that the objections by OP are
4 all presented as alternatives in the code that are by right
5 in the zone, yet these alternatives would in fact all require
6 variances and special exceptions themselves.

7 These lots are in fact non-conforming as they said
8 and non-conforming for the options proposed except perhaps
9 the voluntary IZ, and that option requires an attainable
10 contribution.

11 On the other hand, OP agrees that our proposed
12 development at this location poses no impairment or detriment
13 to the neighborhood under any of the tests of the variance
14 procedure.

15 At this time, I'd like to note that as far as I
16 know, there are no objections to this proposal except one
17 regarding students and that the ANC supports this proposal
18 and actually has sent as witness this morning.

19 So, at some point, I'd like to introduce Ms.
20 Mladinov of the ANC3B to speak as you would require.

21 And that completes my discussion for the moment.

22 CHAIRPERSON HILL: Thanks. Let me hear from the
23 Commissioner real quick. Commissioner Mladinov, can you hear
24 me? Can you introduce yourself for the record, please?

25 MS. MLADINOV: Yes, thank you Chairman Hill and

1 Board Members. My name is Ann Mladinov, M-L-A-D-I-N-O-V, I
2 am Commissioner in ANC 3B01 and I am representing ANC 3B
3 where the subject property is located.

4 I live in the 2800 block of 39th Street, which is
5 about 5 blocks from 2405 37th Street. It is not in my actual
6 single-member district.

7 It's in the neighboring single-member district but
8 that's represented by Commissioner Jackie Blumenthal and she
9 has a schedule conflict this morning so she does indeed need
10 to represent the ANC on this matter.

11 We worked together on a resolution that we adopted
12 just last Thursday by a vote of 4 to 0 at our regular public
13 meeting and I'm sorry we couldn't vote earlier but our
14 practice is to hear from the Applicants and the community at
15 one meeting and then take all of the comments and the facts
16 in the case into account before take a formal vote.

17 So, we're working as fast as we can, thank you.
18 As you may know, our ANC doesn't always take a position in
19 zoning cases in our area. Most of the cases are rear decks
20 or additions and we generally support if the neighbors all
21 support.

22 But there are other cases that have wider
23 implications for the community where we do take a position
24 in the overall interest of the neighborhood. And this case
25 is one of those.

1 As Mr. Dupont mentioned, in this case the ANC and
2 most of the neighbors are in agreement that the proposed
3 project would be of benefit to the community as a whole and
4 the use would be compatible with the nature and appearance
5 and function of the other homes in the neighborhood.

6 As the OP report notes, the proposal would not be
7 likely to have a substantial detrimental impact to the public
8 good, and Mr. Dupont read that quote. But for the particular
9 and really unique situation of these two lots, they would
10 have been redeveloped years ago.

11 This is a very attractive location as far as
12 proximity to transit, walking distance to shops on Wisconsin
13 Avenue as well as schools, it's a great neighborhood.

14 The neighbors and the Commission have been
15 watching and waiting for a proposal that could work and put
16 these two lots back into constructive use.

17 They would like to see the property redeveloped
18 effectively because the existing structure is dilapidated and
19 the overall condition and appearance of a property as a whole
20 is a detriment to the neighborhood.

21 The neighbors and the Commissioners know the story
22 of this property and what difficulties the owners have had
23 with getting anything done there through a series of owners.
24 And Mr. Dupont mentioned working on the same lot 20 years ago
25 with the proposal that did not work out.

1 That was partly because of parking, as I
2 understand it, because parking is in such short supply in
3 this area and in this current proposal, the owner has
4 proposed to build parking on site because of the conditions
5 of the lot.

6 As Mr. Dupont mentioned, there is no alley to the
7 side or the rear so there is no access to a garage where we
8 might usually see it in our neighborhoods to the rear or
9 possibly to the side but has to be entered from the front if
10 you're putting a garage on site.

11 And that garage, as you can see from the proposal,
12 has to be underground, which adds considerably to the cost
13 and that cost could be extreme if you're only spreading it
14 across one unit or one structure.

15 So, it really gravitates towards building more
16 structures on this property and having more units to spread
17 the cost over.

18 We realize that the specific financials aren't in
19 the case and we don't have them either, but we have seen, as
20 Mr. Dupont mentioned also, that these lots have not been
21 attractive or possible to develop with just a single family
22 home on the lot.

23 This house is one of the oldest houses in the area
24 and was built in 1910 before most of the rest of the
25 neighborhood was taking shape, either the commercial or the

1 residential row houses across the street.

2 And it has a full lot for the side yard, which is
3 larger than the lot itself. There is no other lot of that
4 kind in the entire area as far as we know.

5 It is unique in that District and just the fact
6 alone that this lot with the home and the side yard have
7 remained undeveloped for so long argues in itself that it
8 raises practical difficulties and particular exceptional
9 conditions for the owners.

10 No one has been able to develop in more than 20
11 years an area where all properties are priced, that makes it
12 stand out as unique. It is part of a very short row of three
13 residential buildings, as Mr. Dupont mentioned, that were
14 built as single homes in 1910 on that block.

15 They are surrounded by commercial to the north,
16 to the east, and to the south. The Glover Park Market is on
17 the north side two doors up from the subject property, two
18 restaurants on the east open onto Wisconsin, and their rear
19 doors.

20 I think it's in the file, the photo, the rear of
21 those restaurants is directly in the backyard of 2405. And
22 on the south, Lot 553, as Mr. Dupont said, is used for
23 parking and outbuildings associated with the commercial
24 establishment on Wisconsin.

25 So, it does not make an attractive location for

1 a private development. So, our ANC looked at all of the laws
2 and all of the facts and we found that the height lot
3 occupancy for a rear setback for mid surface parking are all
4 within the standards applicable.

5 The land use for that areas in the 2021 D.C.
6 comprehensive plan is moderate ANC housing which includes
7 flats as well as row houses, and there are already apartments
8 and flats in that same block including the apartment with
9 five units within the R3 zone as well as the flats two doors
10 north in NU27.

11 The Applicants proposal would provide much needed
12 housing in the area and the structures would be compatible
13 with the nearby building streetscapes and neighborhoods and
14 appearance, look and use, as well as consistent with the land
15 use and the current future land use map.

16 We've received six letters of support including
17 the neighbors immediately to the north and other residents
18 across the street and on the same street. The only concern
19 that was raised to us was from five residents down the street
20 in the condominium at 2325 37th Street who joined two owners
21 at their neighboring 2323.

22 They raised concerns primarily about the interior
23 spaces and exterior appearances for provisions for trash and
24 whether the unit would be offered for sale or for rent, which
25 are not factors that bear directly on the legal issues in the

1 case.

2 So, the primary question comes to the use variance
3 for residential flats, which can only be found if you find
4 that extraordinary and exceptional situations or conditions
5 of the specific property would result in particular and
6 exceptional practical difficulties or exceptional and undue
7 hardship upon the owner.

8 We understand our fee does not support such a
9 finding but based on our observations and experience ANC
10 disagrees with OP on that point and we found, in conclusion,
11 that the use variance and any area variance that is required
12 would be justified by our understanding of the property and
13 the law.

14 Thank you very much.

15 CHAIRPERSON HILL: Thank you, Commissioner.
16 Commissioner, that was really very well thought out and thank
17 you for your testimony and also, all of the work you guys do.
18 We're all trying to do a lot of work here for the same and
19 you guys do a lot of work with the ANC so thank you.

20 MS. MLADINOV: Thank you and you're welcome, we
21 do try.

22 CHAIRPERSON HILL: Sounds like you're doing a good
23 job. Let's see, I'm going to just turn to -- do you guys
24 want to ask questions first or hear from the Office of
25 Planning? You got anything?

1 MEMBER SMITH: You can go to the Office of
2 Planning.

3 CHAIRPERSON HILL: I'm going to turn to the Office
4 of Planning.

5 MS. VITALE: Chair and Members of the Board, Elisa
6 Vitale with the Office of Planning. The Office of Planning
7 as stated does not recommend approval of the requested
8 variance relief, both the use variance and the area variance.
9 The property is zoned R3, this is not a multiple dwelling
10 unit zone.

11 The lots are conforming, I do want to stress that,
12 the lots are conforming for development with row buildings.
13 They do meet the 20-foot minimum lot width and the minimum
14 lot area requirements and could be developed with row
15 buildings.

16 You could do two row buildings on the two existing
17 record lots. Each of those could have an accessory
18 apartment.

19 Based on this information and the information in
20 the record, OP does not find that the variance argument has
21 been made or that the Applicant has really met the test for
22 the variance relief that's requested.

23 I'll stop there, I'm happy to answer any
24 questions, thank you.

25 CHAIRPERSON HILL: Does the Board have questions

1 for the Office of Planning?

2 MEMBER SMITH: I know you summarize it but can you
3 walk through this analysis of the area variance request?

4 (Simultaneous speaking.)

5 MS. VITALE: Certainly, with respect to area
6 variance, the Applicants requesting relief for both lot width
7 and lot area. With respect to the first issue, extraordinary
8 or exceptional conditions are situation of the property that
9 would lead to a practical difficulty.

10 As we stated, the proximity of residential to
11 commercial happens throughout the city so I don't find that
12 the adjacency of these lots to properties that front on the
13 commercial corridor to be unique.

14 Certainly, I'm not aware of any requirement for
15 an alley buffer. We have situations where single family
16 zoning or multi-family low density RF zones directly abut
17 commercial corridors without an alley buffer.

18 So, I don't find there is a unique situation
19 there. As you move certainly south in the square, there are
20 other properties that are adjacent to properties fronting on
21 Wisconsin. It's not an alley per se, there's hall place that
22 runs through the square as you move south.

23 I don't have particular lot numbers that I can
24 provide on the fly right now to say that lots 329 and 330 are
25 the same as others. But I would say these lots are not

1 particularly unique in the square.

2 Furthermore, should the Applicant really desire
3 to get the density of three lots if they're not satisfied
4 with the two existing conforming record lots that are there
5 are now. They could avail themselves of reduced lot width
6 and lot area through the inclusionary development standards.

7 I think we've heard from the Applicant they don't
8 want to do that but I don't think we've had any demonstration
9 of why that's not finally practicable for the Applicant to
10 pursue that.

11 If they are arguing we need housing or more
12 housing that sort of is a way to get more housing, and
13 particularly affordable housing.

14 So, I think there are other avenues the Applicant
15 could pursue without the need for the variance.

16 With respect to the second plan, the Applicant
17 asserts the area suffers from a lack of improvements but
18 again, I don't think the Applicant has provided any
19 documentation into the record as to why the area in general
20 suffers from the lack of improvements.

21 We've heard there are new apartments, there's
22 other developments certainly happening in the area. And
23 again, I don't think the Applicant has provided sufficient
24 information to demonstrate the variance test is being met
25 here.

1 Moving down my report since you asked for a more
2 detailed explanation of the area variance argument, with
3 respect to exceptional practical difficulty, again, I think
4 we find the Applicant could develop the existing record lots
5 as a matter of right with row buildings, with one principal
6 dwelling unit and one accessory dwelling unit on each of
7 those existing record lots.

8 Or as we stated previously, if the Applicant is
9 seeking to subdivide, the Applicant could subdivide the two
10 lots into three lots through the inclusionary zoning program
11 through a voluntary inclusionary development.

12 We do understand that would also require relief
13 but that's a special exception.

14 It's not a variance and so I think that's
15 something that again, to truly meet the bar for the variance
16 test, I don't think the Applicant has sufficiently
17 demonstrated why that avenue is not feasible.

18 The second point, no substantial detriment to the
19 public good, yes, I don't believe that three row dwellings
20 would be out of character.

21 I do think the issue of parking is interesting and
22 the need for the parking is potentially being driven by three
23 flats, which again, the R3 zone is not a multi-family zone,
24 it's a single-family zone, so that does start to get to the
25 issue of would the area variance and the use variance, I

1 guess maybe more specifically, create a situation that is
2 inconsistent with the surrounding neighborhood character.

3 This isn't a multi-family zone, it's R3 and as we
4 say in our report, one of the purposes and intents of the R3
5 zone is to discourage multiple dwelling unit development.
6 So, I do think this starts to get to impacts to neighborhood
7 character and public good.

8 I don't know that it would create a substantial
9 detriment to the public good. And then finally, with respect
10 to the intent, purpose, and integrity of the zoning
11 regulations, again, this is an area variance. The Applicant
12 would need relief from lot area and lot width.

13 And so I don't believe creating three
14 non-conforming lots when you have two existing conforming
15 lots today would be consistent with the intent and purpose
16 of the zoning regulations and, therefore, it would cause harm
17 to the integrity of the zoning regulations.

18 And that's why we can't support the requested
19 relief.

20 CHAIRPERSON HILL: Sorry, Mr. Smith. Does anyone
21 else have questions for the Office of Planning? Mr. Blake?

22 MEMBER BLAKE: I just want to clarify that
23 providing the IZ unit to get the three lots would not allow
24 for three flats. It would be three row dwellings with
25 accessory units, is that correct?

1 MS. VITALE: Actually, I would defer to DHCD. IT
2 would be three units, one unit of which would have to be the
3 inclusionary unit. I'm not sure if you could have an
4 accessory apartment if you have an IZ unit.

5 So, that might result in just three units, one of
6 which would be an inclusionary zoning unit. I would need to
7 determine whether you could have accessory apartments as part
8 of -- I would think the two market rate units could certainly
9 have accessory apartments.

10 I don't know if the IZ unit within that voluntary
11 inclusionary development could have an accessory apartment.

12 MEMBER BLAKE: Thank you.

13 Mr. Chairman, I'd like to ask a follow-up question
14 when we get back to the Applicant on that just to work
15 through his analysis and why he felt it was untenable based
16 on the economics and what Ms. Vitale just said.

17 CHAIRPERSON HILL: You can ask him now.

18 MEMBER BLAKE: Okay, it's asked then. The
19 question is describe first of all the untenable nature of the
20 IZ unit and how you saw it. As Ms. Vitale just described,
21 there could be a couple different configurations possible.

22 What were the configurations you envisioned and
23 why did you find it untenable?

24 MR. DUPONT: I found it diversity. Typically, the
25 contribution comes to about 8 to 10 percent of the net square

1 feet of the building. In this case, with only three units
2 available, the contribution would actually have to be 33
3 percent of the gross square feet.

4 It's a much, much larger contribution than typical
5 throughout the city, because the project is so small. And
6 it had not occurred to me that the IZ unit would maybe not
7 be able to have the accessory apartment and frankly, I think
8 that's a further disadvantage to an affordable purchaser.

9 MEMBER BLAKE: Aside from the unequitable sort of
10 number there, how is it financially? Did you look at the
11 financial impact? And certainly, when you look at an
12 underground garage, it's extremely expensive.

13 Can you explain the numbers? I'm not clear on
14 that.

15 MR. DUPONT: Actually I'm working with an
16 excavator concreter on another job right now and I had him
17 run some numbers as a preliminary. The amount they had added
18 to each of these six units is affordable.

19 The reason it's of interest to us is that
20 actually, there is no parking on the street here. There is
21 a slow-mode receptor and a hydrant and a street tree that
22 prevent us from having additional driveways for separated
23 units.

24 So, the existing curb-cut is really the only way
25 into the property.

1 MEMBER BLAKE: But the economics of it, how
2 substantial are the economics?

3 MR. DUPONT: The underground parking would
4 apparently add about \$100,000 to each of those six units,
5 which is affordable. It's not affordable for two units, two
6 houses or three houses.

7 MEMBER BLAKE: Thank you.

8 CHAIRPERSON HILL: Commissioner Shapiro, Ms. John?
9 You're on mute, Ms. John.

10 VICE CHAIRPERSON JOHN: I'd like to follow up with
11 Ms. Vitale first on the parking issue. Assuming that the
12 two-unit option, actually, either option. So, DDOT has
13 recommended that the Applicant close the curb cut.

14 So, in that case, would the Applicant be able to
15 get relief from the parking requirement regardless of whether
16 he pursues the two-unit option or the three-unit option?

17 MS. VITALE: Certainly, in instances where there
18 is not a curb-cut and there is no LE access, we would
19 certainly be open a request for relief from the required
20 parking. Again, it's a walkable area, you're close to
21 Wisconsin Avenue.

22 You have groceries close, you have metro bus
23 service on Wisconsin. I don't believe the need to provide
24 underground parking should be driving the Applicant's request
25 or need for more units. They need six units to offset the

1 cost.

2 We would certainly encourage a less
3 parking-focused and more pedestrian-friendly development, and
4 if DDOT's recommending that the curb cut be closed, that
5 certainly forecloses the Applicant's opportunity to do the
6 below-grade parking.

7 And we would support relief from the parking. And
8 it may be this is something that DCRA, the Zoning
9 Administrator, would determine if there even was in fact a
10 parking requirement sometimes, particularly for the lot that
11 doesn't currently have the curb cut that has no parking now.

12 There may not even be a parking requirement per
13 the Zoning Administrator so relief may not even be necessary
14 for that property if the Applicant maintained the current
15 two-lot configuration.

16 I will say I did get confirmation that DHCD is not
17 able to administer an accessory apartment, so if the
18 Applicant were to pursue -- and we're talking in
19 hypotheticals here because that's not what's before us -- but
20 if the Applicant were to pursue a voluntary inclusionary
21 development to get the reduced lot and width lot area and go
22 to three lots, two could be principal units with accessory
23 dwelling units and then the inclusionary zoning unit would
24 not be able to have an accessory apartment.

25 I just wanted to clarify that on the record.

1 VICE CHAIRPERSON JOHN: Thank you, Ms. Vitale.

2 CHAIRPERSON HILL: Commissioner Shapiro? I don't
3 know if it's Commissioner Mladinov, but if you guys can mute
4 yourself if you're not talking? There's some background.

5 COMMISSIONER SHAPIRO: Can you hear me okay?

6 CHAIRPERSON HILL: Yes, we can hear you,
7 Commissioner.

8 COMMISSIONER SHAPIRO: I think I'm connecting with
9 what my fellow Board Members are saying.

10 The issues are around the economic and a question
11 for you, Ms. Vitale, perhaps this is just to be clear about
12 what you evaluate when you're looking at practical difficulty
13 or undue hardship, how much are you taking into account the
14 finances of the project with what information you have?

15 Or do you have any information that you're
16 evaluating the finances related to the variance test?

17 MS. VITALE: We would certainly evaluate any
18 information that's provided in the record if that was part
19 of the Applicant's case or argument. In this instance
20 there's been no financial information provided so we did not
21 look at that or evaluate any of that.

22 There were general statements in the Applicant's
23 burden of proof but there was no documentation provided so
24 we did not analyze that.

25 COMMISSIONER SHAPIRO: Thank you for that.

1 And so then my question goes to you, Mr. Dupont,
2 which is if I'm understanding this correctly, the bottom line
3 is you're saying it's just not financially feasible to do the
4 matter of right or to do what is matter of right with special
5 exception.

6 And there's a difference between what's not
7 financially feasible and what doesn't make you as much money.

8 MR. DUPONT: I'll start with the parking. My
9 initial suggestion to my client had no parking garage
10 beneath.

11 This was his idea and I was extremely skeptical
12 that it would be feasible until I went to my contractor and
13 got some pricing back from him and then did some comps for
14 the neighborhood, at which point I became more convinced.

15 I originally wanted to do these three flats
16 because I think it is the best answer for this location. 6
17 independent dwelling units of about 2000 square feet each,
18 3 bedrooms, family-size units on these lots that are just not
19 happening.

20 COMMISSIONER SHAPIRO: Mr. Dupont, I apologize,
21 I'm asking a different question, which is did you evaluate
22 the financial -- I hear you, actually, as I hear this case
23 and I hear your presentation, that what you are proposing
24 kind of makes sense for the neighborhood.

25 We're evaluating this through a slightly different

1 lens. So, my question is are you saying that it is not
2 financially feasible to build the matter of right option or
3 to go with a special exception that would be required?

4 That it's just not enough density to make it work?

5 MR. DUPONT: That's not exactly it.

6 As I explained, I had met with Mr. Legrant long
7 ago and he showed me that the existing house at 330 cannot
8 be joined to a semi-detached house on 329. The codes
9 explicitly prevent you from building that three-foot gap
10 across to make a semi-detached condition.

11 Therefore, in order to build two decent-sized
12 homes, 330 has to be torn down and rebuilt as well as
13 building 329. It makes it a remarkably inefficient
14 proposition.

15 The next proposal is to take these two lots --

16 CHAIRPERSON HILL: Can I interrupt you one second?
17 Ms. Vitale, is that correct?

18 MS. VITALE: I'm not privy to whatever the
19 conversation was with Mr. Legrant and I don't know when it
20 happened. We've certainly in 2016 updated the zoning
21 regulations and in subsequent cases modified the side yard
22 requirements.

23 I can't speak to building code issues.

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: I'm asking the questions, Mr.

1 Dupont. What I'm just trying to understand is can they build
2 on that lot? You don't know.

3 MS. VITALE: I certainly think they could. They
4 could build lot line to lot line, no side yards would be
5 required. A row right next to --

6 (Simultaneous speaking.)

7 CHAIRPERSON HILL: They'd have to tear down that
8 house, though, right?

9 MS. VITALE: I was just going to say Lot 329 is
10 29.65 feet wide. Again, the Zoning Administrator has the
11 ability to provide flexibility up to 2 percent. He may be
12 able to say you could do a semi-detached building there, that
13 it met the 30-foot minimum width.

14 And the lot area is 2955, again, very close to the
15 3000 square foot minimum required. So, he could potentially
16 build a semi-detached building on that lot or he is well
17 within the minimums to build a row building.

18 A row building does not have to physically attach
19 but again, I am not a building code expert. He could build
20 lot line to lot line on Lot 329 and that would be a row
21 building. That would meet the zoning regulations.

22 He could go lot line to lot line and that line
23 meets the minimum lot width and lot area for a row building.

24 CHAIRPERSON HILL: Thanks, Ms. Vitale.
25 Commissioner Shapiro, did you still have any questions?

1 COMMISSIONER SHAPIRO: That's fine, that's all I
2 have for now.

3 CHAIRPERSON HILL: Ms. John, did you ask all your
4 questions? I forget. You did? Okay. Ms. Mladinov, do you
5 have any questions for the Office of Planning? Or
6 Commissioner, I'm sorry.

7 MS. MLADINOV: I am now unmuted. Yes, thank you
8 very much, Chairman Hill. One question to Ms. Vitale, it
9 sounds like you're saying you do not know what the actual
10 requirement would be as far as lot line to lot line?

11 MS. VITALE: No, not at all. It would be
12 considered a row building if it's spanned lot line to lot
13 line. There used to be a requirement to share a common
14 division wall. That common division wall requirement was
15 eliminated in a text amendment that was adopted by the Zoning
16 Commission.

17 I want to say it was Case 1723 that revised the
18 side yard requirements and eliminated that common division
19 wall requirement. So, you could build lot line to lot line.

20 That would be considered a row building and like
21 I said, actually, both Lot 329 and 330 meet the minimum width
22 and minimum area for a row building. And so that should be
23 able to be constructed and would not require zoning relief.

24 Like I said, I'm not a building code expert but
25 from a zoning perspective, that would certainly be within the

1 zoning requirements.

2 MS. MLADINOV: And it sounded like nobody was
3 certain if it would be required to raise the existing home
4 in order to build a row building lot line to lot line because
5 the side yard requirements still apply?

6 MS. VITALE: There's an existing semi-detached
7 building that is on Lot 330. That is existing, it pre-dates
8 zoning, it's an existing non-conforming structure, it is
9 grandfathered, it could continue to remain there.

10 The Applicant has indicated that it's very
11 dilapidated. It seems like there was a desire to either tear
12 it down and reconstruct. If that's the case you could
13 construct a row building on that lot so you could have two
14 buildings that essentially looked like row buildings, they
15 would be lot line to lot line.

16 Or as I mentioned, the Zoning Administrator has
17 flexibility and these lots may be large enough that the
18 Zoning Administrator would determine that a semi-detached
19 building could be built on one or both of the lots.

20 We're in the land of very hypothetical situations.

21 CHAIRPERSON HILL: Commissioner Mladinov, do you
22 have any more questions for the Office of Planning?

23 MS. MLADINOV: No, thank you.

24 CHAIRPERSON HILL: Thanks, Commissioner, maybe if
25 you could mute yourself also? Mr. Dupont, do you have any

1 questions for the Office of Planning?

2 MR. DUPONT: Yes, comments actually. The zoning
3 code actually forbids building through that. It's missing
4 several feet of 330 to the property line to join 290 in order
5 to make a semi-detached condition that does not already
6 exist.

7 The code actually prohibits that and the
8 semi-detached condition to 330 is to the other side and
9 there, that neighbor also doesn't touch. I also had thought
10 that a row structure had to be one of at least three.

11 We can get two in here on the existing lots but
12 not three. That's why I initially wanted to subdivide to
13 three and that is my recollection of my conversation with Mr.
14 Legrant so long ago.

15 MS. VITALE: You're correct, 330 is on the lot
16 line to the north so it is semi-detached. Its side yard is
17 to the south so that existing building is a semi-detached
18 building. The zoning regulations do state that you cannot
19 add on to that.

20 You can't eliminate an existing side yard in order
21 to create a row building. So, you can't add on to 330 to
22 make it semi-detached but again, in Case 1723 we modified the
23 zoning regulation in order to make it so that you weren't
24 defining side yards based on a development or a building on
25 an adjoining property.

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1 Each one stands alone. 330 is semi-detached, it
2 sits on one lot line and has one side yard. You cannot make
3 it attach by adding onto it but you can build a row building
4 on Lot 329 that goes lot line to lot line.

5 CHAIRPERSON HILL: Can I interrupt? We're getting
6 into a hypothetical world right now and so I appreciate it
7 because I'm just trying to get back to the argument in the
8 conversation with the case.

9 So, Mr. Dupont, do you have any more questions for
10 the Office of Planning?

11 MR. DUPONT: No, I just want to reinforce my
12 belief that three is better than two.

13 CHAIRPERSON HILL: You'll have a conclusion also
14 at the end, Mr. Dupont. Let's see, the only question I had
15 for you is when you guys are looking at stuff, I think your
16 argument is clear and I understand what you're doing.

17 Do you all look at if the lot's been fallow for
18 20 years or something like that, do you?

19 MS. VITALE: Again, I think this gets to what do
20 we evaluate? We look at the variance case that's provided
21 by the Applicant that is in the record.

22 CHAIRPERSON HILL: I got it. First of all, Mr.
23 Young, is there anybody here wishing to testify?

24 Let's see, I'm trying to figure out how this works
25 again. It sounds as though the Applicant has spoken to you,

1 Ms. Vitale, and been working with you, correct?

2 MS. VITALE: I'm trying to unmute myself, yes.

3 CHAIRPERSON HILL: Sure, and then there was the
4 discussion about the IZ and then Mr. Dupont, I think if you
5 wanted make more arguments about the financials for the IZ,
6 that might be something you might want to do.

7 I guess what am I trying to say? My question was
8 for Ms. Vitale again. You guys have talked about the IZ and
9 the different kinds of things that are going on? And then
10 Mr. Moy, I suppose -- no, I don't need Mr. Moy.

11 Does anybody have any final things they'd like to
12 add from my Board Members that is, Ms. John?

13 VICE CHAIRPERSON JOHN: Ms. Vitale, were you able
14 to explain to the Applicant all of the options that were
15 available in terms of the two rule houses and how that could
16 be accomplished?

17 MS. VITALE: I don't believe we did get into a
18 detailed discussion about that. I was not aware of the
19 ability to add on or connect. Again, I was evaluating the
20 application before me which was to subdivide the property
21 into three lots and build three new flats.

22 So, we did not get into a discussion about side
23 yard requirements, no.

24 VICE CHAIRPERSON JOHN: May I follow up with you,
25 Mr. Dupont? Based on this morning's discussion, are you

1 interested in submitting new drawings or any design changes?

2 MR. DUPONT: Of course, on the basis that this
3 property has been in this condition forever and Lot 329
4 appears to have never been built on. I've now been working
5 on it with a second client over a 20-year period.

6 Something has got to happen here, yes. These
7 people who buy these properties are investing a good deal of
8 money in them and, yes, something has to happen.

9 VICE CHAIRPERSON JOHN: I don't mean to interrupt
10 but we have a short time in our schedule today. So, I guess
11 my question to you is do you want to continue this case to
12 explore those options that you might be able to do either as
13 a by write or with a special exception?

14 Or would you like the Board to decide on what's
15 before the Board today?

16 MR. DUPONT: I don't believe the by-write solution
17 of two single family homes is the right solution in this
18 location. They will not be well supported by their neighbors
19 or by the abutter behind. I do not believe the voluntary IZ
20 is a good option.

21 It is by definition very expensive, more than
22 three times the contribution as required for IZ here as would
23 be at any larger project because it simply can't be
24 subdivided into at least 10 components. It can only be
25 subdivided into 3.

1 My preference would be to get a solution today to
2 be able to move ahead with our proposal with or without the
3 garage. Frankly, the garage is just expensive, although it's
4 a nice amenity for the neighborhood.

5 I would have to ask my client for a final
6 confirmation of whether we continue this or settle today.

7 Mr. Chairman, I don't have any further questions.
8 I just wanted to clarify if the Board should decide on what's
9 before the Board today or whether the Applicant wanted to try
10 to get a continuance to talk to the Office of Planning to
11 figure out what's feasible based on the regulations.

12 And Mr. Dupont, I just want to clarify the Board
13 is bound by the regulations and so even though the
14 neighborhood might desire particular solutions, as Ms. Vitale
15 has explained quite clearly and very effectively, the
16 regulations allow certain projects.

17 And even if the Board agrees with you, we're all
18 bound to interpret the regulations as they are, not 20 years
19 ago. Things have changed significantly even since I've been
20 on the Board.

21 So, I don't normally give advice but I think it
22 might be useful to continue this case and get further
23 clarification and advise your client on the way forward
24 because looking at the case today, I'm not in time to vote
25 for it because I agree with the Office of Planning.

1 I don't know what the other Board Members will say
2 but that's what I have.

3 CHAIRPERSON HILL: Mr. Dupont, what I was trying
4 to ask about is what Ms. John has further clarified and
5 stipulated. And so I'm going to go ahead and let you give
6 a conclusion.

7 And then because the Commissioner is here,
8 Commissioner Mladinov, and because the community has
9 expressed some interest in this property and this property
10 has been lying fallow for however many years.

11 I've been here long enough to know that
12 unfortunately, what you've paid for the property, that's your
13 problem, right? That's not what makes anything financially
14 feasible or not financially feasible.

15 MR. DUPONT: Totally agree.

16 CHAIRPERSON HILL: If you pay too much for the
17 lot, you just paid too much for the lot. So, I'm over here
18 and the Office of Planning, this is zoned R3, there's stuff
19 that you can do by right.

20 You can close the curb cut, you can probably get
21 away with parking relief. If you want to come back, you can
22 continue the case, and try to argue the IZ component, in some
23 way you could get what you're trying to get now.

24 I don't think you're going to have much success
25 at it but you're welcome to try. In terms of why you

1 wouldn't be able to do the IZ and still do what you're trying
2 to do. I'm also now kind of speaking to your client.

3 I'm letting you know that I think the Office of
4 Planning's report is very clear, very thought out and working
5 with the Office of Planning would be the best way to move
6 forward. And I'm going to go ahead and continue this case
7 because if we vote no, you can't come back for a year with
8 this exact same relief requested.

9 You could come back again and get at the very end
10 of the queue, which is probably where you're kind of going
11 to start to end up.

12 Actually, now that I think about it, if you have
13 to come back for different relief in terms of parking relief,
14 I just don't know where you are but I don't think you're
15 going to win today, is what I'm trying to just get at.

16 And so the fact that I don't want you guys to get
17 sent all the way back to the back of the line is what we're
18 trying to prevent here, I suppose, and that's just because
19 the Commissioner is here and this log has been empty for 20
20 years.

21 So, would you like to make a conclusion, Mr.
22 Dupont? And then we're going to go ahead and continue this.

23 MR. DUPONT: Thank you very much, I will make a
24 conclusion based on a couple of points. The lots are
25 substandard, non-conforming for either semi-detached or

1 detached as they stand by area and width.

2 Because they're existing, I suppose that makes
3 them okay for either of those cases. But they're substandard
4 both for area and for width, and area substantially, by 300
5 feet. The parking on the street is an available curb cut.

6 I did not know the curb cut was recommended to be
7 closed. I imagine that's because the two lots of have no
8 alley access and the one lot is unbuilt.

9 CHAIRPERSON HILL: I'm sorry, I've got kind of a
10 longer day now. We're going to continue unless you want us
11 to vote on it.

12 That's basically all I was going to say. I don't
13 have a better option than what we're proposing but obviously,
14 we're happy to talk to the Office of Planning about it.

15 MR. DUPONT: And also, I kind of thought that's
16 what variances were for and that's really all I have to say.

17 CHAIRPERSON HILL: If you can make the argument
18 for the variance, yes, exactly, that's what variances are
19 for. And what we're saying is you hadn't made the argument
20 for it. You may think you have but I'm looking right here
21 at my Board Members and I don't think you're going to make
22 it.

23 So, I'm looking to see where we could possibly put
24 you, Mr. Moy, if we continued this.

25 MR. DUPONT: Thank you, Ms. Vitale.

1 CHAIRPERSON HILL: Mr. Moy, are you there? I'm
2 trying to find that email that you sent me with the dates.

3 MR. MOY: I'm looking at the earliest, Mr.
4 Chairman. It could be January 12th, that's when the Board
5 returns from its recess.

6 CHAIRPERSON HILL: I'm thinking in January,
7 February, March.

8 VICE CHAIRPERSON JOHN: Ms. Vitale has her hand
9 up.

10 CHAIRPERSON HILL: Sorry, Ms. Vitale?

11 MS. VITALE: It's all right, I was going to say
12 I do think January would be probably premature.

13 MR. DUPONT: February or March probably.

14 CHAIRPERSON HILL: I'm thinking March or April
15 even, Mr. Moy. April 6th, it looks like we're flexible,
16 correct?

17 MR. MOY: It's a possibility for the Board. So,
18 yes, April 6th, we can do that. We have openings on April
19 6th.

20 COMMISSIONER SHAPIRO: For what it's worth, I'm
21 back on March 16th. Does that feel too early?

22 CHAIRPERSON HILL: Let's do that. We've got two
23 appeals and four cases already on that day. March 30th,
24 let's do March 30th. All right, Mr. Moy?

25 MR. MOY: Yes.

1 CHAIRPERSON HILL: We're going to continue this
2 to March 30th, we're going to let you work with the Office
3 of Planning and see where you get.

4 MR. DUPONT: I'll call Ms. Vitale right away.
5 Thank you very much for your time and help today.

6 CHAIRPERSON HILL: Thank you, Mr. Dupont, thank
7 you, Commissioner Mladinov, thank you, Ms. Vitale. I'm going
8 to close the hearing so we're continuing this to March 30th.

9 Mr. Dupont? Just to let you know, I think you're
10 going to have a lot of work to do. I want your client to
11 hear me, I want you to hear me. There's a lot. I think this
12 thing is going to come back completely different.

13 I'm just letting you know, that's my thought but
14 you've got until March to figure out whatever you all want
15 to try to do.

16 MR. DUPONT: I might come and consult with you.

17 CHAIRPERSON HILL: Yes, I wish I was that good.

18 MR. DUPONT: Thank you very much, though, I really
19 appreciate it.

20 CHAIRPERSON HILL: Bye. Do we want to take a
21 break? All right, let's take a break and we'll come back.

22 (Whereupon, the above-entitled matter went off the
23 record at 10:51 a.m. and resumed at 11:06 a.m.)

24 MR. MOY: The Board is back in session, and the
25 time is at or about 11:06 a.m. The next case application

1 before the Board is Case Number 20573 of AT&T.

2 This is a self-certified application for a special
3 exception from the use permission of Subtitle C, Section
4 1313.2 for monopoles.

5 And this would raise an existing I believe 81-foot
6 light pole and case study a new 89-foot monopole in the RA2
7 zone. The property is located at 2500 Benning Road NE
8 Square 4486 Lot 802. And that's it from me, Mr. Chairman.

9 CHAIRPERSON HILL: Ms. Giordano, can you hear me?
10 Could you introduce yourself for the record, please?

11 MS. GIORDANO: Yes, my name is Cynthia Giordano,
12 I'm with Saul Ewing, Arnstein and Leer Law Firm representing
13 the Applicant and with me is my colleague, Doug Sampson, who
14 has expertise in this monopole area.

15 He's going to handle the hearing.

16 CHAIRPERSON HILL: Thanks. Who else is here with
17 you, just the two of you?

18 MS. GIORDANO: Yes, he has experts with him. Go
19 ahead.

20 MR. SAMPSON: Good morning, Mr. Chair, Doug
21 Sampson, also on behalf of AT&T and DGS. Also with me today
22 is Gaurav Behl, Camille Shabshab and Ryan Triller. They're
23 the team members who helped put together this application
24 material on behalf of AT&T.

25 Unless you have questions for them, I'll proffer

1 their testimony would reflect the application materials and
2 we would stand on the materials that are in the record.

3 CHAIRPERSON HILL: Let's see if we get to them.
4 Why don't you go ahead and give us your presentation and why
5 you believe your Applicant is meeting the criteria for us to
6 grant the relief requested. I'm going to put 15 minutes on
7 the clock so I know where we are.

8 You can begin whenever you'd like.

9 MR. SAMPSON: Thank you very much. And for
10 whoever is working exhibits, if you could pull up Exhibit 5
11 and Exhibit 17, I'd just like to reference those briefly for
12 the Board at some point.

13 So, I'm just going to briefly introduce the
14 project.

15 I'll discuss compliance with our Section 1313 of
16 the Zoning Code and I'll also discuss the community outreach
17 that we've done for this particular application. So, this
18 is an application for special exception for a
19 telecommunications wireless facility at 2500 Benning Road
20 Northeast.

21 That's the former Spingarn High School. This
22 proposal is very similar to the one we discussed last week.

23 It's what we call a drop and swap, the idea is to
24 replace an existing 81-foot stadium light pole with an 89-
25 foot replacement pole that would have the lights go back on

1 it for the stadium and then have telecommunications antennas
2 attached to the top of the pole.

3 This property is zoned RA2 and therefore, the
4 replacement pole is permitted with a special exception and
5 this is a very large parcel that is owned by the District.
6 If the exhibits are available, I'd like to take a quick look
7 at Exhibit 17.

8 MR. YOUNG: One minute.

9 Ds: No problem.

10 What we're going to see in Exhibit 17 is I'm going
11 to show you what are called RF propagation masks, that's
12 radio-frequency propagation maps, and they will show the lack
13 of service and the need for service and how this facility can
14 bring service to that area.

15 And I'd point out this is a very underserved area
16 and what we saw during the pandemic is neighborhoods or
17 communities that did not have adequate wireless and broadband
18 services really fell behind and were at a disadvantage during
19 the pandemic.

20 AT&T nationwide, as people were working for home,
21 worshipping from home, going to school from home, saw an
22 increase in network capacity of about 40 percent at certain
23 times. And so this area is the Carver Langston and Kingman
24 Park neighborhoods and they really are underserved with
25 wireless services.

1 This facility will bring those needed services,
2 wireless and broadband, to this area as well as emergency
3 services. We discussed First Net last week, First Net is a
4 dedicated emergency responder network that has bandwidth
5 specifically reserved for first responders.

6 They have submitted a letter in support of this
7 at Exhibit 38 in the application materials but again, that
8 was created by the 911 Commission to make sure we don't ever
9 have a situation again where first responders can't get
10 through and coordinate in an emergency situation.

11 CHAIRPERSON HILL: Mr. Sampson, we see that
12 exhibit and also the map so I don't think we need to pull
13 that up, Mr. Young.

14 MR. SAMPSON: On Exhibit 17 it's Pages 17 and 21,
15 Page 17 shows current existing coverage and then Page 21
16 would show the proposed coverage with this telecommunications
17 facility. And what you see with the green shading there is
18 what we consider full coverage for AT&T.

19 And that gives you wireless and broadband in
20 building and in cars. And so where you don't see that green
21 shading there's inadequate service and you can have dropped
22 calls and also an inability to connect to broadband and
23 wireless services.

24 Briefly, I'd like to address the criteria in
25 Section 1313. As required by the code, this facility does

1 have co-location opportunities for two other service
2 providers so the AT&T plus two other wireless providers.

3 The monopole is located well away from any
4 residential properties.

5 Again, this is a very large property owned by DGS
6 and it's going to be athletic fields there. And because of
7 that, we're just replacing an existing pole.

8 We won't have to remove any trees, shrubs,
9 anything like that so there won't be any impact on existing
10 vegetation. Looking at 1313.6, this is kind of what we just
11 talked about with demonstration of a significant gap in the
12 wireless services.

13 I think the pages attached to Exhibit 17, which
14 is our burden of proof demonstrate that there is a
15 significant need in this area and this was determined.
16 Because it's a drop and swap, there won't be any new
17 infrastructure or new structures that are going to be built
18 from this.

19 We're just replacing the light pole that already
20 exists. It will just be eight feet taller. And so this was
21 determined to be the least intrusive way to bring no adverse
22 effects to the neighborhood while still bringing really
23 pivotal wireless and broadband coverage including First Net
24 to the area.

25 As far as compliance with the Height Act, we did

1 have conversations with the D.C. Staff early on over a year
2 ago about getting a waiver of the Height Act and trying to
3 build a pole that would be higher because it would give
4 greater coverage.

5 Ultimately, we determined with Staff that it would
6 work better for the neighborhood and for us to keep the pole
7 at 89 feet so it will not exceed the height permitted under
8 the Federal Height Act.

9 We determined that was best for the community and
10 would still give us the coverage we need to bring to this
11 particular area. Again, the replacement could be in the same
12 location so it wouldn't change any of the setbacks already
13 on the property.

14 And again, I think we did take a look at other
15 facilities in the area.

16 There are no other towers that have co-location
17 opportunities that would fill in this coverage gap and again,
18 the reason we chose this particular spot is because you can
19 exist a replacing pole with a new taller pole and really
20 create no visual impact for the area neighborhood.

21 I do just want to briefly touch on community
22 outreach and then I'll be happy to answer any questions that
23 the Board may have. We met with the ANC 5D three separate
24 times during their October, November, and December meeting.
25 They held their December meeting just last night.

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1 They voted to recommend approval 4 to 2 to 1. My
2 understanding is they have not yet had an opportunity to
3 submit their written report to the BZA but we did have that
4 meeting last night and they voted to recommend approval.

5 We also reached out. There were four schools that
6 share the complex or very close proximity to the old Spingarn
7 High School, that's AC High School, Brown Education Complex,
8 School Within a School, and Two Rivers Public Charter School.

9 We reached out to each of those schools and
10 provided them with all of their application materials,
11 provided them with a one-page information sheet that they
12 could send out to parents if they wish.

13 And we had discussions with them to determine if
14 they had any issues or concerns about the project. Two
15 Rivers Public Charter School actually wrote a letter in
16 support, that's Exhibit 41 in the record.

17 Phelps and Brown and School Within a School have
18 not taken a position for or against. I know in my
19 conversation with the principals of Phelps and Brown, their
20 biggest concern was any disruption to the school day. Would
21 construction be interrupting traffic?

22 Would there be issues with parking? Things like
23 that.

24 I will say that DDOT has already determined there
25 will be no impact on traffic and when we explain to those

1 principles that the construction would be on the field and
2 not on the road, there shouldn't be any impact on traffic,
3 they seem to be less concerned about that.

4 CHAIRPERSON HILL: Okay, Mr. Sampson. I got you,
5 I'm going to interrupt you because I'm just trying to get
6 some things clarified. I'm going to just hold you off there
7 for a second and turn to the Office of Planning.

8 MS. THOMAS: Yes, Good morning, Mr. Chair, Members
9 of the Board.

10 Karen Thomas with the Office of Planning. The
11 Office of Planning is recommending approval of the
12 installation of AT&T's facility with a light pole on a light
13 pole that would be eight feet taller than the existing pole
14 at this time.

15 We do not see any issues at this location. We
16 believe the Applicant has satisfied the criteria of Section
17 1313 and since it's well away from residential properties,
18 we don't see an adverse impact with respect to the visual
19 impact on neighboring residential properties.

20 It is well off of Benning Road and towards the
21 interior of the campus. Also, we support the addition of
22 coverage and wireless coverage to this neighborhood as well
23 as the opportunity for other carriers to co-locate on the
24 proposed pole.

25 So, with that, I will rest on the record and be

1 happy to take any questions, thank you.

2 CHAIRPERSON HILL: If the Board doesn't mind, I'm
3 going to hold questions until the end. Mr. Young, is there
4 anyone here wishing to testify?

5 MR. YOUNG: Yes, we have two witnesses.

6 CHAIRPERSON HILL: Could you bring them forward
7 please and give me their names?

8 MR. YOUNG: Bernice Blacknell and --

9 CHAIRPERSON HILL: I got it right here, Raglin?

10 MR. YOUNG: Veronica Raglin.

11 CHAIRPERSON HILL: Commissioner Blacknell, can you
12 hear me?

13 MS. BLACKNELL: I couldn't hear you at first
14 because I was on mute but I'm here. Are you ready for me to
15 speak?

16 CHAIRPERSON HILL: Yes, first could you introduce
17 yourself, Commissioner?

18 MS. BLACKNELL: Yes, that's what I was getting
19 ready to do. My name is Commissioner Bernice Blacknell, I am
20 the AUC Commissioner for the schools on the Hill. My SMD is
21 5D04.

22 CHAIRPERSON HILL: And Commissioner, you are here
23 representing yourself, correct, not the ANC?

24 MS. BLACKNELL: Yes, I'm here to represent myself
25 instead of as an ANC Commissioner.

1 CHAIRPERSON HILL: So, you'll get three minutes
2 to give your testimony and you can begin whenever you like.

3 MS. BLACKNELL: Okay, first of all, I am against
4 this even though it's not in a residential area but the kids
5 at the school do use this field every day. And I have emails
6 in reference to event reach out to the schools.

7 We did not get response back, the only one he got
8 a response back was from Two Rivers. He did not get a
9 response back from the principal at Brown, he did not get a
10 response back from the principal at Phelps.

11 He did not get a response back from the new
12 school, the trailer school, School Within a School. He did
13 not get response back to that. I understand that the
14 principal of Phelps spoke up for the other schools and I'm
15 against this.

16 The principal at a school cannot speak up for the
17 other schools. I would like to have something in writing
18 from the other schools, which they did not respond back. So,
19 we don't know if they are against it or for it.

20 And it's a safety reason for me as an ANC
21 Commissioner. It's a safety reason because they're going to
22 be put in a shed there, an electrical shed there. You have
23 Brown and the other schools do use that field.

24 Phelps uses that field for basketball games,
25 football games and there are also other schools that are in

1 other areas that also use the field. And I feel there needs
2 to be more information given out in reference to this.

3 CHAIRPERSON HILL: Okay, Commissioner, thank you.
4 Do my Board Members have questions for the Commissioner?
5 Commissioner, just to be clear, one of the things you were
6 concerned about was the microwaves, is that correct?

7 MS. BLACKNELL: He's saying it's not dealing with
8 radiation but in our ANC meeting last night he brought up the
9 fact in reference to radiation, if the kids get too close to
10 it and everything, it may cause some irritation or something
11 like that.

12 And I just wanted some clarification. Is this a
13 safety issue? Who's going to secure this due to the simple
14 fact you've got --

15 My concern is about the kids and everything. Even
16 though it's not a residential area, you've got kids that use
17 that field and who's going to be responsible for their
18 safety?

19 CHAIRPERSON HILL: And Commissioner, you guys
20 voted in approval and I guess you were the ones that voted
21 against?

22 MS. BLACKNELL: It was 6 ANC Commissioners last
23 night, sir, 3 voted for it, 2 voted against it, and 1
24 abstained. That's what the vote was last night.

25 CHAIRPERSON HILL: Thanks, Commissioner.

1 MS. BLACKNELL: You're welcome, sir.

2 CHAIRPERSON HILL: Mr. Raglan, can you hear me?

3 MS. RAGLIN: Can you hear me now?

4 CHAIRPERSON HILL: Yes.

5 MS. RAGLIN: Good morning.

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

8 MS. RAGLIN: I'd like to let you know that Frazer
9 Walton signed up to speak on behalf of Kilter Park Civics
10 Association and he has the letter in front of him confirming
11 his participation. So, I just wanted to let you know that
12 so that he would be able to speak.

13 CHAIRPERSON HILL: What is his name again?

14 MS. RAGLIN: Frazer, F-R-A-Z-E-R, last name,
15 Walton, W-A-L-T-O-N.

16 CHAIRPERSON HILL: Mr. Young, if you could look
17 for Mr. Walton and Ms. Raglan, you seem to have a double
18 echo, I don't know if you have a computer on and the phone
19 at the same time?

20 MS. RAGLIN: Is that better?

21 CHAIRPERSON HILL: No, but that's okay. Go ahead
22 and give your three minutes of testimony, we can hear you.

23 MS. RAGLIN: my name is Veronica Raglin and I am
24 a native Washingtonian. 5G is all the talk and rage in the
25 telecommunications industry from leaders who are proposing

1 its implementation throughout the country.

2 However, there are some authorities who are
3 challenging the installation of 5G networks in the society
4 and even in places like the White House, airports, and the
5 Pentagon. 5G is projected to be 100 times faster than 4G.

6 I am here to oppose the construction of 5G
7 networks in my community until further health research is
8 done. What are the test results of the 5G electromagnetic
9 radiation on human health for all ages?

10 Studies show the radiation emitted by 5G will
11 largely be the same as previous network except that it will
12 be exposing us to millimeter rays for the first time.

13 In September 2017, doctors and scientists launched
14 the 5G appeal, a petition which calls for the European Union
15 to impose a moratorium on 5G rollout citing imminent health
16 dangers, like increased cancer risks, cellular stress, and
17 genetic damage.

18 The petition now has more than 250 signatories.
19 In March of this year, meaning 2017, the Brussels minister
20 blocked a 5G rollout saying he wouldn't turn the city
21 inhabitants into laboratory mice.

22 Is 5G proposed simultaneous and other --

23 CHAIRPERSON HILL: We can hear you, Ms. Raglin.

24 MS. RAGLIN: Yes, in other parts of Washington
25 D.C. and somewhere.

1 The installation of 5G in the White House, the
2 National Airport, or the Pentagon is being challenged.
3 Landings during periods of low visibility is a concern that
4 the 5G signal could interfere with the accuracy of an
5 airplane's radio altitude without mitigation in place.

6 Therefore, I recommend the BZA not accept the 5G
7 network in the 5D ANC single member district until more study
8 and research is done to assess the health impact on the
9 people of all ages, thank you.

10 CHAIRPERSON HILL: Thank you. Mr. Young, were you
11 able to find Mr. Walton?

12 MR. YOUNG: No, I wasn't.

13 CHAIRPERSON HILL: We do have his letter in the
14 record. Ms. Raglin and Commissioner Blacknell, thank you so
15 much for your testimony. Let me ask whether the Board
16 Members have any questions for the witnesses.

17 Seeing none, thank you all very much for your
18 testimony. Ms. Young, if you can please excuse them from the
19 hearing? Mr. Sampson, can you hear me?

20 As I understand it, the FCC requirements, you guys
21 are satisfying that you put forward in Exhibit 39 concerning
22 radiation. Can you speak a little bit about that and to the
23 discussion from the witness about 5G?

24 MR. SAMPSON: Sure, the FCC regulates
25 radiofrequency emissions very heavily. This facility will

1 be well within compliance of FCC regulations. Actually, it
2 will be well below those levels. And that really is
3 regulated at the federal level for all telecommunications
4 facilities.

5 They all have to be in compliance. I understand
6 the concerns about health effects. That comes up in many
7 communities where we're trying to bring adequate coverage.

8 The bottom line is that reputable scientific
9 agencies such as the World Health Organization and the
10 American Cancer Society have found no adverse health effects
11 from having these telecommunications located in proximity to
12 residential areas.

13 I understand the concerns about 5G. Honestly, I'm
14 not here to litigate 5G being rolled out across the country
15 by a number of wireless providers.

16 The point is this facility specifically complies
17 with C code provisions set forth in 1313 of the Zoning Code
18 and is in compliance.

19 And there are no adverse effects on the
20 neighborhood as found by the Office of Planning and no
21 adverse health effects as, again, this is regulated at the
22 federal level by the FCC.

23 CHAIRPERSON HILL: Thanks, Mr. Sampson. Does the
24 Board have any questions for anyone? Vice Chair John?

25 VICE CHAIRPERSON JOHN: Mr. Sampson, just for

1 clarification, will this facility have 5G capability or not?

2 MR. SAMPSON: I believe at some point all AT&T
3 facilities will have 5G when it is built, but I know that
4 many AT&T facilities are moving to 5G sometime in the near
5 future.

6 So, I don't believe initially it will but
7 eventually, the plan would be to have 5G here yes.

8 VICE CHAIRPERSON JOHN: Okay, thank you, and a
9 follow-up question for you or one of your experts. How is
10 the FCC compliance determined? What is the process? That
11 might be helpful for the neighbors to hear.

12 MR. SAMPSON: For this I'll turn it over to Gaurav
13 Bell, who is a radio frequency engineer with AT&T and is more
14 familiar with these FCC regulations. Gaurav?

15 CHAIRPERSON HILL: Mr. Bell, could you introduce
16 yourself for the record, please?

17 MR. BEHL: Yes, good afternoon, my name is Gaurav
18 Bell, I'm a radio frequency engineer. I've been working in
19 the field for 20-plus years.

20 To answer the question about how we make the
21 compliance for the FCC, what it is licensed is different
22 frequency bag and one of them is the 700, which is the first
23 bag and then we have 1900, 2100, 2200, so on and so forth.

24 And for each frequency bag, FCC specifies that you
25 can transmit this particular number, those are the listed

1 numbers. For example, for the 700 bag, the number is 1000
2 more per 1 megahertz.

3 AT&T's license for 10 megahertz so that makes it
4 10,000 watts we are allowed to transmit. And we are given
5 a statement that we will be below this number. In reality,
6 we will be way below this number and there is a formula of
7 how you calculate it.

8 It's basically whatever antennas you have,
9 whatever power of radios you have, you do the math and you
10 come up with a critical number.

11 And on top of that, what we do is what we call an
12 MPE study, that's actually predictive modeling which we do,
13 which will show that what is the transmission or what is the
14 power coming out of the radios when you are in front of
15 antennas and when it reaches the ground level.

16 And at any point if it exceeds the allowed limit
17 then we have to come with the mitigation plans and they could
18 be like let's say if you are talking about a rooftop where
19 you could get very close to antennas, you would put a
20 physical barrier so that anybody could not go there.

21 Or you would put a sign warning somebody, hey, you
22 guys are reaching an area where it could be not safe or not
23 presentable to the public. So, this is how we comply to the
24 FCC regulations.

25 VICE CHAIRPERSON JOHN: Mr. Chairman, if I could

1 follow up with Mr. Sampson on the equipment that will be
2 housed near the metropole and one of the witnesses had
3 concerns about children playing near the equipment.

4 So, how will the equipment be secured?

5 Thank you.

6 MR. SAMPSON: This equipment is in an equipment
7 shed which will be locked and then there will be a fence, I
8 believe it's 8 feet around that with anti-climbing devices
9 on it and will be locked at all times unless an AT&T engineer
10 is on site.

11 So, AT&T has gotten very good at putting together
12 these facilities to make them safe and prevent unauthorized
13 individuals from getting into them.

14 That's part of the business model and so I
15 understand the concerns but there really isn't one because
16 this equipment shed will not be accessible to the general
17 public.

18 CHAIRPERSON HILL: Thanks, Ms. John. Anyone else
19 for anybody? Mr. Sampson, do you have anything to add at the
20 end?

21 MR. SAMPSON: No, I will again stand on our record
22 and I understand the concerns that the community brings up
23 but we do have a recommendation from the Office of Planning
24 and from the ANC and I think it is pivotal to bring these
25 necessary wireless and broadband services to underserved

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1 areas in the city.

2 And so we ask the Board approve this application.

3 CHAIRPERSON HILL: Thank you. I'm going to go
4 ahead and close the hearing and the record.

5 MS. GIORDANO: This is Cynthia Giordano. Do you
6 want to leave the record open for a written report from the
7 ANC?

8 CHAIRPERSON HILL: Thanks, Ms. Giordano, that's
9 kind of you to mention that. Yes, Mr. Moy, let's leave the
10 record open for a written report from the ANC on the vote
11 that was taken last night unless my fellow Board Members have
12 any objection to that.

13 Thanks, Ms. Giordano. Mr. Young, if you could
14 please excuse everyone? We had two monopolies last week and
15 Commissioner Shapiro, you were not with us but part of the
16 argument, which is in the regulation, is that there are holes
17 in these communities that need the accessibility.

18 And so I believe they need all the criteria for
19 us to grant the relief that's in the regulations.

20 Some of the issues that the community had
21 concerning -- my question is really kind of outside of our
22 purview, meaning that's something that is at the FCC level
23 and I do believe that in Exhibit 39 it indicates how the
24 Applicant is going to meet those criteria set by the FCC.

25 In addition to that, there's not even 5G in there

1 now and whether or not they're going to get 5G on it or not.
2 And Ms. John asked the question about the shed and I believe
3 I'm comfortable with the answer that we got from the
4 Applicant concerning how that is going to be policed.

5 So, I think it's pretty straightforward and I
6 would agree with the Office of Planning's report and
7 recommendation.

8 I would agree with the ANC's vote that we are
9 leaving the record open for and I'm disappointed there is
10 opposition to something that I think it being a drop and
11 swap, it's not necessarily even going to seem like a
12 significant change to the neighborhood.

13 Mr. Moy, you had a question?

14 MR. MOY: Yes, before I close the record, I have
15 a note from the Staff that we have contacted with Mr. Frazer
16 Walton and he wanted to testify so if you could hold on
17 momentarily, you can bring him into the room.

18 CHAIRPERSON HILL: For the record, I'm going to
19 reopen the hearing and the record so we can hear from the
20 witness that was unable to get on earlier. Mr. Young if you
21 could bring that witness in, please?

22 MR. YOUNG: I don't see him so I just contacted
23 Staff and ask if he was maybe calling in for his phone
24 number. But I don't see his name on here.

25 CHAIRPERSON HILL: I understand. I see him in the

1 record in terms of what they submitted. Mr. Nicholas, can
2 you hear me?

3 MR. NICHOLS: Yes.

4 CHAIRPERSON HILL: We have the letter from Mr.
5 Walton in the record. Are we able to deliberate?

6 MR. NICHOLS: If there's the information that was
7 considered there you can pull it up based upon the
8 information that's in the record. So, I would think yes but
9 I don't know if this testimony would be any different.

10 CHAIRPERSON HILL: You haven't found the person
11 yet?

12 MR. MOY: I think Staff is momentarily bringing
13 him in. I don't know why it's taking longer than I
14 anticipated. You can wait a couple minutes. Mr. Chairman,
15 he is trying to call in, that's proceeding along. He's going
16 to call in, I do know that much.

17 CHAIRPERSON HILL: Mr. Moy, can you hear me? If
18 you guys want to we can move on to the next case.
19 Unfortunately, I have to leave at 12:15 p.m. and so you all
20 can come back and take the testimony and then see what
21 happens from there.

22 The only other solution is...that's what I would
23 try to do, just try to figure out whenever you find this
24 witness now, Mr. Moy, because of the other ways, the person
25 would possibly file something into the record.

1 And so they could file new testimony in the record
2 due to the technical difficulties. But then we wouldn't be
3 able to take a vote until next week.

4 MR. MOY: That's correct.

5 CHAIRPERSON HILL: And keep all that open. So,
6 Ms. John, since you're going to be covering for me, do you
7 think that is a good way to move forward?

8 VICE CHAIRPERSON JOHN: I like that option.

9 CHAIRPERSON HILL: Staff will go ahead and try to
10 reach out Mr. Walton. Let's move on to our next case and you
11 guys can come back.

12 MR. MOY: Thank you, Mr. Chairman, that sounds
13 like a plan. Maybe he needs the 5G now. Sorry about that,
14 a little bit of levity.

15 The next case before the Board is 20578 and this
16 is of Naseem and Gregory Kourosh. This is an application for
17 special exception from the occupancy requirements Subtitle
18 E, Section 304.1.

19 This would construct a rare depth and stair
20 additional to an existing attached two-story with cellar
21 principal dwelling in the RF1 zone. The property is located
22 at 1527 I believe it's 1st Street NW. Yes, Square 615 Lot
23 268.

24 CHAIRPERSON HILL: Mr. Tejada, can you hear me?

25 MR. TEJADA: Yes, can you hear me?

1 CHAIRPERSON HILL: Yes, could you introduce
2 yourself for the record?

3 MR. TEJADA: Of course, good morning, I am Hernan
4 Tejada, I am the contractor and representative of the Kourosh
5 family in regard to this matter in front of the BCA.

6 CHAIRPERSON HILL: Mr. Tejada, could you go ahead
7 and give your presentation? You'll have 15 minutes and you
8 can begin whenever you like.

9 MR. TEJADA: Yes, of course.

10 It will be really quite fast. This project starts
11 with an old deck that is installed and has been there for
12 decades, which is actually almost 70 -- in total with the
13 building is occupying 70 percent of the entire lot occupancy.

14 I'm sorry. So, what we are intending to do is
15 demolish this deck, which is obviously due to time almost
16 ready to be demolished and build something new but with a
17 smaller area. So, basically, we're requesting instead of I
18 know we could take it all the way to 70 by relief we
19 requested.

20 But we're just requesting 66 to 70 percent. We
21 want to go up 6.7 percent above the limit that it currently
22 is, which is 60 percent.

23 Now, this deck, as we stated in the burden of
24 proof, basically, would be replacing almost the exact same
25 location of the old deck that is currently it.

1 And therefore, everyone in the neighborhood is
2 familiar with this deck, with this occupied area, the
3 neighbors, the bystanders that live in the neighborhood.

4 So, basically, the position of the new deck
5 wouldn't really affect or make a real visual difference but
6 only improve the look of the back of the property of this
7 person.

8 We actually started this deck more than 21 feet
9 away from the back alley, which means we are really good with
10 the rear setback, which is 20, which allows us to have plenty
11 of air flow and light.

12 The deck platform, I don't know if you are
13 familiar with deck construction, there's the deck platform,
14 which is basically where everybody stands on and there's a
15 railing which goes around. The railing is open, which means
16 that it has preview, you can see through, there's airflow,
17 light, sound.

18 It's basically an open space and the platform
19 structure is six feet above ground level, which is basically
20 on the same height as the fences that surround the property,
21 which means the neighbors cannot have visual impediment from
22 the -- they cannot be blocked, that's what I'm trying to say,
23 the light cannot be blocked by the structure, the main
24 structure of the deck.

25 The area where everybody steps is below the level

1 of this visually of visibility of the neighbors and the
2 neighborhood. And I believe this --

3 CHAIRPERSON HILL: I'm just going to interrupt
4 you. I understand what you're trying to convey. I'm going
5 to turn to the Office of Planning?

6 MS. VITALE: Elisa Vitale with the Office of
7 Planning. I was admitted as a panelist but my colleague, Mr.
8 Kirschenbaum, is actually handling this case. If Mr. Moy or
9 Mr. Young would like to --

10 There we go, thank you.

11 CHAIRPERSON HILL: Mr. Kirschenbaum, can you hear
12 me?

13 MR. KIRSCHENBAUM: Yes, I was just admitted. I'm
14 Mr. Kirschenbaum with the Office of Planning and we recommend
15 approval of this special exception relief for the deck and
16 we sign our Staff report. Please let me know if you have any
17 further questions.

18 CHAIRPERSON HILL: Thank you. Does the Board have
19 any questions for the Office of Planning or Mr. Tejada? Mr.
20 Tejada, do you have any questions for the Office of Planning?

21 MR. TEJADA: No, we're good to go.

22 CHAIRPERSON HILL: Mr. Young, is there anyone here
23 wishing to testify?

24 MR. YOUNG: The Applicant was asking Staff if they
25 could be brought in to speak and he was just getting them

1 signed up so that they could testify.

2 CHAIRPERSON HILL: Mr. Tejada, you're saying your
3 client is trying to speak?

4 MR. TEJADA: I was not the one who spoke right now
5 but I believe that's what I understand.

6 CHAIRPERSON HILL: I don't think it's necessary.

7 MR. TEJADA: At this point I don't think so either
8 if there's no question to me from you from the Board against
9 this.

10 CHAIRPERSON HILL: Mr. Moy?

11 MR. MOY: While the Applicant is still on the
12 screen, Mr. Chairman, Staff alerts me the Applicant has filed
13 an affidavit for the solar requirements. We have a 24-hour
14 block so yes.

15 MR. TEJADA: That was myself, unfortunately for
16 some reason that attachment didn't go through for the 24
17 hours and I had to do it real quick late last night.

18 CHAIRPERSON HILL: Unless the Board has any issues
19 I'd like to go ahead and admit that into the record. We're
20 going to go ahead and do that because we want to decide if
21 we have any issues. Mr. Tejada, anything you'd like to add
22 at the end?

23 MR. TEJADA: No, I think I said everything and
24 probably the last thing I wanted to add is that in addition
25 to all these specific things about the location, the history,

1 and the location, is the letters of support we received from
2 neighborhood and especially from the neighbors on the right,
3 the left of the property, and behind and across the alley.

4 That's all I need to say.

5 CHAIRPERSON HILL: Thank you. I'm going to go
6 ahead and close the hearing and the record. Mr. Young, if
7 you could excuse everyone? Mr. Smith, I hope you don't mind,
8 can you start us off on this one?

9 MEMBER SMITH: This is a pretty straightforward
10 application. The Applicant is asking for special exception
11 consideration to construct a rear end addition to an existing
12 attached two-story brown unit with the seller.

13 And I believe it's fairly straightforward based
14 on what is submitted in the record and the discussion by the
15 Applicant.

16 I do believe they have met the burden of proof for
17 us to be able to grant special exception from E5201 and I do
18 believe looking at the criteria for us to grant special
19 exception, I do believe it meets all the criteria specified
20 in this section and under the general special exception
21 standards under X09.2.

22 So, with that, if DDOT has no objections and the
23 ANC has also recommended approval because I believe the
24 proposal would be harmonious with the adjacent properties
25 within the area, I do give greatly to OP's Staff report and

1 I will recommend approval for the special exception.

2 CHAIRPERSON HILL: Thank you. Vice Chair John?

3 VICE CHAIRPERSON JOHN: I agree with Board Member
4 Smith, Mr. Chairman, I think this is a fairly straightforward
5 case and both the Office of Planning and Board Member Smith
6 have done an excellent job of stepping through the
7 requirements and how the application meets the criteria for
8 relief.

9 I will be voting in support.

10 CHAIRPERSON HILL: Thank you. Mr. Moy?

11 MEMBER BLAKE: The analysis represented by the
12 Office of Planning and my colleagues in their assessment of
13 the situation. I would also note the support of the Bates
14 Area Civic Association as well as the ANC and I will be
15 prepared to support as well.

16 CHAIRPERSON HILL: Commissioner Shapiro?

17 COMMISSIONER SHAPIRO: Nothing further that I'll
18 be voting on. I'm prepared to vote in support of this as
19 well.

20 CHAIRPERSON HILL: I have nothing further to add,
21 I would agree with my colleagues. I make a motion to approve
22 Application 20578 as captioned and read by the Secretary and
23 ask for a second, Ms. John?

24 VICE CHAIRPERSON JOHN: Second.

25 CHAIRPERSON HILL: Mr. Moy, a motion has been made

1 and seconded will you take a roll call?

2 MR. MOY: When I call each of your names, if you
3 would please respond to with a yes, no, or abstain to the
4 motion made by Chairman Hill to approved the application for
5 the relief requested.

6 The motion was seconded by Vice Chair John.
7 Zoning Commissioner Peter Shapiro?

8 COMMISSIONER SHAPIRO: Yes.

9 MR. MOY: Mr. Smith? Mr. Blake?

10 MEMBER BLAKE: Yes.

11 MR. MOY: Vice Chair John? Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: The Staff would record the vote as 5 to
14 0 to 0 and this is on the motion made by Chairman Hill to
15 approve.

16 The motion to approve was seconded by Vice Chair
17 John, also in support of the motion to approve was Zoning
18 Commissioner Peter Shapiro, Mr. Smith, Mr. Blake, Vice Chair
19 John, and Chairman Hill. The motion carries on a vote of 5
20 to 0 to 0.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. You can
22 call our next case when you get a chance.

23 MR. MOY: This will be Case Application 20579 of
24 Alexis Chappell and Greg Kendall, and this is a self-
25 certified application for relief for special exception from

1 the lot occupancy requirements Subtitle E Section 304.1 and
2 this would construct a two-story rare addition to an existing
3 attached two-story with basement principal dwelling in the
4 RF1 zone.

5 The property is located at 4215 7th Street NW,
6 Square 3226 Lot 59.

7 CHAIRPERSON HILL: Mr. Kendall, is that you? I'm
8 sorry, Mr. Jelen, I see Mr. Jelen, can you hear me?

9 MR. JELEN: Yes, I can.

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

12 MR. JELEN: My name is Bill Jelen, I am the
13 architect and agent for Greg and Alexis. Greg is also here
14 and can participate as needed.

15 CHAIRPERSON HILL: Mr. Jelen, do you want to go
16 ahead and walk us through your application?

17 MR. JELEN: Absolutely. Greg and Alexis are
18 asking for relief. They have an existing attached row home
19 in RF1 neighborhood that is existing non-conforming just the
20 way the lot and the houses were built on the lots originally.

21 They're asking to put on a small rear addition and
22 to rebuild parts of it and then to add about 16 inches, which
23 would take them to a 70 percent lot occupancy, which is
24 within the special exception requirements.

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

1 MS. VITALE: Yes.

2 CHAIRPERSON HILL: Could you give us your report,
3 please?

4 MS. VITALE: Certainly, Elisa Vitale with the
5 Office of Planning. I'll keep this brief. The Office of
6 Planning is recommending approval of the requested special
7 exception relief for lot occupancy.

8 We're happy to rest on the record of our Staff
9 report and can take any questions, thank you.

10 CHAIRPERSON HILL: Does the Board have any
11 questions for the Office of Planning? Mr. Jelen, do you have
12 any questions for the Office of Planning?

13 MR. JELEN: No, sir.

14 CHAIRPERSON HILL: Mr. Young, do we have anybody
15 wishing to testify? Mr. Jelen, do you have anything you'd
16 like to add at the end?

17 MR. JELEN: Just we'll also want to point out Greg
18 and Alexis have worked with the ANC and have also garnered
19 approval from the ANC which I think is on the record. And
20 that's really it, there's neighborhood support and it's a
21 very modest request.

22 CHAIRPERSON HILL: I'm going to close. Mr.
23 Kendall, I'm sorry, we're running a lot of things today so
24 I don't think we have any questions for you. I'm going to
25 go ahead and close the hearing and the record.

1 If you could excuse everyone, Mr. Young? After
2 reading through the record as well as the analysis of the
3 Office of Planning, DDOT, and the ANC, I would agree with all
4 of them.

5 I also thought the shadow studies were helpful
6 twenty-first century provided. And I thought it was
7 relatively straightforward so I'm going to be voting in favor
8 of this application.

9 Mr. Smith, do you have anything you'd like to add?
10 Vice Chair John?

11 VICE CHAIRPERSON JOHN: I have nothing to add.
12 It's a fairly straightforward application.

13 CHAIRPERSON HILL: Mr. Blake?

14 MEMBER BLAKE: The Applicant has sufficiently
15 addressed the issues and I would be comfortable recommending
16 approval.

17 CHAIRPERSON HILL: Commissioner Shapiro?

18 COMMISSIONER SHAPIRO: No concerns, Mr. Chair.

19 CHAIRPERSON HILL: I'm going to go ahead and make
20 a motion to approve application 20579 as captioned and read
21 by the Secretary and ask for a second, Ms. John?

22 VICE CHAIRPERSON JOHN: Second.

23 CHAIRPERSON HILL: Motion made and seconded. Mr.
24 Moy, if you could please take a roll call vote?

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

1 would please respond to with a yes, no, or abstain to the
2 motion made by Chairman Hill to approved the application for
3 the relief requested.

4 The motion to approve was seconded by Vice Chair
5 John. Zoning Commissioner Peter Shapiro?

6 COMMISSIONER SHAPIRO: Yes.

7 MR. MOY: Mr. Smith? Mr. Blake?

8 MEMBER BLAKE: Yes.

9 MR. MOY: Vice Chair John? Chairman Hill?

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: The Staff would record the vote as 5 to
12 0 to 0 and this is on the motion made by Chairman Hill to
13 approve.

14 The motion to approve was seconded by Vice Chair
15 John, also in support of the motion to approve was Zoning
16 Commissioner Peter Shapiro, Mr. Smith, Mr. Blake, Vice Chair
17 John, and Chairman Hill. The motion carries on a vote of 5
18 to 0 to 0.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. Give me
20 one minute, Mr. Moy. I'm going to just go ahead and go
21 because it's a good place to break here. Vice Chair John is
22 going to take over for me. Vice Chair John, thank you so
23 much.

24 Thank you all to my fellow Board Members and have
25 a good day.

1 VICE CHAIRPERSON JOHN: You're welcome, Chairman
2 Hill, have a good day. Let me ask the Board Members, would
3 you like take lunch now or would you like start the next
4 case?

5 MEMBER SMITH: Start the next case.

6 VICE CHAIRPERSON JOHN: Mr. Moy, is the witness
7 from the at7t case present here?

8 MR. MOY: No, he is not. The Staff is still
9 active in locating him.

10 VICE CHAIRPERSON JOHN: Mr. Moy, would you please
11 go ahead and call the next case?

12 MR. MOY: This would be Case 20553 of Income 1
13 LLC. This is a self-certified application for a special
14 exception from the side yard requirements, Subtitle D Section
15 206.2. This would construct a new two-story principal
16 dwelling unit on a substandard lot in the R1B zone.

17 The property is located at 4410 Douglas Street NE
18 Square 5116 Lot 122. The only other item I have for you is
19 that my understanding is that the Applicant apparently has
20 a copy of the ANC report, so I would ask the Applicant about
21 that when you call them into the record.

22 VICE CHAIRPERSON JOHN: Thank you. Mr. Dales, are
23 you representing the Applicant today? Your mic is off.

24 MR. DALES: That's correct.

25 VICE CHAIRPERSON JOHN: Can you go ahead and

1 introduce yourself, for the record?

2 MR. DALES: Phil Dales of Lithwelsh and Simmons
3 at 181 Periastro Parkway in Annapolis, Maryland, I'm here
4 representing the Applicant.

5 VICE CHAIRPERSON JOHN: Do you have anyone else
6 with you today?

7 MR. DALES: I do, the architect for the project
8 is here, Mr. Adam Carballo and the Applicant representative
9 from Income 1 is Mr. Peter Chinloy.

10 VICE CHAIRPERSON JOHN: We'll go ahead and
11 introduce them as necessary. You have 15 minutes to tell us
12 how your application meets the criteria for relief and Mr.
13 Young is going to go ahead and put 15 minutes on the clock.

14 MR. DALES: Thank you, I'll try to be briefer than
15 that. I would proffer to the Board that the application and
16 the record accurately reflects and effectively addresses the
17 requirements for the special exception.

18 And that the November 29th memorandum from the
19 Office of Planning which recommends approval of the special
20 exception also effectively addresses the criteria.

21 I've been addressed mainly on that in the interest
22 of time and efficiency but this is a relatively simple
23 application for a special exception pursuant to Section
24 5201.1B of the zoning regulations, which provide for a
25 reduction in the required setbacks, in this case the side

1 yard setbacks for lots of substandard width.

2 The required side yards for this property if
3 rigidly imposed would result in a home of only nine feet
4 wide. We therefore ask for a reduction to five feet on the
5 western lot line and a reduction of four feet on the eastern
6 lot line from that April variance.

7 That's going to allow us for a very modest 18 foot
8 wide home, which is in keeping with others in the
9 neighborhood. We think that's a reasonable width and the
10 overall two-story house below the height restrictions is a
11 modest overall size.

12 We've also obtained a vote of support from ANC 7C
13 which was mentioned by Mr. Moy and the minute that we are
14 already part of the record, we obtained a vote of approval
15 for supporting this application.

16 But this letter which we received the support in
17 has been uploaded and also sent to Staff. That additionally
18 indicates the vote from the ANC survived that. We received
19 that this morning from Chairman Sharaj and then we understand
20 there is an individual who is opposing the application.

21 We understand that opposition is on the
22 foregrounds, mainly light and air concerns, fire safety
23 concerns, neighborhood character concerns and property value
24 impact concerns.

25 So, to just quickly address those as to the key

1 points that this board may want to consider in addition to
2 the points made in the application, I would note to the Board
3 that the first criteria is objection to light and air and we
4 would just remind our neighbor that this property is not
5 adjacent to hers, as the opposition letter states.

6 In fact, it's the next property over. The
7 property adjacent to hers has an existing structure on it and
8 it's not the subject of this application although it is by
9 the Applicant.

10 As to the fire safety concerns, Mr. Corballo can
11 help testify if needed but we would just note that the zoning
12 ordinance is not the primary regulation to address fire
13 safety concerns.

14 The purpose of the zoning ordinance is to provide
15 residential areas with attached dwellings and joining vacant
16 areas likely to be there for those purposes and to stabilize
17 residential areas into a suitable environment for family
18 life.

19 Those purposes are more related to neighborhood
20 character and use, whereas the fire code is a primary
21 governing regulation for fire safety concerns. We will of
22 course comply with all the fire regulations.

23 With regard to the neighborhood character
24 concerns, what I would suggest in response to the issues
25 raised in opposition are that the restrictions set by the

1 side yard setbacks, if upheld and strictly effort, they would
2 actually result in structures that are much more disruptive
3 to this community.

4 To extremely oddly narrow structures on these 25
5 lots would be more inconsistent with the residential
6 character of this neighborhood and the special exception
7 provisions exist here to allow for consistent structures that
8 fit in with the neighborhood character and also allow the
9 construction of single family dwellings without undue effect
10 upon the surrounding communities.

11 So, that's the main thrust of the opposition.

12 The final concern about property values, it's our
13 experience, both mine as the attorney and the Applicant's in
14 developing properties, that the improvement of these vacant
15 partials or dilapidated partials or partials with whole
16 dilapidated structures with new structures that are
17 consistent with the surrounding neighborhood tends to
18 increase property values for the surrounding neighborhood
19 rather than cause any harm to them, especially when there
20 aren't fire or light and air concerns as I hope I've
21 addressed.

22 So, with that, I will wrap up our presentation
23 here unless there are questions for me, Mr. Carballo, or Mr.
24 Chinloy. And we'll address those if you have them, thank
25 you.

1 VICE CHAIRPERSON JOHN: There is just one
2 follow-up question and then I'll turn to the Board. So, the
3 regulations also require you to talk about any adverse
4 impacts in terms of privacy to the adjacent neighbors. Can
5 you address that?

6 MR. DALES: I think I'll ask Mr. Carballo to
7 address that. We are not locating the proposed structure
8 very near the property to the west, which is to the left and
9 is the one property adjacent to the Applicant.

10 Mr. Carballo, could you address that concern?

11 MS. CLARKE: My name is Adam Carballo, I'm the
12 architect on record for this project from Carballo
13 Architecture. With respect to privacy, as Mr. Dales
14 presented, this is an existing undersize lot.

15 It would be virtually impossible to comply with
16 the side yard setbacks imposed by the Zoning District, which
17 require eight feet on each side. Our lot is 25 feet wide,
18 providing 16 feet for a setback on a 25-foot lot would be
19 unnecessary.

20 It would provide for an unnecessarily small
21 property nine feet wide. With respect to privacy, we are
22 proposing smaller setbacks on either property line. One
23 setback of four feet, one setback of three feet.

24 We are proposing that the four-foot setback be
25 adjacent to the next closes property which is to the west.

1 We've also minimized the number of windows on that property
2 side to provide further privacy for the adjoining neighbor.

3 We've actually designed the building to have the
4 majority of the windows at the front and back of the property
5 to preserve as much privacy as possible to the adjoining
6 neighbor.

7 VICE CHAIRPERSON JOHN: Thank you very much, Mr.
8 Carballo. Go ahead.

9 MEMBER BLAKE: One quick question, with regards
10 to the house, I understand you control it but could you
11 please tell me what the effect of separation is between that
12 house on that side and the placement windows for privacy to
13 that house?

14 MS. CLARKE: On the opposite side there are
15 minimal windows to the east and looking at my -- there is a
16 setback I believe 5 feet. So, we would have an eight foot
17 setback between 4410 and 4412 Douglas.

18 MR. DALES: Mr. Carballo, could you clarify which
19 elevation to the west is 4406? There's a space between our
20 lot line and that existing structure. Is that the side of
21 our proposed house that has no windows or is that the size
22 that has the minimized windows?

23 MS. CLARKE: That has minimized windows on that
24 side.

25 MR. DALES: So, the other side, where we are

1 nearly adjacent to the structure that our Applicant also owns
2 which is the Eastern side, we have proposed no windows
3 although there is still a setback of four feet on that side?

4 MS. CLARKE: Correct, there are no windows on the
5 12 side, which is the shorter, narrower setback.

6 MR. DALES: Thank you.

7 VICE CHAIRPERSON JOHN: The east side has no
8 windows?

9 MS. CLARKE: Yes, ma'am. We provided no windows
10 on that side because that has the narrower setback.

11 VICE CHAIRPERSON JOHN: Does the Board have any
12 other questions? Go ahead, Commissioner Shapiro.

13 COMMISSIONER SHAPIRO: Thank you, just to note
14 that the ANC report actually is in the record, Exhibit 39.
15 I'm not sure whether we need to waive our rules or something
16 to formally allow that in or not?

17 VICE CHAIRPERSON JOHN: If we have no objection
18 I'll go ahead and waive the late filing for the ANC report.
19 Thank you. So, are there no further questions? And if there
20 are none, I'll go to the Office of Planning.

21 MR. KIRSCHENBAUM: Good afternoon, Chair John and
22 Members of the Board of Zoning Adjustment. I am Jonathan
23 Kirschenbaum with the Office of Planning and we recommend
24 approval of the requested side yard special exception. We
25 rest on our Staff report.

1 Please let me know if you have any questions,
2 thank you.

3 VICE CHAIRPERSON JOHN: Thank you. Does the Board
4 have any questions? Mr. Young, are there any witnesses? Is
5 the Commissioner here? No. Are there any witnesses signed
6 up to testify? Okay.

7 Mr. Dales, do you have any closing comments?

8 MR. DALES: We'll rest on the record.

9 VICE CHAIRPERSON JOHN: Mr. Young, I'm going to
10 go ahead and close the record and the hearing and excuse the
11 witnesses. Thank you for your testimony. Are we ready to
12 deliberate?

13 Would anyone like to start?

14 I'll start the discussion. This is fairly
15 straightforward, although there is a neighbor who is in
16 opposition and that testimony is in the record, although the
17 neighbor did not appear.

18 I'm satisfied that in terms of impacts to light
19 and air and privacy, the application would not create any
20 adverse impacts on the neighboring property. I'm going to
21 give great weight to the analysis of the recommendations of
22 the Office of Planning.

23 And I believe the ANC report is not in the record
24 and the ANC is in support, and DDOT has no objection. So,
25 does anyone have anything else to add? Okay, so if no one

1 has anything to add, I'm going to make a motion to approve
2 application number 20553 of Income 1 LLC.

3 And I'll ask for a second. Mr. Smith?

4 MEMBER SMITH: Second.

5 VICE CHAIRPERSON JOHN: Mr. Moy, would you please
6 take the roll call?

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

11 Zoning Commissioner Peter Shapiro?

12 COMMISSIONER SHAPIRO: Yes.

13 MR. MOY: Mr. Smith?

14 MEMBER SMITH: Yes.

15 MR. MOY: Mr. Blake?

16 MEMBER BLAKE: Yes.

17 MR. MOY: Vice Chair John?

18 VICE CHAIRPERSON JOHN: Yes.

19 MR. MOY: And we have a Board Member not present
20 and not voting. The Staff would record the vote as 4 to 0
21 to 1 and this is on the motion made by Vice Chair John to
22 approve. The motion to approve was seconded by Mr. Smith.

23 Also in support of the motion to approve was
24 Zoning Commissioner Peter Shapiro, Mr. Smith, Mr. Blake, Vice
25 Chair John.

1 Board Member not present. The motion carries on
2 a vote of 4 to 0 to 1.

3 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. Can
4 you let us know if the witness for that earlier case is
5 available now?

6 MR. MOY: Staff tells me he is so if you wish,
7 I'll call that case now if you like.

8 VICE CHAIRPERSON JOHN: Please go ahead and also
9 that case.

10 MR. MOY: This would be Case 20573 of AT&T and
11 this is a coordination of the Board's discussion on this
12 application pending input from a Mr. Frazer Walton wanting
13 to testify.

14 VICE CHAIRPERSON JOHN: Thank you. Mr. Walton,
15 can you hear me?

16 MR. YOUNG: I think he's on mute, Madam Chair.

17 VICE CHAIRPERSON JOHN: Mr. Walton, can you turn
18 your mic on?

19 MR. MOY: Mr. Young, you can unmute him as well
20 since you're the host.

21 MR. WALTON: Yes, ma'am?

22 VICE CHAIRPERSON JOHN: Go ahead and give your
23 testimony, please. You will have three minutes?

24 MR. WALTON: I have how many minutes?

25 VICE CHAIRPERSON JOHN: Three minutes.

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1 MR. WALTON: I'm speaking on behalf of the
2 Association but I'll try to do it in three minutes.

3 VICE CHAIRPERSON JOHN: If you're speaking on
4 behalf of the Association you have five minutes. So, please
5 go ahead and introduce yourself for the record?

6 MR. WALTON: Thank you very much.

7 Good afternoon, members of the Board, my name is
8 Frazer Walton and I represent the Kingman Park Civic
9 Association. The Spingarn Educational campus is located in
10 the Kingman Park Historic District and Kingman Park
11 neighborhood.

12 AT&T seeks an exception to the D.C. zoning law to
13 enable it to construct a 90 foot 5G cell tower on the
14 Spingarn football field. That decision is well within your
15 purview and within your jurisdiction.

16 Please note this neighborhood association is
17 vehemently opposed to the construction. KPCA is opposed to
18 the construction for the following reason. Under Subtitle
19 X, there will be an adverse impact on school age children and
20 older citizens within this community.

21 KPCA opposes the construction of the 5G cell tower
22 under the zoning laws special exception provisions because
23 the cell tower and 5G technology will constitute a change in
24 use and particularly adversely affect school-age children and
25 senior citizens with challenged immune systems.

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1 Therefore, the 89-foot cell tower will not be in
2 compliance with DCMR Subtitle X.

3 Scientific studies reveal that our F radiation
4 exposure to our F pulsation and modulation even below the
5 FCC's current guidelines will cause negative health effects
6 unrelated to cancer such as reproductive problems and
7 neurological problems that span from the effects on memory
8 to motor abilities particularly in small children.

9 Please review AT&T's Exhibit 17, which is dated
10 January 28, 2019.

11 The letter certifies that the proposed cell tower
12 construction technology complies with federal communications
13 transmission power guidelines and that they will undertake
14 best efforts to, quote, prevent harmful radio frequency
15 interference from its telecommunications facilities.

16 However, on August 13, 2021 the United States
17 Court of Appeals for District of Columbia ruled that the FCC,
18 this was a case against the FCC, has failed to update its
19 guidelines.

20 The guidelines were last updated in 1996 to
21 address the advent of wireless communication and RF radio
22 frequency waves on the health of children in particular and
23 the community in general.

24 The Court remanded the case to the FCC and stated
25 in part that, quote, the FCC must provide a reasoned

1 explanation for its determination that its guidelines
2 adequately protect against harmful effects of exposure to
3 radio frequency radiation unrelated to cancer.

4 It must in particular, number one, provide a
5 reasoned explanation for its decision to retain its testing
6 procedures for determining whether cell phones and other
7 portable electronic devices comply with these guidelines.

8 Two, address the impacts of radio frequency
9 radiation on children, the health implications of long-term
10 exposure to RAF radiation, the ubiquity of wireless devices
11 and other technological developments that have occurred since
12 the Commission last updated its guidelines.

13 And three, address the impacts of RF radiation on
14 the environment. That's at Page 30 of the Court's decision.

15 The Court held that the FCC conclusions regarding
16 the adequacy of its testing procedures particularly as they
17 relate to children and its conclusions regarding the
18 implications of long-term exposure to RF radiation is
19 arbitrary and capricious.

20 And it failed to respond to comments concerning
21 environmental harm caused by RAF radiation. KPCA maintains
22 that this leads to the conclusion that AT&T's representations
23 are also arbitrary and capricious.

24 And the January 28, 2019 representation concerning
25 RAF radiation fails to address the non-cancerous effects on

1 the environment and particularly school-age children. For
2 that reason, it does not comply with DCMR Subtitle X.

3 It will present an adverse impact on the community
4 and could well lead to legal action against the District and
5 AT&T for hundreds of parents and community leaders. Thank
6 you very much and for your time and I greatly appreciate you
7 all allowing me to put this on the record.

8 Thank you, again.

9 VICE CHAIRPERSON JOHN: Thank you for your
10 testimony, Mr. Walton. Mr. Young, can you let Mr. Sampson in,
11 please? The Board would like to give you an opportunity to
12 ask questions of Mr. Walton if you have any.

13 MR. SAMPSON: I don't have any questions but I do
14 have a response when the time is right for that.

15 VICE CHAIRPERSON JOHN: This is the time.

16 MR. SAMPSON: So, I did read the case and I'm very
17 familiar with the case that Mr. Walton cited. I just want
18 to clarify that the D.C. Court of Appeals did not rule that
19 there are any health effects or that the FCC is in violation
20 of anything.

21 Simply stated, there was evidence in the record
22 that the Court found the FCC did not adequately address in
23 its opinion so it remanded it for the FCC to address that in
24 its opinion for the proposed rulemaking.

25 So, I just want to clarify that this case that was

1 provided by Mr. Walton does not in any way say there are
2 adverse health effects or that the FCC is in violation of
3 anything other than they didn't address it adequately in
4 their opinion.

5 The FCC could very well now address it in its
6 opinion and have the rule exactly where it was before, which
7 is not uncommon in these types of situations. So, I
8 understand again, we talked about the health effects earlier.

9 I understand the concerns that come up in the
10 community but again, this is regulated by the FCC, they
11 monitor it year after year and reputable scientific agencies
12 have found there are no adverse health effects.

13 And I agree with what the Chair said earlier
14 before he had to hop off, that this really is at the FCC
15 level. It really isn't pertinent to whether or not this
16 application complies with the specific provisions of the
17 zoning code, which again we believe it does.

18 Thank you very much.

19 VICE CHAIRPERSON JOHN: Thank you. Mr. Moy, the
20 Board will close the record and the hearing again. Please
21 excuse the witnesses. Are we ready to deliberate?

22 Would you like to do this after lunch or now?
23 After lunch? Okay. So, it's now 12:27 p.m., how about if
24 we return at 1:00 p.m.? We will then deliberate and decide
25 on this case.

1 Does that work for everyone? Okay, thank you, the
2 Board is adjourned.

3 (Whereupon, the above-entitled matter went off the
4 record at 12:27 p.m. and resumed at 1:07 p.m.)

5 MR. MOY: Yes, thank you, Madam Vice Chair. The
6 Board is back in its public hearing session after a quick
7 lunch recess, and the time is now at or about 1:07 p.m.

8 VICE CHAIRPERSON JOHN: Thank you.

9 MR. MOY: And I believe --

10 VICE CHAIRPERSON JOHN: Go ahead.

11 MR. MOY: Go ahead. And I believe, Madam Vice
12 Chair, unless you tell me otherwise, the Board left off
13 before lunch on case application number 20573 of AT&T.

14 VICE CHAIRPERSON JOHN: That's correct, Mr. Moy,
15 but I believe we need to recall that case.

16 MR. MOY: Yes, so this would be case application
17 number 20573 of AT&T, and as you'll recall, this is a self-
18 certified application for special exception from the use
19 permissions of Subtitle C, Section 1313.2 for monopolies, and
20 this is in the RA-2 Zone and is property located at 2500
21 Benning Road, NE, Square 4486, Lot 802.

22 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. So,
23 is the Board ready to deliberate? Okay, I didn't hear a no,
24 so I'll go ahead and start the discussion and feel free to
25 add anything else.

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1 So, this is a very full record and I appreciate
2 the testimony of all of the witnesses, and the persons in
3 opposition expressed concerns about potential adverse impacts
4 in granting approval for this metro pole.

5 And although the Board approved two similar cases
6 recently, the Board decides each case on its own merits.
7 This particular metro pole will be, monopole, sorry, will be
8 replaced, will replace an existing light pole and will be
9 eight feet taller to accommodate collocation requirements.

10 It is sited on a large property owned by the
11 District and is not close to residential neighbors. While
12 children use the fields for athletic events, the equipment
13 will be screened by high fences and other measures as the
14 Applicant's attorney stated.

15 I'm satisfied that the Applicant's written
16 presentation and testimony shows how the application meets
17 the requirements of Section C 1313, particularly 1313.6(g)
18 which addresses the FCC requirements, and I would note that
19 the FCC requirements and standards are enforced by the FCC
20 and not the BZA.

21 So, I will also give great weight to the analysis
22 and recommendations of the Office of Planning and I have no
23 reason to not agree with their analysis. The ANC is in
24 support had DDOT has no objection. And I'd like to hear from
25 my Board members on anything they'd like to add.

1 COMMISSIONER SHAPIRO: I agree with your analysis
2 and I have nothing else to add. Thank you.

3 VICE CHAIRPERSON JOHN: Thank you, Mr. Shapiro,
4 Commissioner Shapiro.

5 MEMBER SMITH: Madam Chair, I also agree with your
6 analysis as well and I won't belabor this point. I do
7 believe that given what we've looked at into the record, and
8 the staff report provided by OP, and the analysis given by
9 the Applicant in how there wouldn't be a major impact from
10 a health standpoint on radio waves that may emit from this
11 tower and any subsequent or future modification of this tower
12 for 5G, I am comfortable with approving the special
13 exception.

14 VICE CHAIRPERSON JOHN: Thank you, Board Member
15 Smith, and Board Member Blake?

16 MEMBER BLAKE: The Applicant has met the burden
17 of proof to receive special exemption relief. The most
18 important part, of course, is C 1313.6(a) through (g), which
19 really captures most of the issues of pure concern, for
20 example, the last intrusive means of providing improved
21 services to the community.

22 The area around the pole, as you pointed out, will
23 be fenced in to protect users of the athletic field. The
24 height of the pole will not exceed the height required to
25 provide the services, and a closed tower, you know, has, as

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1 they've indicated with the collocation, members would still
2 meet the FCC compliant issues.

3 Certainly it's not within the purview of this
4 Board, as you pointed out, to determine that. The FCC is the
5 expert body on that. So, it is available, but it's just not
6 the right flow. And our focus is on 1313 and I do believe
7 the provisions have been met.

8 The concerns otherwise have not -- I think the
9 opposition's concerns did not really talk about this
10 particular tower and how it would adversely affect the
11 neighboring properties. That was not really supported. So,
12 I feel comfortable supporting this request.

13 VICE CHAIRPERSON JOHN: Okay, thank you very much.
14 And so, I will go ahead and make a motion to approve
15 application 20573 of AT&T and ask for a second. Mr. Smith?

16 MEMBER SMITH: Second.

17 VICE CHAIRPERSON JOHN: Oh, I forgot to close the
18 record before we deliberated, so the record is closed. So,
19 Mr. Moy, would you please call the roll call?

20 MR. MOY: Yes, thank you, Madam Vice Chair. When
21 I call each of your names, if you would please respond with
22 a yes, no, or abstain to the motion made by Vice Chair John
23 to approve the application for the relief requested. The
24 motion to approve was seconded by Mr. Smith. Zoning
25 Commissioner Peter Shapiro?

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1 Mr. Smith?

2 MEMBER SMITH: Yes.

3 MR. MOY: Mr. Blake?

4 Vice Chair John?

5 VICE CHAIRPERSON JOHN: Yes.

6 MR. MOY: We have a Board member not present and
7 not voting. Staff would then record the vote as four to zero
8 to one and this is on the motion to approve made by Vice
9 Chair John. The motion to approve was seconded by Mr. Smith.
10 The motion to approve was also in support by Zoning
11 Commissioner Peter Shapiro, Mr. Smith, Mr. Blake, and Vice
12 Chair John. The motion carries on a vote of four to zero to
13 one.

14 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. So,
15 would you go ahead and call the next case, please, which I
16 believe is 20579?

17 MR. MOY: I have 20526 or was there a different
18 case?

19 VICE CHAIRPERSON JOHN: Let's go ahead with 20526.

20 MR. MOY: Okay, okay.

21 VICE CHAIRPERSON JOHN: Thank you.

22 MR. MOY: So, this is case application number
23 20526 of 4248, LLC. This is a self-certified application as
24 amended for special exception from the side yard requirements
25 for a semi-detached, one-family dwelling of Subtitle D,

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1 Section 206.3.

2 This would construct a new three-story, semi-
3 detached, principal dwelling, and this is in ANC 7C in the
4 R-2 Zone district, the property located at 1227 47th Place,
5 NE, Square 5160, Lot 39. This was last heard by the Board
6 at its November 3 public hearing and it was continued to
7 today's hearing on December 15.

8 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. Would
9 you let the parties in, please? Mr. Bello?

10 MR. MOY: I don't know if Mr. Bello made it in at
11 the moment, Madam Vice Chair, but the architect, Amanda
12 Clarke, is available.

13 VICE CHAIRPERSON JOHN: Okay, thank you. Would
14 you let the architect in, please?

15 MS. CLARKE: I'm in and good afternoon. My name
16 is Amanda Clarke. And I had texted with Mr. Bello just a few
17 moments ago, so I know he was in transit, so it's possible
18 he might come in at any moment, but I am happy to stand in
19 for him in his absence.

20 VICE CHAIRPERSON JOHN: Okay, well, that's great.
21 So, can you introduce yourself again for the record?

22 MS. CLARKE: My name is Amanda Clarke. I am the
23 architect for the project at 1227 47th Place, NE, and, yes.

24 VICE CHAIRPERSON JOHN: Thank you. And I see that
25 the commissioner is with us. Can you introduce yourself,

1 please?

2 (Foreign language spoken.)

3 VICE CHAIRPERSON JOHN: Hello?

4 MR. BELLO: Good afternoon, Madam Chair.

5 (Foreign language spoken.)

6 VICE CHAIRPERSON JOHN: Good afternoon, Mr. Bello.

7 Is there -- okay, there's some background. Is that coming
8 from you, Mr. Bello?

9 MR. BELLO: I hope not. Let me move my mic a
10 little bit.

11 VICE CHAIRPERSON JOHN: Okay, thank you. Please
12 introduce yourself for the record and tell us how the
13 application meets the criteria for relief, and I'll put 15
14 minutes on the record, please, I mean on the clock, please,
15 Mr. Young.

16 And as you're describing how your application
17 meets the requirement, Mr. Bello, please fill us in on what
18 happened after the last meeting and whether you've submitted
19 the documents and information that the Board requested.

20 MR. BELLO: Yes, my name is Toye Bello. I'm
21 representing the Applicant in this case. Madam Chair, this
22 is, in fact, a continued case, if you will, but I'm glad to
23 represent the case.

24 But at the last hearing, the Board requested
25 clarification on the side yard setback requirement, which

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1 Applicant has uploaded a plat to show that the side yard
2 would be 3.94 feet, and Applicant has submitted additional
3 supplemental records in response to certain issues raised by
4 the Deanwood Community Association upon which the ANC has
5 predicated their resolution of opposition. So, do you want
6 me to start all over again or --

7 VICE CHAIRPERSON JOHN: No, Mr. Bello. That won't
8 be necessary. I looked at what was submitted and I saw the
9 plat which showed the side yard at 3.94 feet, but I didn't
10 see any correction in any of the other documents, and I
11 believe that the documents are still not correct.

12 MR. BELLO: I'm afraid I don't know what other
13 documents you're talking about. The only issue that was
14 raised at the last hearing was to indicate what the side yard
15 would be that is provided.

16 (Simultaneous speaking.)

17 VICE CHAIRPERSON JOHN: Oh, you wanted to speak,
18 Mr. Shapiro?

19 COMMISSIONER SHAPIRO: I'm sorry. I imagine I'm
20 going to ask the same question you were asking, so I'll be
21 quiet.

22 VICE CHAIRPERSON JOHN: So, the updated self cert
23 still says 2.94 feet. The revised plat, you're correct, does
24 say 3.94 feet, but the architectural drawings also need to
25 match the revised plat and the updated self cert needs to

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1 match the revised plat as well.

2 MR. BELLO: Okay, I apologize for that. I didn't
3 really know that we had to reconcile the self-certification,
4 but I believe that the plans do reflect that the building
5 would be only 17 feet wide, which leaves about 3.94 feet for
6 the side yard that is provided.

7 VICE CHAIRPERSON JOHN: Mr. Bello, would you like
8 to have your architect address this? Because everything has
9 to match, the plat, the self cert, and the drawings.

10 MR. BELLO: I think the architect is online. Mr.
11 Amanda Clarke?

12 MS. CLARKE: Yes, the architectural drawings, like
13 Mr. Bello just stated, should reflect, they do reflect a 17-
14 foot wide construction with a 3.94 feet side yard. I'm not
15 looking at the self-certification right now, so I can't speak
16 to that being consistent.

17 VICE CHAIRPERSON JOHN: Okay, so --

18 MS. CLARKE: But we have not changed the -- we had
19 not at any point changed the width of the building, so that
20 should be consistent.

21 VICE CHAIRPERSON JOHN: Okay, thank you. Did you
22 have a question, Mr. Shapiro?

23 COMMISSIONER SHAPIRO: I'm joining with you, Madam
24 Chair, which is that where we last left this was that the
25 documents presented to us were not, they weren't aligned.

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1 They didn't all have the same number, and it's not about the
2 width of the building. It's about the, I believe it was the
3 side yard setback. That was the number that wasn't aligned
4 in all three cases in the documents.

5 So, it feels like a technical issue, but it's a
6 technical issue that just has to be resolved so that the
7 documentation is accurate when it comes before us.

8 (Simultaneous speaking.)

9 MS. CLARKE: I believe it was --

10 COMMISSIONER SHAPIRO: I'm sorry?

11 MS. CLARKE: If I may just say one -- sorry. I
12 believe it was perhaps at three foot 11 on the self cert and
13 then we were using 3.94 on the plat, I think perhaps, and
14 they are one and the same. I believe that perhaps may be
15 where a bit of confusion may have been.

16 VICE CHAIRPERSON JOHN: So, Mr. Bello, everything
17 has to match, so we can't -- the Board isn't going to do the
18 deduction for you, you know, take away 17 feet from whatever.
19 So, the Board also approves the drawings as filed. So, you
20 know, we gave the Applicant an opportunity to make the
21 corrections. Mr. Moy?

22 MR. MOY: Madam Vice Chair, if you're willing, the
23 OP case manager is in the hearing room if you want to hear
24 from her on this concern that you're speaking of.

25 VICE CHAIRPERSON JOHN: Sure. Does the Board have

1 any other questions before we --

2 COMMISSIONER SHAPIRO: Madam Chair, there is the
3 question of the ANC report that's in the record and they're
4 in opposition to this case at this point, but I guess that
5 can come later because we'll hear from the ANC. Yeah, so I
6 have nothing else.

7 VICE CHAIRPERSON JOHN: Thanks, and we interrupted
8 Mr. Bello in his presentation. Mr. Bello, you wanted to talk
9 about the neighborhood opposition? You're muted, Mr. Bello,
10 okay.

11 MR. BELLO: Yes, so the Association had a concern
12 about whether this was going to be affordable housing or not
13 based on the fact that this lot was partitioned under the
14 surplus program from DHCD.

15 We've answered that question by entering the
16 covenant that the owner agreed to with DHCD and this is a
17 subject matter that we believe resides in the purview of
18 DHCD.

19 So, the program that they bought this surplus
20 property under requires that they sell the property or rent
21 it as an affordable dwelling unit and the owner has signed
22 a covenant to do so. So, the enforcement of that program is
23 the purview of DHCD and not a zoning concern.

24 The second issue is the side yard the ANC referred
25 to as being narrow and an alley. The side yard is not an

1 alley. It is 3.94 feet and the construction code only
2 requires three feet of setback between two walls in order to
3 have openings in those walls and meet the fire safety
4 requirements, so that's not a zoning issue.

5 And the property has street frontage and also
6 abuts a public alley that is 15 feet wide, so there's ample
7 access for any emergency vehicle to provide service for a
8 three-story building.

9 VICE CHAIRPERSON JOHN: Okay, thank you, and
10 before we go to the Office of Planning, Mr. Bello, I'm
11 looking at Exhibit 20, which is the -- Exhibit 5, and I don't
12 know what page this is, but it shows the side yard at three
13 feet 11 inches.

14 So, we still have three measurements, three feet
15 11, 2.94, and the other one. So, please think about that
16 while I go to the Office of Planning.

17 MR. BELLO: Will do.

18 VICE CHAIRPERSON JOHN: Ms. Elliott, are you here?

19 MS. ELLIOTT: Good afternoon, Madam Chair and
20 members of the Board. I'm Brandice Elliott representing the
21 Office of Planning.

22 I actually have nothing to add to this case. The
23 Office of Planning filed the report to the record at Exhibit
24 28. We're recommending approval of the side yard special
25 exception relief that's been requested, so we'll stand on the

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1 record of that report, but I'm happy to answer any questions
2 that you have.

3 VICE CHAIRPERSON JOHN: Thank you. Does the Board
4 have any questions for Ms. Elliott? Mr. Shapiro?

5 COMMISSIONER SHAPIRO: Perhaps the question for
6 Ms. Elliott is which side yard number does she believe she's
7 supporting?

8 MS. ELLIOTT: That is a good question. In our
9 report, we referenced 3.92, so --

10 COMMISSIONER SHAPIRO: I believe that's a fourth
11 number, Madam Chair.

12 MS. ELLIOTT: I think that might have been a fat
13 finger error on my part as well because the 3.94 is what the
14 plans were showing, so that's what we would have supported.

15 COMMISSIONER SHAPIRO: Okay.

16 VICE CHAIRPERSON JOHN: So, which -- okay, so to
17 follow up, I'm looking at a drawing that shows 3.11 inches.
18 So, Mr. Bello, do you have any questions for the Office of
19 Planning?

20 MS. ELLIOTT: I'm sorry, Madam Chair, if I may
21 interject really quickly, I think part of the confusion of
22 the 3.11 is that it's actually, it's a conversion issue.
23 It's three feet, 11 inches or 3.94 feet.

24 VICE CHAIRPERSON JOHN: Thank you for the
25 clarification, Ms. Elliott, but, you know, the Board can't

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1 figure it out. The drawings have to state precisely what's
2 being requested.

3 MS. ELLIOTT: Of course.

4 VICE CHAIRPERSON JOHN: Okay, so does the
5 Applicant have any questions for Ms. Elliott, for the Office
6 of Planning?

7 MR. BELLO: No, Madam Chair.

8 VICE CHAIRPERSON JOHN: Thank you. I'll go to the
9 commissioner, the ANC commissioner. Can you introduce
10 yourself for the record, please?

11 MR. HOLMES: Good afternoon, Antawan Holmes,
12 single member district commissioner for 7C04 Deanwood and the
13 chair of ANC 7C. As far as our presentation, while we had
14 a letter of opposition, counter to what you already said to
15 as well, the original numbers I was looking was that 2.9,
16 which was the original.

17 So, originally, I had said three feet and then I
18 saw a new one come up there that said three point whatever
19 the new one is, three point something, so that's why I put
20 four feet in there, but if it's over three feet, then it's
21 not as small as I thought it was when I looked at that site.

22 But their issue is that around three feet, there
23 are windows into residents' homes, apartment units, and we
24 just had a concern about basically privacy based on however
25 the windows are going to be placed, which could be used to

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1 address that matter, but we wanted to make sure that we were
2 concerned about the privacy issue.

3 In terms of that alleyway space, if it was as
4 tight as we thought it were, we do know of the -- we do have
5 a lot of illicit activities that are happening in and around
6 that Metro station right now, so we would be concerned about
7 making sure that there was a possible way of illuminating
8 that site to resolve the matter of things happening between
9 buildings shall we say.

10 Those were the issues that we saw that were
11 related to the zoning. Outside of that, we asked questions
12 about the, as Mr. Bello stated, DHCD-related questions about
13 the property and how it was going to be used since the
14 project was championed in the Deanwood community as well as
15 it was a home for where the tiny home site and all of the
16 other initiatives for the Vacant to Vibrant DC process was.

17 Unfortunately, we didn't receive any of the
18 answers we needed to kind of understand how was that
19 translating into this project, and therefore, since the
20 community and ANC were very involved with that project, we
21 couldn't support it until we had a better understanding of
22 what way they were going to move forward with it.

23 VICE CHAIRPERSON JOHN: Thank you, Mr. Holmes.
24 So, did the Applicant present to the ANC?

25 MR. HOLMES: They presented to the ANC on November

1 11 and presented to the DCA on the 13th, this past Monday.

2 VICE CHAIRPERSON JOHN: Okay, all right, does the
3 Board have any questions for Commissioner Holmes? Mr. Blake?

4 MEMBER BLAKE: Commissioner Holmes, in the ANC
5 letter, it says that the approval was contingent upon the
6 Applicant presenting their development plans and seeking
7 approval of the Deanwood Citizens Association.

8 MR. HOLMES: That's correct.

9 MEMBER BLAKE: And it says that the conditions
10 were not met, and so you would not support, but the
11 conditions would have been met because they did meet and
12 present.

13 MR. HOLMES: That is not -- they didn't seek
14 approval to see if the community felt that this project
15 aligned with the regular character of the neighborhood and/or
16 at least with the terms that went along with the Vacant to
17 Vibrant project which was brought up during that meeting.

18 So, because they were not able to talk through the
19 rest of that, as well as the other things I put. They
20 weren't able to answer some of those questions until a letter
21 did come after the fact. We did see it. I saw it posted,
22 but at the time, the community didn't support it because they
23 did not have any answers at that time.

24 MEMBER BLAKE: Does the community have the answers
25 satisfactorily at this time?

1 MR. HOLMES: I would have to go back and ask them.

2 MEMBER BLAKE: Okay, and you're saying that
3 because of that, you would not be able to support that?

4 MR. HOLMES: At the time of the decision, it
5 wasn't answered, so we put in a letter of no support at that
6 time.

7 MEMBER BLAKE: And this was voted on by the entire
8 ANC?

9 MR. HOLMES: Yes.

10 MEMBER BLAKE: Okay.

11 VICE CHAIRPERSON JOHN: Does the Board have any
12 other questions? Thank you. Mr. Young, is there anyone
13 wishing to testify? Pardon?

14 MR. HOLMES: Oh, sorry.

15 VICE CHAIRPERSON JOHN: Okay, so Mr. Bello, would
16 you like to make your closing statement now?

17 MR. BELLO: Yes, Madam Chair. Insofar as the
18 confusion about the actual side yard, the Applicant agrees
19 with OP that it's a matter of conversion, whether one uses
20 a decimal point or whether one is using feet and inches, and,
21 you know, the Applicant can upload information to be
22 consistent if that makes the Board more comfortable. So,
23 clearly this side yard is 3.94 feet.

24 In the original hearing, the Applicant presented
25 how the application meets the test for a special exception,

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1 and in this case, the only issue of privacy was addressed in
2 that presentation in the sense that the openings that are on
3 the side of the wall that faces the nonconforming apartment
4 house have been so located that they don't look into any of
5 the private rooms of those apartment house. They actually
6 are opposite the stairwell and the kitchen areas.

7 And the property, the apartment house is actually
8 an apartment that is nonconforming with respect to the
9 construction codes because it sits on the property line and
10 it has at-risk windows that the Applicant could have actually
11 determined to build a wall against and those windows would
12 have to be closed.

13 But in consideration of that adjacent property,
14 the Applicant located the line wall opposite the apartment
15 in order not to exercise the right that they had to close
16 those windows if they wished. So, Applicant believes that
17 the onus is actually on the existing building because it has
18 at-risk nonconforming windows.

19 The Applicant believes that this application meets
20 the test for special exception and respectfully asks the
21 Board to grant the relief sought. Thank you very much.

22 VICE CHAIRPERSON JOHN: Thank you, Mr. Bello. I'm
23 going to go outside the process and ask if you discussed the
24 at-risk windows with both the ANC and the Deanwood
25 Association?

1 MR. BELLO: I provided both the ANC and the DCA
2 with the same PowerPoint presentation submitted to the record
3 and made the point that the Applicant had been considerate
4 in locating the lot line wall opposite the other window in
5 consideration of the existence of those windows.

6 Under the construction codes, the Applicant
7 actually had the right to locate the wall opposite those
8 windows, and by law, those windows would have to be
9 eliminated. That's one.

10 And just to go back to what the ANC commissioner
11 said, there has not been any other ANC votes after the
12 Deanwood Community Association decision. So, the contingent
13 decision was based on a unanimous vote and there has not been
14 any other meeting to vote otherwise since we met with DCA on
15 December 15.

16 VICE CHAIRPERSON JOHN: Okay, Mr. Holmes, were you
17 at that meeting where Mr. Bello made his presentation?

18 MR. HOLMES: For the DCA meeting?

19 VICE CHAIRPERSON JOHN: Yes.

20 MR. HOLMES: Absolutely.

21 VICE CHAIRPERSON JOHN: Okay, and the Association
22 was still opposed?

23 MR. HOLMES: Yes, they were opposed during the
24 meeting that they had this Monday.

25 VICE CHAIRPERSON JOHN: Okay, so I'm going to

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1 excuse you, Mr. Holmes and Mr. Bello.

2 MR. HOLMES: Oh, just one more point. I think Mr.
3 Bello was trying to say that the ANC had to have a follow-up
4 vote upon the contingency. That is not the case.

5 VICE CHAIRPERSON JOHN: Okay.

6 MR. HOLMES: The ANC has done multiple, we have
7 done multiple BZA decision memos and they're all the same.
8 We put it on there because sometimes we have the applicants
9 come to the ANC before they come to the community to give the
10 first presentation.

11 That's why we, if they come that way, we can do
12 a contingent, so then we go to that meeting to hear so we can
13 find out what the community says, and then that finalizes our
14 decision memo.

15 VICE CHAIRPERSON JOHN: Okay, thank you. I see
16 several hands up, Mr. Smith and then Mr. Shapiro.

17 MEMBER SMITH: I have a question for Mr. Bello and
18 Mr. Holmes. In light of the letter and the concerns that
19 they had, the second concern about the narrow alley between
20 the apartment building between the home would create a
21 hallway area and there was a recommendation to put in
22 lighting which may be a little bit problematic between those
23 two buildings because you don't want light crossing property
24 lines.

25 Was there any discussion about a fence between

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1 those two buildings that would keep anyone out of that area
2 between the two apartment buildings?

3 VICE CHAIRPERSON JOHN: Mr. Holmes, that's --

4 MR. HOLMES: Okay, that question is for me. I
5 didn't know if Mr. Bello wanted to answer it, but I did not
6 hear that recommendation or suggestion, but again, that would
7 also be another way to stop the passing, the traffic that
8 goes between narrow buildings. Yes, a fence would be able
9 to resolve that.

10 VICE CHAIRPERSON JOHN: Thank you. I'm going to
11 go to Commissioner Shapiro now.

12 COMMISSIONER SHAPIRO: This is for Chair Holmes,
13 a question for you. I'm still a little bit confused about
14 what, your concerns around a messy process versus a concern
15 around sort of the content of the case, so just help me a
16 bit.

17 What would it take for you -- do you feel this
18 needs to come back to you all as the ANC, and if so -- it
19 not, fine, and if so, what would you want to see to address
20 the concern? What would you imagine you would see to have
21 your support?

22 MR. HOLMES: Okay, so again, that's why -- and I'm
23 glad you said that. That's why I separated the discussion
24 the way I did, because as you all tell me, we want to make
25 sure we get to the zoning part first, so that's why it's up

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1 front to talk about that variance.

2 Now, the first document I had used that was
3 provided to me by Mr. Bello, it did say two point something
4 feet, so I was really concerned about how narrow that was.
5 I did see the updated one that said three point something,
6 so it's still under four, which is --

7 You know, we see things happen going through the
8 alleyway, you know, and I've mentioned that at all the
9 previous meetings, the prostitution, drugs, et cetera that's
10 happening in those areas, and it happens in those narrow
11 places where police cars can't get to if they're not on bikes
12 or they're not on foot.

13 So, if lighting -- as Mr. Smith said, it is kind
14 of, it would be kind of hard to do. We're talking about the
15 edges, but if you're also talking about a fence there, that
16 could possibly alleviate the process of through traffic in
17 that narrow alley.

18 In terms of the second one, which was basically
19 the privacy for those windows, I mean, I guess, again, we're
20 just going to have to -- I'm going to have to probably look
21 at the document again. It's kind of hard to narrow up the
22 windows that are on the side of the building.

23 Yes, there are two large stairwell glass there,
24 but there's also four individual windows that are on the,
25 sorry, six individual windows that goes to each apartment

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1 that's on the back side of it all the way down to the first
2 floor level.

3 So, we just would have to figure out what it would
4 take to make sure that if you were -- whether you were
5 looking out the window from that house and you could see in
6 the window -- even if you're looking in the stairwell window,
7 if somebody opens the door, you can look in their house.

8 If you look through the window, and if you could
9 get a look at the other one, you can look into somebody's
10 house. People try to keep them covered, but sometimes in
11 between of people coming out, sometimes places are covered
12 and sometimes things are not.

13 We just want to make sure we don't have that
14 visibility out there if we could just try to find some way
15 to address that. That kind of gets to all of the stuff
16 that's related to the zoning.

17 In terms of the piece that Mr. Bello and I have
18 been talking about where it's DHCD, again, it's just one of
19 those properties that the community has long known that
20 needed to be addressed for housing requirements, and we just
21 wanted to make sure that that was noted in the hearing,
22 whether you agree or not, that it was something that went
23 through Vacant to Vibrant, that affordability in the housing
24 was something that was supposed to happen at that lot so that
25 we could just hold true to the spirit of that project as it

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1 was presented to the Deanwood community by DHCD.

2 VICE CHAIRPERSON JOHN: Okay, so let's follow up
3 with you first, Mr. Holmes, and then Mr. Bello. Is there any
4 value in continuing this case, for Mr. Bello to come back to
5 the ANC?

6 And I'm just going to say if these are truly at-
7 risk windows, then, you know, Mr. Bello is correct. The
8 issue is whether, you know, he's done enough mitigation and
9 it seems as if he has. So, is there any value in coming back
10 to the ANC?

11 MR. HOLMES: What I can do is I'll put him on the
12 January meeting and we'll go ahead and I'll reach -- I know
13 that house was purchased, that building was purchased by a
14 new owner. I'm not sure if they really reached out or said
15 anything about it, but I'll go reach out to them just to make
16 sure that we can resolve the whole privacy issue.

17 And if you're saying the alleyway can get taken
18 care or if this three foot, four foot moving alley can get
19 taken with fair care of with some type of fencing/lighting
20 combination, I think if we had that conversation one last
21 time, we'd be done with this because --

22 VICE CHAIRPERSON JOHN: Thank you. I'll go to Mr.
23 Bello. Mr. Bello, do you have any comments?

24 MR. BELLO: Well, the Applicant is not averse to
25 going back to the ANC to work with them to ensure that we

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1 meet their satisfaction and hopefully extract some support
2 from them, so we'll leave that to the discretion of the
3 Board.

4 VICE CHAIRPERSON JOHN: Okay, thank you, Mr.
5 Bello. So, I think what I'm going to suggest to the Board
6 is that we continue this case to a time that Mr. Moy can give
7 us and leave the record open for additional information based
8 on any meeting or resolution between the ANC and the
9 Applicant, and that would be my suggestion unless someone
10 objects, someone from the Board. Okay, thank you. So, Mr.
11 Moy, what time are we looking at?

12 MR. MOY: Madam Vice Chair, I would suggest
13 returning to the Board at, unless you tell me otherwise, I'm
14 looking at a continued hearing for February the 9th.

15 VICE CHAIRPERSON JOHN: Okay, thank you, Mr. Moy.
16 So, we will continue this case to February 9 and I'm going
17 to be very clear about what is expected. The Applicant is
18 to provide clear drawings that are consistent with the relief
19 required for the rear yard.

20 And let me just say as an aside that I'm not going
21 to convert between metrics and inches. It's supposed to be
22 clearly stated on the diagrams which must match the self cert
23 and the plat, so we should have that information in the
24 record.

25 And the parties are going to meet with the

1 Deanwood Association and the ANC again to see if the
2 differences can be ironed out given, and this is for you, Mr.
3 Holmes, if it is true those windows of the apartment are at
4 risk, and that's it.

5 And Mr. Bello, I understand you are going to look
6 at -- well, I don't know if you said that, but my
7 recommendation would be to look at what can be done for that
8 side yard which is four feet, 3.94 feet, to address some of
9 the neighbor's concerns.

10 MR. BELLO: Could you clarify that last statement,
11 Madam Chair?

12 VICE CHAIRPERSON JOHN: Look at what the Applicant
13 could do to mitigate the neighbor's concerns about the 3.9
14 foot alley, as Mr. Smith said, maybe a fence, or lighting,
15 or whatever the parties can work out between them.

16 MR. BELLO: Thank you, Madam Chair.

17 VICE CHAIRPERSON JOHN: Okay, so we'll see you
18 again on February 9 and thank you for your testimony, and Mr.
19 Young, can you excuse everyone? Yes, Mr. Moy?

20 MR. MOY: Yes, if you wanted to give some target
21 deadlines, Madam Vice Chair, it would be helpful if I knew
22 when Commissioner Holmes was going to conduct his ANC
23 meeting. I'm asking that so that the Applicant can have his
24 final supplemental information as described by the Vice Chair
25 prior to your ANC meeting.

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1 VICE CHAIRPERSON JOHN: Thank you. Would you like
2 to give us those dates, Mr. Moy?

3 MR. MOY: Yeah, I'd like to hear Commissioner
4 Holmes' meeting date in January.

5 MR. HOLMES: Thank you, Mr. Moy. We are meeting
6 on January the 13th at 7:00 on Webex.

7 MR. MOY: Webex, okay, I love it. Okay, so if
8 you're meeting on January 13, then it seems logical to me,
9 Mr. Bello, that you would have all of your materials together
10 prior to the ANC meeting January 13. Let's say you submit
11 that to the ANC and into the case record by, let's say,
12 January the 10th?

13 MR. BELLO: Not a problem except that I need one
14 clarification. Is the Applicant just meeting with the ANC
15 or do we have to go back to the Deanwood Community
16 Association because they have two schedules?

17 VICE CHAIRPERSON JOHN: Mr. Bello, however you all
18 work it out. I'm just recommending that the Board give you
19 all additional time to see if anything else can be worked out
20 instead of deciding today.

21 MR. HOLMES: The Deanwood Citizens Association
22 will be met on January the 24th at 6:00 on Zoom.

23 MR. MOY: Okay, so my suggestion, Madam Vice
24 Chair, and tell me what you think, is the Applicant can
25 prepare all of his supplemental information by January the

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1 10th, and then the ANC can make their final position, let's
2 say by, let's say January the 28th?

3 MR. HOLMES: I agree.

4 MR. MOY: And then if the Applicant wants to
5 respond to the ANC's filing, then the Applicant can have
6 until February the, let's say February the 2nd to respond.

7 VICE CHAIRPERSON JOHN: And so, Mr. Moy, I forgot
8 to ask if Commissioner Shapiro would be available on February
9 9, okay.

10 MR. MOY: Okay, so that's my suggested timeline,
11 Madam Vice Chair.

12 VICE CHAIRPERSON JOHN: Okay, thank you. All
13 right, Mr. Young, the record -- actually, Mr. Moy, we'll keep
14 the record open until February 9 for a continued hearing and
15 I'll ask Mr. Young to excuse the parties, and I'd like to say
16 thank you all for your testimony.

17 MR. BELLO: Thank you.

18 MR. HOLMES: Thank you, everyone. Take care and
19 have happy holidays.

20 VICE CHAIRPERSON JOHN: Bye, and same to you.
21 Okay, Mr. Young -- Mr. Moy, I don't know what's with Mr.
22 Young's name today. Mr. Moy, can you please call the next
23 case?

24 MR. MOY: I'm very fine with that. Mr. Young is
25 my hero, Madam Vice Chair.

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1 VICE CHAIRPERSON JOHN: He is mine too. He is
2 mine too.

3 MR. MOY: Okay, so in the hearing session is the
4 last application before going back to the decision meeting
5 session, so this would be case application number 20354 of
6 Cambridge Holdings, LLC.

7 This is a self-certified application as amended
8 for special exceptions to new residential development
9 requirements, Subtitle U, Section 421, parking screening
10 requirements, Subtitle C, Section 714.2.

11 This would raze the existing principal dwelling
12 unit and construct three new apartment houses totaling 30
13 units in the RA-1 Zone at the property located at 2400
14 through 2402 20th Street, NE and 1914 Bryant Street, NE,
15 Square 4112E, Lots 9 through 11.

16 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. Good
17 afternoon, Mr. Sullivan. Can you introduce yourself for the
18 record, please?

19 MR. SULLIVAN: Yes, thank you, Madam Chair and
20 members of the Board, Marty Sullivan with Sullivan & Barros
21 on behalf of the Applicant.

22 VICE CHAIRPERSON JOHN: Okay, thank you. I see
23 the ANC commissioner is also here. Can you introduce
24 yourself for the record, please?

25 MR. MONTAGUE: Ms. John and members, Commissioner

1 Jeremiah Montague, Jr. I'm turning on the picture so you can
2 see my wonderful face.

3 VICE CHAIRPERSON JOHN: Okay, thank you very much.
4 So, Mr. Sullivan, could you tell us where we are? I believe
5 this is a continued hearing. And tell us how you are meeting
6 the requirements for relief.

7 Oh, I'm sorry, there's a preliminary matter. You
8 had filed some updated plans and you needed to have a waiver,
9 and can you tell us why you need a waiver?

10 MR. SULLIVAN: Correct, we were late in providing
11 the grading plan and that was what the request was for. We
12 also provided a landscape plan, although the landscape
13 information was on the plans already because the Office of
14 Planning did comment on that, so I don't think it was a
15 material change.

16 I'd also note that the Office of Planning noted
17 the grade was rather flat. We just had some issues with the
18 consultant that was providing the grading plan with their
19 timing, and so we didn't provide -- that was what was
20 provided late, but the plans haven't changed.

21 VICE CHAIRPERSON JOHN: Okay, thank you. So, if
22 no other Board member objects, I'll go ahead and allow them
23 into the record. I don't see any hands. So, Mr. Sullivan,
24 would you tell us where you are with the project and how it
25 meets the criteria for relief?

1 MR. SULLIVAN: Sure, and I don't think it's a
2 continued hearing, but it has been postponed several times.
3 It was -- and originally it was just one building, or two
4 buildings, I'm sorry, of ten units each, and then a third
5 building was added when going -- actually as part of the
6 outreach to one of the neighbors, we ended up purchasing a
7 neighboring property as well and made it three buildings, so
8 it's been quite a while.

9 And I also wanted to note, I know Chairman Hill
10 is not here, but my name is still in all caps and I don't --
11 I can't do anything about that, so if Mr. Young knows how to
12 fix that, I'd appreciate that.

13 VICE CHAIRPERSON JOHN: Mr. Sullivan, it just
14 looks like you're screaming at us.

15 MR. SULLIVAN: I know. I'm aware of that.

16 VICE CHAIRPERSON JOHN: Yes, I read the record and
17 it seemed to me that the case had been here before and it
18 seemed like something I had seen before, so please go ahead
19 and tell us how the application meets the criteria, and Mr.
20 Young had put 15 minutes on the record, so please go ahead.

21 MR. SULLIVAN: Okay, great, thank you. There is
22 a PowerPoint if Mr. Young could please post that. Thank you.
23 And I'll note while we're waiting for that that with me here
24 today too is a principal with the property owner, Mr. Frank
25 Rameshni, and also Adam Crain is here and I did see his name

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1 up a second ago. I don't see it here now, but he's the
2 architect on the project.

3 MR. RAMESHNI: Hi, this is Frank. I'd like to
4 interject. He just messaged to say that when he was added
5 as a participant, he got kicked off and he can't get back in,
6 so we don't have him online at the moment. There's a
7 technical issue.

8 VICE CHAIRPERSON JOHN: Thank you. So, Mr.
9 Sullivan, we'll just introduce as necessary at the
10 appropriate time.

11 MR. SULLIVAN: Okay, thank you.

12 VICE CHAIRPERSON JOHN: Go ahead.

13 MR. SULLIVAN: Okay, so if we could go to the next
14 slide, please? This is an RA-1 case. The proposal is to
15 raze two existing buildings on two separate record lots and
16 then there's a third vacant lot, and to construct three
17 three-story, ten-unit, multi-family residential buildings on
18 each of the three lots.

19 Together, it's one project and one RA-1
20 application, so accordingly, we're asking for special
21 exception approval pursuant to U-421, and as part of that,
22 we're asking for special exception relief from the parking
23 screening requirement of C 714.2. Next slide, please?

24 And I'm at the point where I'd like Mr. Crain to
25 be back on if he is, but I can proceed. Because this is an

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1 RA-1 project and I think you most likely will have questions
2 for Mr. Crain and I'd like to have him present, but I can --

3 VICE CHAIRPERSON JOHN: Mr. Crain, can you hear
4 us?

5 MR. RAMESHNI: No, he can't get back on. Adam,
6 are you on again or not? Have you got back on?

7 MR. CRAIN: Can you guys hear me now? Sorry about
8 that.

9 MR. RAMESHNI: Oh, yes, okay.

10 MR. CRAIN: As soon as I got moved to a panelist,
11 it froze up and kicked me out.

12 VICE CHAIRPERSON JOHN: So, Mr. Crain, please
13 introduce yourself for the record.

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

16 VICE CHAIRPERSON JOHN: Thank you. Go ahead, Mr.
17 Sullivan.

18 MR. SULLIVAN: Thank you, and this is the point
19 where I'll turn it over to Mr. Crain to explain the project.
20 Thank you.

21 MR. CRAIN: Sure, hi, everyone. Thanks for being
22 here today. As Marty probably introduced while I was kicked
23 off, we've got three adjacent lots here, 1914 Bryant and 2400
24 and 2402 20th.

25 The pocket that you're looking at here is a little

1 pocket of RA-1 zones. To the north, you've got a single
2 family zone with R1-B, and then to the south across from
3 Loomis Park is kind of an industrial area. I guess we'll
4 switch to the next slide here.

5 So, this is looking west from the east side on
6 20th Street. Kind of visible are the two houses that exist
7 on the lot. 2400 20th there that's kind of angled on the
8 corner will be razed along with the 1914 Bryant Street house
9 that's obscured here by the large tree. Next slide?

10 This is a street level view of the house that will
11 be razed. One of -- I guess the exit of a proposed curb cut
12 that we're working with DDOT for will be in the general
13 vicinity of that curb cut you see there on the right-hand
14 side.

15 Beyond that, you can see 2406 20th. That's kind
16 of where the single family houses start, but still in the RA-
17 1 zone. Next slide?

18 This is just a view of the existing curb cut.
19 Kind of beyond and behind the tree line, that's a cluster of
20 townhomes that's adjacent to the 1914 Bryant Street property.
21 Next slide?

22 As a view, we're looking across the street at
23 Loomis Park and some of the industrial buildings beyond.
24 Next slide?

25 This is kind of an overview. This kind of

1 encompasses this little rectangular shaped RA-1 zone pocket.
2 Our three lots are nine, ten, and 11, this kind of shaded
3 hatch right in the middle. You see that cluster of townhomes
4 I mentioned to the left-hand side to the west, some single
5 family detached residences to the north and the east. Next
6 slide?

7 This is a 3-D view of our proposed development.
8 We're looking here kind of on the corner of Bryant and 20th
9 Street. On the right-hand side where that curb cut's coming
10 out, that's kind of the exit point of the one-way drive aisle
11 which will enter on the left-hand side. It's a bit chopped
12 off here.

13 But each of these will be three-level over cellar
14 ten-unit apartment buildings, so there will be a total of 30
15 units, but separated into three buildings. As you can see
16 here, we've got some of the bay window and stoop and step or
17 porch projections. That will be submitted and gone over with
18 DDOT. We've had some initial reviews with them that have
19 gone favorably. Next slide?

20 This is a view from the rear so you can kind of
21 get a bit of a better view of the drive aisle as it comes in
22 along the bottom, then turns and exits between the building.
23 Next slide?

24 So, this is an overview of the site plan. The
25 property line's outlined in kind of the red dashed

1 demarcations. You'll see one of the biggest changes we had
2 in working extensively with the Office of Planning and some
3 of their comments, which were quite helpful actually, was the
4 changing of this shared driveway or drive aisle and the two
5 curb cuts that are associated with it.

6 The house, or I guess the structure at 1914 Bryant
7 was completely modified and flipped and the drive aisle
8 changed in an effort to create this green space that we show,
9 kind of a green amenity-rich courtyard that all three of
10 these properties can enjoy and access.

11 So, it was a fair bit of work, but we're quite
12 happy with how it turned out, and we think that's reflected
13 in the approval suggestion from the Office of Planning.

14 We are providing a total of 11 parking spots in
15 excess of what's required. On here, you'll also see a bit
16 of clarity as far as the access paths that go throughout the
17 site to navigate pedestrians around, and some of the bay
18 window, and stair, and porch projections in public space.
19 Next slide?

20 So, this and the next two slides will just be kind
21 of a quick overview of the floor plans to show the general
22 building setup. Again, we have three levels over cellar, ten
23 units each. There will be one IZ unit in each building for
24 a total of three across the three properties.

25 So, some of these properties have kind of a multi-

1 story setup where we've got entrances or two levels per unit,
2 but in general, you know, some of them are one, two, and
3 three-bedroom units. There's a variation between the three
4 buildings. Next slide?

5 This would be the corner building as you can see
6 from the bay window projections on the right and top sides.
7 Again, as I mentioned, some of these units are multi-story
8 to make better use of the space.

9 You know, this one and the previous one, a lot of
10 the entrances, we tried to flank that courtyard that we
11 created with the entrances so it creates a bit of a communal
12 and amenity outdoor space for all the units.

13 So, along with having the bay windows pay respect
14 to the street, we wanted to have as many of the entrances as
15 we can, you know, face the courtyard. Next slide?

16 And this would be 2402 20th that I could -- would
17 be kind of on the back of the property. This kind of has a
18 u-shaped cutout to accommodate some of the parking spaces
19 that we're putting in there.

20 Again, you know, we know that with the ANC's
21 feedback on a lot of BZA cases that parking is always a major
22 point, so this was an effort to bring more cars off the
23 street and it necessitated us wrapping the building around
24 some of that parking to get cars onsite off the street and
25 alleviate some of their concerns. Next slide? I think it

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1 will go back to Marty now.

2 MR. SULLIVAN: Thank you, Adam. We'll go over the
3 special exception requirements. The project will be in
4 harmony with the general purpose and intent of the zoning
5 regulations. It calls for moderate density multi-residential
6 buildings, which, of course, is appropriate for the RA-1
7 zone.

8 The area is made up of single family dwellings and
9 also multi-family dwellings, and it's a PDR zone right across
10 the street, and the proposed buildings are not likely to
11 adversely affect the use of the neighboring residential
12 properties.

13 As Adam mentioned, this project is quite different
14 than a lot of RA-1 projects we bring where we're working with
15 a single family house that's often in between two other
16 single family houses and there's a limited amount of space.

17 Because it's three buildings on three lots, it
18 really allowed for significant work between the Applicant and
19 the Office of Planning, and that was very rewarding in the
20 redesign in actually bringing the amenity space to the
21 interior of the buildings and the parking spaces to the
22 exterior, so that was quite a good result of the RA-1 process
23 in this case. Next slide, please?

24 The specific requirements, the Board shall refer
25 the application to the relevant District of Columbia agencies

1 for comment and recommendation as to the adequacy of the
2 following existing and planned area schools.

3 As noted in the Office of Planning report, I don't
4 believe that the Deputy Mayor of Education responded.
5 However, the Office of Planning has provided some information
6 regarding this requirement.

7 On public streets, recreation, and other services,
8 the buildings front on two streets. There are several parks
9 and recreation centers within walking distance of the
10 property, including a park directly across the street. Next
11 slide, please?

12 Regarding Section 421.3, the Board shall refer the
13 application to the Office of Planning for comment and
14 recommendation on site plan arraignment of buildings and
15 structures and provisions of light, air, parking, recreation,
16 landscaping, and grading as they relate to the surrounding
17 neighborhood, and the relationship of the proposed project
18 to public plans and projects.

19 The Office of Planning has provided significant
20 detail on this and I would refer the Board to the Office of
21 Planning's report. They went into great detail on this
22 particular requirement.

23 But in particular, we do exceed the parking
24 requirement. There are several public transit options nearby
25 the area, and I'll mention again the improved site plan

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1 design that the Applicant came up with together with the
2 Office of Planning.

3 For 421.4, as noted, the Office of Planning has
4 stated that the Applicant has filed all of the necessary
5 plans. Next slide, please?

6 The specific requirements for the screening
7 relief, these are the criteria that the Board should consider
8 in the screening relief. There's a requirement that a
9 parking area be entirely screened around the entire
10 perimeter, and for these reasons, the Applicant is seeking
11 relief.

12 The parking area is located within the interior
13 of the property and it doesn't intersect with public
14 pedestrian environments, and removing the screening will not
15 impact the public pedestrian environment.

16 As the parking areas directly border the shared
17 private driveway, there's no existing vegetation in the area
18 of the requested relief, and the parking spaces will not be
19 visible from the public space except for some narrow gaps
20 where the shared driveway enters the public space. Next
21 slide, please?

22 It also meets some other criteria. There's no
23 unusual topographic conditions. The land is generally flat
24 and the proposed parking will be at the same height as the
25 shared driveway surface.

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1 Also, the requested relief would not have any
2 impacts on traffic conditions, and it may, in fact, improve
3 the residents' ability to park their cars off the public
4 right of way more efficiently. Next slide, please?

5 And that's it for our presentation if the Board
6 has any questions. Thank you.

7 VICE CHAIRPERSON JOHN: Thank you, Mr. Sullivan.
8 Does the Board have any questions? So, I have one for Mr.
9 Crain, and I tried to count the parking spots, but maybe I
10 don't count very well. Mr. Young, could you put that slide
11 back up, that presentation back up? And it was a couple more
12 slides before that. Keep going. There you go.

13 MR. CRAIN: Sure.

14 VICE CHAIRPERSON JOHN: So, I tried to count the
15 11 spaces.

16 MR. CRAIN: I might have gone too quickly, so I'll
17 walk you through. We've got kind of on the bottom, the
18 bottom of 1914 Bryant, we have three parallel spaces there
19 labeled P1, P2, and P3. At the bottom left beyond that, we
20 have two additional spaces labeled P4 and P5. Those are
21 behind the building at Lot 11 on the bottom left.

22 So, then moving up to kind of the center to the
23 left of the courtyard, on the left-hand side, we have P6, P7,
24 and P8, and then on the right-hand side, you'll see nine,
25 ten, and 11.

1 VICE CHAIRPERSON JOHN: Okay.

2 MR. CRAIN: So, there's three clusters of three
3 and one cluster of two.

4 VICE CHAIRPERSON JOHN: Okay, thank you.

5 MR. CRAIN: Sure.

6 VICE CHAIRPERSON JOHN: And this is for Mr.
7 Sullivan. So, DDOT commented on the width of the driveway
8 and said it didn't meet the standards, the residential
9 standards for the curb cut. Is that change in your new
10 plans?

11 MR. CRAIN: We had a meeting with Emma of DDOT and
12 specifically went over this, and the last that I've heard
13 from her, it seemed to be in compliance and she had no issues
14 with it.

15 MR. SULLIVAN: And, in fact, I think DDOT's
16 current report may be on an older iteration. I don't believe
17 they updated their report, and we continue to work with them
18 because an original comment that they had on the three
19 buildings was that they wanted just one curb cut because they
20 didn't realize it was three buildings, but I believe they're
21 okay with the two curb cuts now in further discussions, and
22 maybe the Office of Planning may have some more information
23 on DDOT's feedback on that.

24 VICE CHAIRPERSON JOHN: Okay, so does the Board
25 have any questions? So, I'll go to the Office of Planning.

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1 Mr. Kirschenbaum, can you introduce yourself, please?

2 MR. KIRSCHENBAUM: Jonathan Kirschenbaum with the
3 Office of Planning, and we recommend approval of the special
4 exception relief for new residential development in the RA-1
5 zone and also for screening around surface parking.

6 I don't have any additional information about
7 DDOT. Their filing at Exhibit 34 was based on very, very old
8 plans when there was only two buildings and one driveway.
9 It was indicated to us from DDOT that based on the more
10 current configuration, that two curb cuts would not be
11 supported.

12 The Applicant then informed us they had talked
13 further with DDOT and DDOT told them that it would be
14 supported, but DDOT has not provided an updated letter into
15 the record and I don't have any additional information.

16 VICE CHAIRPERSON JOHN: Okay, so did you want to
17 give your report or was that?

18 MR. KIRSCHENBAUM: You know, that's my report.
19 If there's any specific questions about the site plan
20 arrangement or about the relief, I'm happy to talk about it.

21 VICE CHAIRPERSON JOHN: Okay, can you talk about
22 the parking relief?

23 MR. KIRSCHENBAUM: Well, there's no parking relief
24 for this application.

25 VICE CHAIRPERSON JOHN: Parking screening,

1 screening.

2 MR. KIRSCHENBAUM: Oh, parking screening, sure.
3 So, as the Applicant mentioned, most of the parking is
4 located on the interior of the lot and facing away from
5 adjacent streets and sidewalks.

6 Most of the proposed surface parking would be
7 screened from adjacent properties either by a five-foot solid
8 screen fence along the western and northern property lines
9 or by the proposed apartment buildings themselves.

10 The subject properties are generally flat, so the
11 rugged sort of topographic conditions that would increase the
12 visibility of the proposed surface parking from parking
13 areas, and there should not be any kind of traffic conditions
14 that would negatively be impacted by a lack of screening as,
15 again, the parking would generally not be visible from public
16 streets or areas.

17 VICE CHAIRPERSON JOHN: Okay, thank you, Mr.
18 Kirschenbaum. Does the Board have any questions for the
19 Office of Planning? Does the Applicant have any questions
20 for the Office of Planning?

21 MR. SULLIVAN: No, thank you.

22 VICE CHAIRPERSON JOHN: So, I'm going to turn to
23 the ANC. So, does the ANC have any questions for the Office
24 of Planning? And if you like, you can go ahead and give your
25 testimony at this point.

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1 MR. MONTAGUE: Thank you, Ms. John. Can you hear
2 me?

3 VICE CHAIRPERSON JOHN: Yes.

4 MR. MONTAGUE: Okay, I know that the Board had some
5 confusion about our report and the attached single member
6 district letter, and that the full Commission voted not to
7 offer a letter of support, but the single member district
8 letter voices community support and support of the single
9 member district which is immediately affected.

10 The Applicant has gone back on numerous -- they
11 had three meetings with the community and the single member
12 district. They went back and revised their plans according
13 to the members of the single member district and the three
14 property owners that are nearby, so their concerns seem to
15 have been taken care of.

16 The fact that the buildings were rearranged in
17 such a manner that the parking is basically shielded from
18 public space work in favor of what we saw. The issues that
19 came up from the ANC were a commissioner in particular wanted
20 to know about affordability, and the question and what was
21 not answered immediately, was it condos versus rental?

22 And then there was confusion because there's an
23 additional project literally across the street that's getting
24 ready to go up, and so that particular commissioner was a
25 little bit confused about that use versus this use, so, and

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1 keeping in contact with Ms. John always reminds me we focus
2 on this project and we don't focus on others.

3 So, in keeping with that, there was also a
4 question raised about accessibility, ADA accessibility.
5 There are no elevators in these buildings and these are
6 three-story buildings, which is fine, but that means that any
7 ADA compliant unit would probably be ground floor as the
8 people would not be able to get to the upper levels.

9 There was a question about the IZ unit. That
10 particular commissioner wanted additional IZ units as opposed
11 to a single, which is the minimum requirement per building.

12 There was a question asked about handicap parking
13 spaces in addition to. We were already getting 11, but she
14 wanted three more that were specifically handicap designated.

15 I'm just mentioning the reason why we got the no
16 letter of support. So, basically what is coming to the BZA
17 is a decision, a neutral decision. The 129 says that we have
18 to be in opposition, or in favor, or whatever, and as a
19 result of not providing a letter of support, we didn't kill
20 the project. We simply said that based on the majority of
21 our commissioners, we did not offer a letter of support for
22 the project.

23 Oh, and the last thing that was mentioned was one
24 commissioner mentioned that they saw a lack of community
25 support, noting in particular on the day that we were

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1 voting for it, there were no community members there to
2 support or object to, but they had already raised their
3 issues earlier in earlier meetings and the Applicant had met
4 those conditions.

5 The one thing that -- I will note two things. The
6 development right immediately behind is a gated community.
7 I think it's called Channing Place. There was a reference
8 made by Mr. Sullivan that said that there are multiple
9 transit options, which is not true. There's only one bus
10 line which is the E2, which is on Montana Avenue.

11 The other thing was that this is -- while we don't
12 have a historic preservation zone or a conversation zone, I,
13 as a commissioner and a historian, want to say to the Board,
14 yes, I know it's not covered by the regulation, but I want
15 it on the record that this is replacing a historic house of
16 the Loomis family who is largely responsible for that Loomis
17 Park which is across the street and that immediate vicinity.

18 The Loomis family stayed in that house until 1929
19 when a daughter sold it after it was willed to her. The
20 Loomis family eventually left and went back to Connecticut,
21 but the Loomis family, Lawrence and his brother, Silas, who
22 lived a block away, were instrumental in the Howard
23 University.

24 So, one served as a board member and actually
25 helped to open the university. Both actually worked in the

1 Howard University Medical School in its earlier days and I
2 thought that was important.

3 So, what we had solicited from the Applicant was
4 some recognition that they were replacing the Loomis
5 property, and basically as I heard in another meeting last
6 night, our community is tired of being erased.

7 So, there was a request made, but there has not
8 been follow up by the owner that says that we will designate
9 this as perhaps the Residences at Loomis Park or, you know,
10 whatever.

11 That is a community concern, that as the
12 developers come in and place their boxes, that there is
13 basically -- that the prior history of the community is being
14 erased by them doing that. Respectfully, that's my comments
15 on --

16 MR. RAMESHNI: Mr. Montague, sorry.

17 MR. MONTAGUE: -- my ANC report.

18 MR. RAMESHNI: This is actually Frank, one of the
19 developers, and I've actually made a very strong point to
20 Adam that we have to bring this up during this presentation
21 that we will be addressing that. I think he opened up that,
22 but we will be addressing that and I can put that on record,
23 and we may even call it Loomis as a development. So, that
24 hasn't gone unnoticed and I haven't forgotten about that.

25 I think it was just forgotten to be mentioned, but

1 we acknowledge that and we are going to do something about
2 that, so it's on the record. We may even call the whole
3 thing The Loomis. That's a possibility, but we haven't
4 forgotten about that.

5 MR. MONTAGUE: Thank you.

6 VICE CHAIRPERSON JOHN: Okay, could you please
7 introduce yourself for the record, please?

8 MR. RAMESHNI: I'm sorry. My name is Frank
9 Rameshni and I'm one of the owners.

10 VICE CHAIRPERSON JOHN: Okay, thank you. So, does
11 the Board have any questions for the ANC? Commissioner
12 Shapiro?

13 COMMISSIONER SHAPIRO: Thank you, Madam Chair.
14 You know, the question is for Commissioner Montague, and this
15 is a little bit out of our purview and I'm very glad that you
16 brought up the history, and I'm wondering is there any
17 existing plaque or anything like that that describes a little
18 bit of this history in the area and the park already? Does
19 that exist at all?

20 MR. MONTAGUE: Well, I actually, not to be self-
21 promoting, I wrote a history book --

22 COMMISSIONER SHAPIRO: Feel free. Feel free.

23 MR. MONTAGUE: -- about the subdivisions in the
24 area, a 666-page book which describes how that entire section
25 came to be and it addresses the Loomis'. One of the things,

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1 one of the civic associations had planned to try and work out
2 a way to put up a commemorative plaque there.

3 It is one of the community's 61 points of interest
4 in Northeast Washington, D.C. and there's going to be a
5 walking plan developed this spring so that people will be
6 able to know why Loomis Park exists, where Silas and Lawrence
7 lived, and the connection to the Whipper House which is at
8 20th and Channing at the end of the block.

9 COMMISSIONER SHAPIRO: Okay.

10 MR. MONTAGUE: So, but, yeah, it is actually
11 formally documented in my book which is available on Google
12 Books.

13 COMMISSIONER SHAPIRO: All right, thank you, much
14 appreciated. And while, again, it's not something that is
15 going to be contingent upon any kind of action we take, I
16 think, Mr. Rameshni, anything that you all can do to help
17 promote that history in addition to the naming, but, you
18 know, contributing to some kind of plaque or recognition,
19 because I'm with you. I think that's an important thing to
20 hold onto. Thank you. That's all I have.

21 MR. MONTAGUE: Thank you.

22 MR. RAMESHNI: Absolutely.

23 VICE CHAIRPERSON JOHN: I would just like to echo
24 Commissioner Shapiro's comments and, yeah, it would be a good
25 thing to do. So, does the Applicant have any questions for

1 the Office of Planning?

2 MR. SULLIVAN: No, thank you, nor for the ANC.

3 VICE CHAIRPERSON JOHN: Nor for the ANC. Thank
4 you. Is there anyone wishing to testify, Mr. Young?

5 MR. YOUNG: We do not.

6 VICE CHAIRPERSON JOHN: Okay, so I'm going to
7 close the -- oh, Mr. Sullivan, do you have closing remarks?

8 MR. SULLIVAN: No, nothing further, just I did
9 want to acknowledge Commissioner Montague, and it was the
10 first meeting which maybe might be a year ago, he did bring
11 up the issue of the Loomis' and we've definitely been focused
12 on that, but it's --

13 I apologize that I haven't addressed that more
14 directly, but it's certainly something that the developer
15 intends to address and it could be of benefit to the building
16 as well. It's not something that is difficult to do, so
17 that's certainly going to be followed up on. Thank you.

18 VICE CHAIRPERSON JOHN: Thank you. And Mr.
19 Montague, I just had one follow-up question which I forgot
20 to ask. Did you mean to say there was no vote one way or the
21 other concerning the project?

22 MR. MONTAGUE: No, no, no, no, no, the Commission
23 voted four-three not to offer a letter of support and that
24 was the end of the matter. It sounds confusing.

25 VICE CHAIRPERSON JOHN: Yes.

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1 MR. MONTAGUE: So, we did not kill the project.
2 We simply did not offer a letter of support.

3 VICE CHAIRPERSON JOHN: So, there is no opposition
4 from the ANC, just --

5 MR. MONTAGUE: There is opposition from some
6 commissioners, but as it stands, as the vote that we took,
7 there is no opposition.

8 VICE CHAIRPERSON JOHN: Okay, all right.

9 MR. MONTAGUE: I know that sounds like me talking
10 like a lawyer, but I'm not, but that's the best way I can
11 frame --

12 VICE CHAIRPERSON JOHN: Okay.

13 MR. MONTAGUE: -- what happened when this one came
14 up for consideration.

15 VICE CHAIRPERSON JOHN: All right, Mr. Sullivan,
16 did you want to --

17 MR. SULLIVAN: Sure, if can talk like a lawyer,
18 that happens sometimes, like sometimes when you get -- when
19 there's a resolution to support and it gets voted down, then
20 there's effectively nothing, and then oftentimes the ANC will
21 then turn it around and have a resolution to oppose, and in
22 this case, they just had the resolution to support that got
23 voted down, which I agree with Commissioner Montague, leads
24 to a neutral decision.

25 VICE CHAIRPERSON JOHN: Right, I just wanted to

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1 be clear that there was no motion to oppose which puts the
2 Board in a different situation in dealing with this, okay,
3 so --

4 MR. MONTAGUE: I don't hope to have this happen
5 again.

6 VICE CHAIRPERSON JOHN: Okay, so if there is
7 nothing further, does any Board member have any questions?
8 Okay, so if there is nothing further, I'll just thank the
9 witnesses for their testimony and ask Mr. Young to excuse
10 everyone.

11 MR. SULLIVAN: Thank you.

12 VICE CHAIRPERSON JOHN: Okay, great, so are we
13 ready to deliberate? Does anyone want to start? Do I need
14 to call names? Okay, geez, all right, so for such a large
15 project, I thought that it was not a very complicated ask
16 because basically the project as described by the Office of
17 Planning meets all of the development standards for
18 conversion under U4.421 except for the parking and screening
19 relief which, I'm sorry, yeah, the parking screening relief
20 which the architect described in great detail. So, I would
21 give great weight to the Office of Planning's report.

22 The Office of Planning did note something about
23 the trash rooms being in the building, but apparently the
24 Applicant did make an effort to screen the trash rooms with
25 a fence, and the Applicant is also continuing to meet with

1 DDOT about the driveway.

2 So, based on the recommendation, the analysis and
3 the recommendation from the Office of Planning, I am inclined
4 to give great weight to that report. I don't see any reason
5 to disagree with OP's analysis or recommendation, and based
6 on the clarification from Mr. Montague, I take it that the
7 Applicant, that the ANC is not opposed to the application.

8 I don't know if anyone wants to add anything else,
9 but I thought that this was a fairly straightforward
10 application given the size of the project, and so I have no
11 other comments except to say that I hope that the Applicant
12 will follow through in working with the ANC to do something
13 with the project that memorializes the historic relationship
14 of the Loomis family to the project, and I will leave it at
15 that and see if my Board members would like to add anything.
16 Mr. Blake?

17 MEMBER BLAKE: Madam Chair, I agree with your
18 analysis of the situation. This is a very attractive looking
19 cluster of buildings and it does certainly meet the
20 standards.

21 My only concern is with regard to DDOT's dated
22 report, and it would be attractive just to have the
23 additional information submitted to the record from DDOT if
24 they were interested in doing so just because it doesn't
25 reflect the current configuration of the project, but

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1 otherwise, I'm very comfortable with what we have seen before
2 us.

3 VICE CHAIRPERSON JOHN: Okay, thank you, Mr.
4 Blake. Mr. Smith?

5 MEMBER SMITH: I agree with everything that both
6 of you have stated so far. I believe it's a very attractive
7 development and the only thing that doesn't meet it is, like
8 you stated, Vice Chair John, this issue of parking screen.

9 And, you know, I'm fairly comfortable with this
10 special exception because the majority of the parking would
11 be screened by the buildings themselves. The only, you know,
12 the only area parking area though that wouldn't be screened
13 or would be an issue would be those two parking spaces that
14 abut 1914 Bryant.

15 With the current configuration, I'm fairly
16 comfortable with moving forward because there is a major
17 topographic change between these buildings and that cluster
18 of townhomes between Bryant and Channing where I don't
19 believe this configuration will have an impact because the
20 proposed parking would be so much lower in elevation than
21 those townhouses that would be a little further up the hill.
22 So, I'm fairly comfortable with this special exception
23 request and also that it does meet pretty much all of the
24 requirements of Subtitle U-421.

25 But I do agree with Mr. Blake that if we can leave

1 the record open just for one item, the revision of DDOT's
2 analysis of this project because their analysis states two
3 buildings with 20 units as opposed to three buildings with
4 30 units. It would just make the record so much clearer, so
5 I would recommend approval, but if we could get that into the
6 record for this issue.

7 VICE CHAIRPERSON JOHN: Thank you, Mr. Smith. Mr.
8 Shapiro?

9 COMMISSIONER SHAPIRO: Thank you, Madam Chair.
10 I don't have a lot to add. I too found it a pretty enticing
11 project.

12 In terms of the issue around the DDOT report, the
13 only thing that I would say is that I certainly will support
14 the orientation of my colleagues around this, but the only
15 thing I'd say is even with DDOT's expression around the
16 driveway, they had no objection to the project even in its
17 earlier incarnation.

18 So, you know, I'm inclined to support the project
19 and to encourage us to be able to take action on it as soon
20 as possible, and then, you know, I guess I don't -- what I
21 wouldn't want is to have this be held up because of the DDOT
22 report since it's clearly related to a previous incarnation
23 and this is a pretty significantly improved project even
24 since then.

25 I will follow the lead of Commissioners Blake and

1 Smith, of course, but that's my view on it.

2 VICE CHAIRPERSON JOHN: So, thank you, Mr.
3 Shapiro, and I think I agree with you, Mr. Shapiro, about not
4 leaving the record open for DDOT because, as you said, DDOT
5 did not object and DDOT does have jurisdiction over the
6 public space issues, and any action by DDOT would not change
7 anything structurally in the architectural plans that we
8 approve today, and if it did, then the Applicant would have
9 to return to the Board.

10 So, I don't know if I can persuade Mr. Blake and
11 Mr. Smith to go along with us, but that would be --

12 MEMBER BLAKE: So persuaded on this side.

13 VICE CHAIRPERSON JOHN: Okay, so I won't bother
14 Mr. Smith since Mr. Blake has agreed to be persuaded, and so
15 you don't have to respond unless you would like to, Mr.
16 Smith.

17 Okay, so I'll go ahead and close the record then,
18 which I hope I did initially, but it will be closed, and so
19 I believe we're ready to make a motion to approve application
20 number 20354 of Cambridge Holdings, LLC as captioned and read
21 by the Secretary and ask for a second. Mr. Smith?

22 MEMBER SMITH: Second.

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

25 MR. MOY: If you would, please respond with a yes,

1 no, or abstain to the motion made by Vice Chair John to
2 approve the application for the relief requested. The motion
3 to approve was seconded by Mr. Smith. Zoning Commissioner
4 Peter Shapiro?

5 COMMISSIONER SHAPIRO: Yes.

6 MR. MOY: Mr. Smith?

7 MEMBER SMITH: Yes.

8 MR. MOY: Mr. Blake?

9 Vice Chair John?

10 VICE CHAIRPERSON JOHN: Yes.

11 MR. MOY: And we have a Board member not present
12 and not voting. Staff would record the vote as four to zero
13 to one and this is on the motion made by Vice Chair John to
14 approve, the motion seconded by Mr. Smith to approve, also
15 in support of the motion to approve, Zoning Commissioner
16 Peter Shapiro, Mr. Smith, Mr. Blake, and Vice Chair John.
17 The motion carries on a vote of four to zero to one.

18 VICE CHAIRPERSON JOHN: Thank you, Mr. Moy. So,
19 before we take the next case, I wanted to take a break. Is
20 everyone else ready for a ten-minute break? Okay, so let's
21 take a ten-minute break, Mr. Moy, which would bring us back
22 at 2:50, okay? Thank you. See you all in a few minutes.

23 (Whereupon, the above-entitled matter went off the
24 record at 2:39 p.m.)
25

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: 12-15-21

Place: teleconference

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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