

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 9, 2022

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK HILL, CHAIR
- LORNA JOHN, Vice CHAIR
- CARL BLAKE, Board Member
- CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Commissioner, Zoning Commission

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN COCHRAN
BRANDICE ELLIOTT
ANNE FOTHERGILL
MATTHEW JESICK
JONATHAN KIRSCHENBAUM
STEPHEN MORDFIN
CRYSTAL MYERS
KAREN THOMAS
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SARAH BAJAJ, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from the
Regular Public Hearing held on February 9, 2022.

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

(10:01 a.m.)

VICE CHAIR JOHN: Mr. Moy. Good morning, Mr. Miller.

ZC MEMBER MILLER: Good morning, Madame Chair.

VICE CHAIR JOHN: Welcome. Will Mr. Moy please call the first hearing case which I believe is 20526.

MR. MOY: Yes, thank you. Let's see if I can read this correctly this time. All right, this case, this is before the Board in its Public Hearing Session, Case Application Number 20526 of 4248 LLC.

This Application has been amended for special exception from the side yard requirements of Federal D, Section 206.3 pursuant to Subtitle D, Section 5201, Subtitle X, Section 901.2.

This will construct a new three-story semi-detached principal dwelling unit in the R-2 Zone property located at 1227 47th Place Northeast Square, 5160 Lot 39. And participating on this hearing case is Vice Chair John, Mr. Blake, Mr. Smith and Zoning Commissioner Peter, rather Rob Miller.

VICE CHAIR JOHN: Thank you. So are there any preliminary matters, oh, first of all, Mr. Young, would you let the parties in please?

ZC MEMBER MILLER: Yes, and while he's doing that, Madame Chair, yes, Peter Shapiro had sat in on the previous hearings. I have reviewed the hearing record in this case and prepared to consider it today with you.

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1 VICE CHAIR JOHN: Thank you, Commissioner.

2 MR. MOY: Madame Vice Chair, so going to your question, the
3 applicant did submit a record, made a filing late within our 24-
4 hour block and it was his revised Form 135 so that's waiting for
5 the Board's decision to whether or not you want to allow that into
6 the record for today's hearing.

7 VICE CHAIR JOHN: Thank you. Good morning, Mr. Bello.
8 Would you allow me to introduce yourself please?

9 MR. BELLO: Good morning, Madame Chair, Board Members.
10 Toye Bello representing the Applicant.

11 VICE CHAIR JOHN: Thank you. And do I see Commissioner
12 Holmes? Could you introduce yourself please?

13 MR. HOLMES: Good morning, Chair Johns. This is Antawan
14 Holmes, ANC Chair of Sudden Safe.

15 VICE CHAIR JOHN: Okay, thank you. So Mr. Bello, can you
16 tell us where we are and what happened since our last hearing?
17 The Board asked you to provide a number of documents to the
18 record. And can you tell us what happened since the last hearing?

19 MR. BELLO: Thank you, Madame Chair. I think some of the
20 outstanding issues that the Applicant had to address is covered
21 under the cover letter which is Exhibit 48.

22 Essentially, the issue was one with the narrow side yard
23 and the safety of that side yard given its narrowness. The other
24 was the light and the air and privacy issues between the two
25 adjoining faces of the building.

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1 Knowing that the existing apartment has at risk windows on
2 the lot line. Applicant has submitted revised site plans which
3 is in Exhibit 46, essentially building a gate so that the side
4 yard is inaccessible.

5 And at the rear of the property, there's a roll-up garage
6 door which makes that side yard completely inaccessible from the
7 street or from the alley. Further, the Applicant has incorporated
8 the motion sensor lighting for, in order to remove the darkness
9 that the ANC had as a concern, as a safety concern.

10 The only other issue is that the Board wanted clarification
11 of what exactly the side yard is. And there's a site plan that's
12 been submitted as part of Exhibit 46 showing that side yard is 3
13 feet, 11 inches. And those were the outstanding issues, Madame
14 Chair.

15 VICE CHAIR JOHN: Thank you, Mr. Bello. Were you also able
16 to, were you also asked to consult with the ANC?

17 MR. BELLO: Yes, Madame Chair. And I did send all of this
18 documents to the ANC in a timely manner, but unfortunately, I
19 couldn't be present for the ANC meeting because I will still
20 overseas and had connectivity issues, but with, I've had exchanges
21 with Commissioner Holmes, with respect to that and also with, to
22 do with community association.

23 VICE CHAIR JOHN: Can you tell us what happened with the
24 Deanwood Community Association?

25 MR. BELLO: I've not been able to meet with them either,

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1 but Commissioner Holmes and I communicated this morning and I've
2 committed to meeting with the DCA to address any other issues, but
3 I'll let Commissioner Holmes speak to that.

4 I think that the general feeling is that the Applicant has
5 addressed adequately those concerns that DCA had and the ANC had.

6 VICE CHAIR JOHN: Commissioner Holmes? Thank you, Mr.
7 Bello. Commissioner Holmes?

8 MR. HOLMES: Yes. Thank you. So Commissioner, to give
9 Commissioner, sorry, to give Mr. Bello his credit, he did try to
10 connect to the meeting. I saw him briefly try to connect onto the
11 WebEx and then it dropped off when it came time for him to do his
12 presentation.

13 He did call me when he did come back into the country, at
14 which point, but I had already took a look at his drawings and it
15 did address the things that were missing from the last time,
16 3.94/3 feet, 11 inches was updated in the documents as well as the
17 fence that was talked about.

18 And the, taking away the access from the back alleyway as
19 well as we did appreciate the updated design where they show, they
20 did a mirror side by side with the at-risk mirror side by side
21 showing where they lined up and it gave a much better, it was much
22 better for us to understand exactly where it lined up, where it
23 theoretically would have been built at.

24 So again, he did send an email out to the Deanwood
25 Association. Unfortunately, by the time he came back, all the

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1 meeting times had been missed, but he did and I just saw he did
2 send an email back and forth and late last night.

3 I did get a, I did receive an email from the DCA saying
4 that based on all of the same documents that I've reviewed, that
5 technically it looks good. It looks much better now in terms of
6 project.

7 And then I also spoke to Mr. Bello after that and he did
8 say he was going to go back and just, you know, give them a formal
9 updated presentation, but they were already started review of the
10 documents.

11 So at this point, the majority of this is it looks very
12 good for us and we and ANC feels much better about this project.

13 VICE CHAIR JOHN: Okay, thank you, Commissioner. Do the
14 Board Members have any questions? Mr. Blake?

15 MEMBER BLAKE: Yes, Commissioner. I would just clarify,
16 your position then is that you now support the application? I
17 need to feel better, do you support the application officially?

18 MR. HOLMES: Yes, officially, I was going to support the
19 application. Unfortunately, like I said, everything came to me
20 in the middle of the night so I did not have time to actually
21 write a document, put my signature on it so. But yes, we do feel
22 like we have much more support for this project.

23 VICE CHAIR JOHN: So Commissioner Holmes, this is what I
24 don't understand. Are you authorized by the full Commission to
25 change from opposition to support and maybe --

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1 MR. HOLMES: Yes, I am the single member District
2 Commissioner of that site and the Chair, yes, I am.

3 VICE CHAIR JOHN: Of the full Commission?

4 MR. HOLMES: Yes.

5 VICE CHAIR JOHN: Yes. So I need clarification from
6 counsel on this because we don't have, right now it's a contested
7 application.

8 MR. HOLMES: Right.

9 VICE CHAIR JOHN: And in order to give great weight to the
10 ANC, we would need something in the record to show that the full
11 ANC is removing the opposition. That's not a standing ruler so.

12 MR. HOLMES: Okay, so --

13 VICE CHAIR JOHN: Or --

14 MR. HOLMES: -- again, so then Mr. Bello, you do plan on
15 meeting with the DCA to give them that final presentation that was
16 discussed from the last meeting? That is the last requirement
17 that's necessary. I believe they're trying to get something on
18 the books right now.

19 So technically, no, I wouldn't be able to, technically I
20 could say that I don't support it, but I think they're moving in
21 the right direction of getting this done. Is this something where
22 the Committee is moving forward voting on it today?

23 Because if so, then that, do you know how much more time
24 to put on this?

25 VICE CHAIR JOHN: I think what I'm trying to say is if we'd

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1 had all of the requirements satisfied, we could have moved ahead,
2 but right now, there's opposition from the ANC and in order to
3 give any great weight to the ANC's concerns, we would need to have
4 a full vote, but you know, where there's a quorum.

5 MR. HOLMES: Okay.

6 VICE CHAIR JOHN: So.

7 MR. HOLMES: Well, then if you, technically I would need
8 for them to come back to another meeting. We can finalize that
9 at the ANC --

10 VICE CHAIR JOHN: Okay.

11 MR. HOLMES: -- just to finish that.

12 VICE CHAIR JOHN: And --

13 MR. HOLMES: I just needed to say that -- go ahead.

14 VICE CHAIR JOHN: When would that meeting be? So let's
15 hear about when --

16 MR. HOLMES: I'm going to say --

17 VICE CHAIR JOHN: Are you, would the ANC still require the
18 Applicant to meet with the Deanwood Association? If so, whatever
19 time you suggest has to account for the Deanwood Association
20 meeting and then the ANC meeting.

21 MR. HOLMES: All right. So then the next DCA meeting would
22 be February the 28th and the next ANC general meeting is going to
23 be on March the 10th.

24 VICE CHAIR JOHN: Okay, so we're looking at April.

25 MR. HOLMES: Okay.

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1 VICE CHAIR JOHN: Mr. Moy? Are you there, Mr. Moy?

2 MR. MOY: Yes, I'm here.

3 VICE CHAIR JOHN: So it looks like we're continuing this
4 case again and hopefully it's the last continuance because each
5 time we continue a case, everybody has to prepare for it.

6 MR. MOY: Yes, indeed. If I understood correctly, then the
7 full ANC is meeting on March 10th and if that's the case, then the
8 next Board hearing after March 10th would be March the 16th.

9 VICE CHAIR JOHN: Okay.

10 MR. MOY: So this would be for decision making? And then
11 register?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Okay, March 16th, decision.

14 VICE CHAIR JOHN: Okay. And we should have the letter from
15 the full Commission, Commissioner Holmes, by that date.

16 MR. HOLMES: That's correct.

17 VICE CHAIR JOHN: Okay. Thank you. And, Mr. Bello, it was
18 a preliminary matter. I believe you had a revised Form 135 that's
19 not in the record?

20 MR. BELLO: Yes, and the only revision was to correct that
21 this is a special exception and not, in any of the other areas.

22 VICE CHAIR JOHN: Okay. Thank you. So, Mr. Moy, we'll go
23 ahead and let that into the record.

24 MR. MOY: Yes.

25 VICE CHAIR JOHN: Okay. So I think that's it for today.

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1 Thank you, Mr. Bello.

2 MR. BELLO: Thank you.

3 VICE CHAIR JOHN: Commissioner Holmes. Board Member Hill?
4 Chairman Hill, thank you.

5 CHAIR HILL: All right, Mr. Moy. You can call 20589.

6 MR. MOY: I knew I was right. Okay, 20589. Okay, perfect.
7 Before the Board is, for consideration, is Application Number
8 20589 of John Best. This Application was capturing and advertised
9 for a use variance from the nonconforming use requirement Subtitle
10 C, Section 204.1 pursuant to Subsection 1002.

11 This would convert a one-story Church in an existing multi-
12 unit residential building for a principal dwelling unit in the R-
13 1-B Zone. The apartment is located at 1801 Otis Street, Number
14 1 or rather Number 2, Northeast Square, 4202 Lot 204.

15 CHAIR HILL: Okay, that's it. Mr. Young, you can let
16 everybody in. Mr. Best, is that you?

17 MR. BEST: Yes, sir.

18 CHAIR HILL: You see how maybe your phone is on or --

19 MR. BEST: Yes, I got it. Thank you. All right.

20 CHAIR HILL: Okay, sir, great. Could you introduce
21 yourself --

22 MR. BEST: I'm sorry about that.

23 CHAIR HILL: -- for the record, Mr. Best? That's all
24 right.

25 MR. BEST: And I've got to get --.

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1 CHAIR HILL: You are, I could hear you. If you just unmute
2 yourself. You were good. No, you're still muted, Mr. Best.
3 There you go. Oop, now you're muted again. There you go. Okay.
4 Do you want to introduce yourself for the record, sir?

5 MR. BEST: Yes, my name is John Best. I am the owner.

6 CHAIR HILL: Okay, great. Mr. Best, if you want to go
7 ahead and walk us through your application and why you believe you
8 meet the standard and the criteria for us to grant the relief
9 requested, I'm going to put 15 minutes on the clock there just so
10 I know where we are and you can begin whenever you like.

11 MR. BEST: Okay, thank you, sir. Thank you all for hearing
12 the case. This is a project whereas I have owned an apartment
13 building, seven units, two commercial units, since 1994.

14 And about four or five years ago I went through DHCD and
15 converted the unit, developed it to a condominium. And that was
16 approved and they all are registered. It was reduced from seven
17 unit to six units.

18 And the configuration is that on the corner is a corner
19 Church that has been there for a long time, since I would say back
20 in the beginning of probably in the 1990 areas, early that the
21 Church started and, no before that. Forgive me.

22 I think the Church was there probably in the 1970s or so.
23 And in 1994, when I purchased it, I continued to let it operate
24 as a Church because frankly, I was agreeable to it being a Church.

25 And I had earlier years good congregations would come

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1 through, but I noticed that as the demographics changed in the
2 city that there was less attendees at the Church, less members.

3 We did have some parking situation on Sundays, but it was
4 just one day basically. So it all worked well, but when I began
5 to notice that the Pastors began to approach me about their leases
6 saying they couldn't afford it, they anticipated more people.

7 The class is about 100 people and I think I, over the
8 years, I've only seen probably 25, 50 people. So it's a small
9 corner Church and when we converted it, we went through DCRA, of
10 course, with a building permit and plans.

11 It was approved for the second floor of the building, but
12 because of the Church being on the first floor and that is the
13 only construction that would be done on the first floor, is the
14 Church area which is 030, 633, we applied for this variance.

15 And what we something want to do is convert it from the
16 Church space into a two-bedroom, two and a half bath condo that
17 would have, in this particular instance, would have a street
18 entrance.

19 CHAIR HILL: Okay. Mr. --

20 MR. BEST: I reside in Unit 1, the first floor.

21 CHAIR HILL: Okay. Mr. Best, sorry to interrupt you. I
22 mean, I'm reading through your application and I see how you're
23 meeting some of or how you've made your argument for some of the
24 criteria.

25 Can you speak a little bit to why it can't be like storage

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1 or gym space and how it's financially burdensome?

2 MR. BEST: Because it's too large of an area. And it's the
3 whole building. We have a furnished area. We just, it's too
4 large of an area to make that use of.

5 CHAIR HILL: Okay. Before I turn to questions from the
6 Board, actually, I'm just going to turn to the Office of Planning
7 real quickly if I could.

8 MS. MYERS: Good morning. For the record, Crystal Myers
9 with the Office of Planning. The Office of Planning has
10 recommended approval of this use variance request. It is still
11 on the record or if you want me to go through it, I can.

12 MEMBER SMITH: I would welcome you going through it.

13 MS. MYERS: Certainly. So the Office of Planning agreed
14 with the Applicant that there is an extraordinary or exceptional
15 situation on the property mainly being that the space is quite
16 large for a typical other alternative use.

17 We would have normally have thought a storage or gym space
18 or something else, but we were convinced that according to the
19 Applicant saying that the space was large and being on the first
20 floor, it would be problematic to just use it for that type of
21 use.

22 And we also were convinced that the space is no longer
23 financially viable as a Church. We thought that was an undue
24 hardship on the Applicant, on the owner, to continue it as a
25 Church seeing as how quite a series of different Churches have

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1 used the space in recent times and have been unsuccessful with
2 maintaining their lease.

3 So we were convinced that is a hardship and there again,
4 it would be no other practical use for the space was a hardship
5 on the owner. And then, looking at the public good, we do
6 obviously understand that the proposal did not result in a
7 substantial detriment to the public good.

8 The development overall would result in one less unit which
9 also connects with the zoning regulations, the substantial
10 permanent zoning regulations. The regulations ideally would like
11 to reduce the density on this property and this is resulting in
12 a less unit which we thought is more in line with what the zoning
13 regulations are trying to do on this site. So that's why we
14 recommended approval.

15 MEMBER SMITH: So, I do have one follow-up question and
16 yes, in your statement point, you state there will be one less
17 unit. It's a little unclear to me that it would be one less unit.

18 And, you know, I can ask that quick question to you, Ms.
19 Myers, or to Mr. Best. When I was looking at the floor plans, I
20 counted about six units already, currently. Could you give some
21 clarification to that?

22 I see the one unit that you say is unoccupied. I'm
23 assuming that's the first floor because that's the largest space.
24 Are there five units on the upper floor?

25 MR. BEST: There are on the upper floor, four, on the upper

1 floor. And on the first floor, and I can see how it could be a
2 little confusing, is I own and occupy all of the first floor with
3 the exception of the Church space and the common area, the lobby
4 and the small utility room.

5 It's, of course, and I move in the building and I made a
6 decision, I made it comfortable. So I extended the space and not
7 only that, it has a garage, it has an elevator. In this
8 particular units, I have a sunroom. And all of this was done
9 through DCRA.

10 MEMBER SMITH: Okay.

11 CHAIR HILL: And, Mr. Best, how many total units are there?

12 MR. BEST: The total units in the building right now will
13 be six units.

14 CHAIR HILL: Right, this is the --

15 MR. BEST: The Church -- beg pardon?

16 CHAIR HILL: So what happened to the other unit?

17 MR. BEST: Okay, on the first, on the second floor, two
18 units was combined into one. Three and four was made one because
19 they were smaller units so we just made one large unit so that is
20 a three bedroom, two bath that is for sale now on the second floor
21 because that was part of the DCRA approval place.

22 It wasn't involved in this variance issue. And on the
23 first floor, you have two units. It would be the Church, unit
24 one, my unit, unit two would be the Church unit then upstairs you
25 have four units and those are your six units.

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1 MEMBER SMITH: Okay, can I follow up on that because I'm
2 looking at your, the floor plans that you submitted as part of the
3 record that says existing second floor plan. I see a unit six,
4 seven, two, four, three. That's five units I'm counting on that
5 second floor.

6 MR. BEST: Well one of those units, sorry to pardon you,
7 one of those units on the second floor belongs to unit one.

8 MEMBER SMITH: Right and I see that as unit five.

9 MR. BEST: Right.

10 MEMBER SMITH: The owners, the portion of the owners so
11 that's where the spiral steps is at?

12 MR. BEST: That's two units are at. No, the elevator and
13 spiral steps.

14 MEMBER SMITH: Okay, so I'm not counting that one. I'm
15 counting unit six, seven, two, three and four. So are these the
16 most up-to-date existing floor plans?

17 MR. BEST: Okay. No, you have what we have there, but let
18 me see if I can't walk it one more time. On the second floor, you
19 have unit two, I mean, forgive me, unit three, second floor, unit
20 three.

21 MEMBER SMITH: Okay.

22 MR. BEST: Now, unit number four, you have unit number five
23 and you have unit number six. Now you see an extra door up there,
24 that door is for number one.

25 MEMBER SMITH: Yes, I'm looking at your plans, but you

1 know, what you're saying isn't lining up with what's in the
2 record.

3 MR. BEST: Okay.

4 MEMBER SMITH: So help me to see --

5 MR. BEST: That's what, I can respond. You've got to give
6 me a question and I can help clarify it.

7 MEMBER SMITH: Well, that's my question. The question is,
8 is there a reduction in units?

9 MR. BEST: Yes, sir.

10 MEMBER SMITH: Because in the caption, you're seeing in the
11 STARE report, it's saying that there's a reduction in units.

12 MR. BEST: Yes, sir.

13 MEMBER SMITH: I seen that based on your floor plans.

14 MR. BEST: Yes, sir.

15 MEMBER SMITH: So it would not be a reduction in density
16 based on what I'm seeing so --

17 MR. BEST: Now, when you say density, I don't, I get
18 density confused with units. Now, I'm just --

19 MEMBER SMITH: We never get --

20 MR. BEST: -- I'm just going by number of units and I can
21 say to you that, and I think here's where the confusion may be,
22 on the 18th Street side where the Church is, 3633, the side that
23 was 3639, 3629, which is an office, that office during the
24 conversion from being converted to a condo was converted and made
25 a part, or is a part of unit one.

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1 Just has a different address, but it has a zoning variance
2 from years ago under John and Vinny Best so we retained that
3 portion of the building as our office as its always been. And
4 this was approved through the conversion process.

5 So those two commercial units on the first floor became
6 just two units on -- we had seven apartments, but we didn't have
7 and also we had a Church and an office. So then, technically it
8 was a mixed-use building with two commercial and seven
9 residential, but after the reshuffle of the conversion, the seven
10 units were reduced to six and everything else was kind of just
11 parched off and numbered off, one, two, three, four, five, six
12 because there's no other area on this floor other than unit one
13 and to be unit two.

14 MEMBER SMITH: So, Mr. Best, I'm clear on the first floor.

15 MR. BEST: Okay.

16 MEMBER SMITH: It is a unit one which you say you occupy
17 and the Church space. And I see in your plans that you submitted
18 that a portion of the Church space will be a new unit, the one
19 that you're --

20 MR. BEST: Not a portion, the entire.

21 MEMBER SMITH: It looks like a portion of what was the
22 Church where it says hall and office is being --

23 MR. BEST: Oh, no, that's still separate. Hall and office
24 now is unit one according to the conversion plan.

25 MEMBER SMITH: Okay, again, that's not what is in this

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1 plans here so.

2 MR. BEST: You had an existing and then you had a
3 prospective plan so, I don't know if you --.

4 MEMBER SMITH: Yes, I have the existing plan for the first
5 floor, the proposed plan for the first floor and the existing plan
6 for, what is the existing plan for the second floor, but again,
7 what I'm seeing on in the record is on the existing floor plan,
8 that there are --

9 MR. BEST: Would you point that out to me in the record?
10 What you're seeing.

11 MEMBER SMITH: Exhibit --

12 MS. MYERS: Seven.

13 MEMBER SMITH: Seven. So the only reason why I bring this
14 up is that the Office of Planning Staff Report says that it is a
15 reduction in units. I'm not counting a reduction in units based
16 on the floor plans that were submitted so I'm just asking for the
17 clarification.

18 If not, I would recommend that the plans aren't clear, that
19 we revisit this as you submit some revisions that may show some
20 changes that may occur on the first or second floor.

21 MR. BEST: That's what --

22 CHAIR HILL: Mr. Best, can you hear me?

23 MR. BEST: What? Yes, sir, having --

24 CHAIR HILL: Mr. Best, Mr. Best, Mr. Best, hang on one
25 second.

1 MR. BEST: Yes, sir.

2 CHAIR HILL: Ms. Myers, can you hear me?

3 MS. MYERS: Yes.

4 CHAIR HILL: Are you following along with what Board Member
5 Smith is asking?

6 MS. MYERS: I am. Just to be clear, we did go over this
7 a couple of times with the Applicant and I thought that he
8 confirmed it, but you know, we need to, it sounds like it would
9 make sense for him to update some of the information in the
10 record.

11 My understanding was that units three and four on the upper
12 floor were combined into one whole unit.

13 MR. BEST: And it is.

14 MS. MYERS: Okay, so that, and then my understanding also
15 was that unit six on the upper floor became unit five and what
16 unit one on the ground floor and unit five on the upper floor
17 became one big unit.

18 MR. BEST: Yes.

19 MS. MYERS: Okay, that did happen as well. Okay. Just
20 wanted to --

21 MR. BEST: That's it. You described it.

22 MS. MYERS: Okay.

23 MR. BEST: And you look at it, the seven units that I had
24 an apartment license for, after the conversion, those seven units
25 were reduced to six because why? The three and four was combined.

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1 And the Church was always proposed to be a two bedroom
2 condo so it always from the beginning was proposed to be that.
3 So the Church was going to be unit number two, upstairs, you're
4 going to have three, four, five, six.

5 And that's why I'm kind of struggling with what could I
6 forgo and prove or redraw to demonstrate that because if it's not
7 there, it's very clear because that, you know, it's clear up to
8 conversion. DCHC they knew what I was doing and it does get a
9 little complex, but seven units.

10 I had an apartment building license for seven units. The
11 conversion was approved for six. And now you go and reconfigure
12 the space, the floor plan, the footprint, and as a result of
13 redoing the footprint, the office space on 18th Street is part of
14 unit one, the Church will be unit two and that would be your first
15 floor. The second floor will be three, four, five, six.

16 MS. MYERS: So we went from seven units and then four units
17 got combined into two units which would bring us down to five and
18 then the Applicant is proposing the Church space to become
19 something which would bring us back up to six units.

20 So that was our understanding of how this was working, but
21 I will admit, the plans were very challenging so we did have go
22 back and forth with the Applicant on this a few times. And, you
23 know, I can understand why the Board perhaps would like something
24 a little bit clearer, but that was a challenge on this case.

25 MEMBER SMITH: So, Ms. Myers, based on your statements and,

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1 did you receive the documentation that show those combinations on
2 the second floor?

3 MS. MYERS: We used the email confirmation from the
4 Applicant, but we did not get a new set of drawings.

5 MEMBER SMITH: All right.

6 MS. MYERS: We just went back and forth through emails.

7 MEMBER SMITH: Okay, so given --

8 MR. BEST: It was submitted with these. Drawings were
9 submitted with the applications. My architectural drawings.

10 MEMBER SMITH: Your architectural drawings for the first
11 floor?

12 MR. BEST: No, well, that's the only area we're talking,
13 the first, well, you're right. Now, I see. There you go, I got
14 it. Perhaps you don't have the second floor drawings?

15 MEMBER SMITH: Yes.

16 MR. BEST: And I got, just incentive, I thought it was all
17 on the first floor, but I can easily get you the second floor
18 drawing and that would clearly because, they also plan they have
19 really accurately described the project so I can understand
20 without that second floor drawing, I can understand, sir, why you
21 might see the full picture.

22 MEMBER SMITH: Okay, thank you. I'll welcome that. And
23 that's all the questions I have.

24 CHAIR HILL: All right. Let me do this, all right, Mr.
25 Blake?

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1 MEMBER BLAKE: Yes, I just had a quick question of
2 clarification about he lives above the first floor unit. First
3 of all, we talked about the size of the Church space. And there
4 was a conflicting statements in the document as to what the actual
5 size of the space was.

6 It's referred to as large a couple of times and so forth,
7 but I haven't been able to reconcile the sizing relative to what
8 we've said. It says, for example, in your burden of proof it's
9 2,700 square feet, but that seems kind of large for a two bedroom,
10 two and a half bath unit.

11 And also, when I did the dimensional, looked at the
12 dimensions on the chart, it came out to be more like 1,100 or so.
13 So I tried to extend the 2,700, how that fits in and also and you
14 look at the configuration of the first floor, I do understand you
15 got a use variance for the office space which is relatively small
16 space, maybe 500 square feet.

17 Is that part of the 2,700 square feet count you use? And
18 to that extend that that now --

19 MR. BEST: I didn't understand that last question about the
20 office space, 2,700 square feet is part of what?

21 MEMBER BLAKE: Is that you have 2,700 square feet indicated
22 for your Church space and I'm saying to you, it doesn't
23 dimensionally look like it's that large, and I'm saying does that
24 include the 205 and 525 square feet in that you, that apparently
25 is like the office space size for in the 2,700? Just clarify the

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1 2,700.

2 MR. BEST: Well, in my application, that was all of the sub
3 certification and I also got a zoning, what they call that --
4 something to pay the codes, a zoning memorandum. And the square
5 foot on my application for that space is, you're right, it's like
6 1,100, 1,159 I think it is.

7 It is not 2,700, it's 11, I can give you the exact because
8 it was, it's in my application because as a matter of fact, that
9 was one of the things they asked me to come back and let them,
10 that they had not seen in my application and I'm looking through
11 the application now, you're right.

12 I see here, area four, oh, no, that's 2,700. I don't know
13 if that's for just number two, I don't know, but I can provide
14 that information as well. But I know it's not 2,700 because it's
15 on the market, I think it's a three bedroom, but it's not, I think
16 it's like 12, forgive me, it's 1,263. One thousand, two hundred
17 sixty-three square feet and the other half is the office space on
18 18th Street side.

19 MEMBER BLAKE: Okay, and the office space was then moved
20 into part of unit one. Is that correct?

21 MR. BEST: Yes, because the office space, the long was our
22 company, bus company and we've already had that space when we got
23 the zoning variance before we been operating out of it and since
24 it was in our name, because we owned the building, DCHC said you
25 can retain it.

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1 They did that research and they say, but only you can use
2 it. If I were to move or to someone else to own it, they would
3 have to apply for a new home use permit for that area.

4 MEMBER BLAKE: Okay, but the variance you have is for it,
5 general office space and that would be more like an ancillary use
6 which you describe just now as a home office. Correct?

7 MR. BEST: Right.

8 MEMBER BLAKE: Okay. Then Ms. Meyers, I have a question
9 for you. Is that change in configuration, we looked at this from
10 your reduction in density is reflected in a number of units
11 dropping from seven to six?

12 Would you and why would you, I'm just curious as to why you
13 did not look at that as a decrease and we look at the density or
14 the overall use so the square footage now is increasing as far as
15 the conforming, nonconforming use as opposed to the number of
16 units.

17 Can you address that for me? Why we're not looking at the
18 increase in the square footage as a density measure?

19 MS. MYERS: I mean, I would say that, yes, the square
20 footage is going up, but we did take a look at it or we did just
21 for the last trial, make a note of the units going down for not
22 harming the zoning regulations.

23 I mean our main crux of our argument is really more of the
24 exceptional situation part. The fact that it is a substantial
25 space and this would, you know, there really is no other practical

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1 use for the space.

2 That's kind of the crux of our variance support for this
3 case. But for the not harming the zoning regulations, we did note
4 that the reduction in units would be more in line with it. I mean
5 the R-1, what is it? The R-1 --

6 MEMBER BLAKE: B.

7 MS. MYERS: -- B zone is a single unit zone so we're, you
8 know, getting in the direction of getting closer to the one unit.
9 I mean, clearly we're not there, but we're going from seven to six
10 units and that is, this is a zone that's based on the size, or the
11 number of units.

12 But like I said, the real crux of our argument is really
13 more about the space, the practical use of the space and not
14 having really an alternative practical use for the space.

15 MEMBER BLAKE: When, and I noticed it in your analysis, you
16 focus on the accessory uses of the space. Did you also look at
17 the permitted uses within the zone that might also be used for
18 this other institution uses?

19 MS. MYERS: We do, I mean, you know, we try not to base the
20 variance argument on, you know, putting too much into, you know,
21 I guess other types of uses because I mean, you know, you can
22 always vary, you know, knock the building down, make a house, but
23 that's not what we're proposing to do here.

24 And, you know, with what they are doing, we thought this
25 was in line with that the R-1-B zone is trying to do which is, you

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1 know, move it in the direction of less units on this property, but
2 as for proposing other uses for the property, I mean, it is
3 limited.

4 I mean, it's a single family zone so there's not a lot of
5 other matter of right uses, and so the practical other options we
6 normally would have consider are more ancillary uses.

7 But like I said, you know, this is a hundred seat Church
8 space so, you know, making the typical ancillary uses or uses for
9 that space don't, aren't really practical options in this case.

10 MEMBER BLAKE: But if you look at just, I'm not going to
11 belabor this too long, but just to look at the space, I mean, if
12 you have, it is a fair space, it's not a typical or commercial
13 spaces that is on the street.

14 It's a little bit back from it and focuses the building
15 restriction line there that factors into that, but the fact that
16 there was a corner store opening that would allow the Church
17 opening would allow a lot of potential things like maybe daycare
18 or some other business that might be able to use it for that type
19 of use other than a Church seems that that's a permitted use that
20 might be something within the zone that would fit in there just
21 as well as an apartment.

22 I agree with you that from a practical matter, an apartment
23 seems like a good idea, but this building had, you know, the glass
24 windows, the openings, I think they're gone now, but I think that
25 was configured in such a way that might have applied for some of

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1 the other applications.

2 MR. BEST: If I may respond to that. Not only as the
3 Applicant, but as a resident, I'm surrounded by homeowners and I
4 didn't think that commercial space out there and those spaces that
5 you're suggesting would be a good fit to this community.

6 These are homeowners, residential, the reason I've been
7 able to survive because I function with all single-family houses
8 around me that I function with them, then they in sync as a matter
9 of fact so I'm just saying to you, sir, no, the best use for this
10 is residential.

11 And looking at the demographics of Washington, D.C., it
12 could use this residential unit.

13 CHAIR HILL: Mr. Best, give me a second here. So Ms.
14 Myers, you got any comment for Mr. Blake?

15 MS. MYERS: To be clear, Mr. Blake, you're asking if the
16 space could be used for another matter of right use under the R-1-
17 B zone. Is that what you're asking?

18 MEMBMER BLAKE: Yes, did we evaluate to see that it was
19 used for another matter of right or special exception use toward
20 the zone?

21 MS. MYERS: We don't typically do that. You know, so no,
22 I'd have to, you know, go through all the different matter of
23 right uses so I wouldn't be able to off-the-cuff tell you exactly,
24 you know, what that particular use work in that space because we
25 don't typically review all the different other uses.

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1 You know, I mean, when it comes to looking at what's being
2 recommended or what's being requested here and whether or not it
3 would work, and if it's a reasonable argument, we thought that it
4 was a reasonable argument, but I mean, yes, there are some other
5 uses in the zone and if the Applicant wanted to go and try those,
6 you know, perhaps that would also work.

7 But I mean, it's limited. I mean, the R-1-B zone is a
8 single family house zone. So I'm not even a hundred percent sure
9 right now. Again, I'd have to take a look at the regs a little
10 bit more clearly.

11 But I'm not even sure right now that a child daycare use
12 would be permitted in this zone, but I'd have to double check.

13 MR. BEST: And may I just offer --

14 CHAIR HILL: Mr. Best, just give me a second. Let me,
15 you're not helping yourself right now. Just give me a second.

16 MR. BEST: Thank you, sir.

17 CHAIR HILL: Okay, all right. Okay. So let me do this,
18 so Mr. Smith, you want a, the second story drawing. Correct? The
19 plan, right? Mr. Best, do you have that?

20 MR. BEST: Yes, sir.

21 CHAIR HILL: Okay, and then Mr. Blake was interested in the
22 square footage of, Mr. Blake, you wanted the square footage of
23 what the new unit was going to be?

24 MEMBER BLAKE: Oh, yes, I'd like to get the square footage
25 of the space offer that is called a Church and I don't know if

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1 it's appropriate or not, but I would if we're going to have some
2 additional information provided, like to see some interior
3 pictures if possible.

4 CHAIR HILL: Interior pictures of which part, Mr. Blake?

5 MEMBER BLAKE: The unit two space.

6 CHAIR HILL: Okay, so --

7 MR. BEST: Let me respond to that because I don't really
8 know where this is going now. That space in January when I
9 applied for the whole building to be converted, the office of
10 zoning approved the zoning on January the 8th last year, I think.

11 The whole building for zoning and we started moving in the
12 building. Someone over in zoning, Mr. Nadal, realized that it was
13 a Church and it could not be a part of that construction process
14 because the Church space would require a variance or special
15 exception.

16 And at that point, everything stopped, but prior to that,
17 it had not been, we had filed for the permits, but that was just
18 waiting for the inspections. And we could not do the inspections
19 because why? We had to wait on the zoning which where and that
20 was the first unit we started working on, two units, one upstairs
21 and --

22 CHAIR HILL: And, Mr. Blake, I've got a day ahead of me so
23 let me just try to get through this with you. Okay? So if you
24 do this, okay, I'm going to try to get you back here later today.
25 Okay? So go ahead, you have the plans for the second floor.

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1 Right?

2 MR. BEST: I have those.

3 CHAIR HILL: Okay. And then why don't you go ahead and
4 figure out the square footage that Mr. Blake is asking for. Okay?

5 MR. BEST: Those two spaces?

6 MEMBER BLAKE: Yes, sir.

7 CHAIR HILL: And those two spaces and Mr. Smith needs
8 something else. Okay? He's raising his hand, and then we'll come
9 back here at the end of the day. I've got to leave at 6:00 so we
10 got to hopefully get this done before that.

11 MR. BEST: I'm going to get right on it when I leave.

12 CHAIR HILL: And then Mr. Smith, you need something else?

13 MEMBER SMITH: Yes, so I, you know, in the dialogue that
14 was going between Ms. Myers and Mr. Blake, one of the things that
15 I think came up was that they also planned it doesn't evaluation,
16 it doesn't, you know, have a discussion with the Applicant about
17 uses that may be permitted as a matter of right or by special
18 exception within the space.

19 So then to complete an analysis on, to me I think that's
20 crucial for us to make a decision about whether a variance is
21 warranted here and it sounds like that may not have been done.

22 So I would welcome the Office of Planning looking at uses
23 that are allowed as a matter of right and by special exception and
24 for Mr. Best to, you know, explain his reasoning why when you look
25 at those particular uses, why it would not work for that space.

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1 Not just because of the size of the place. There are some
2 additional uses, but the reason why those uses doesn't work. So
3 I don't know if this can come back later on today. I think that's
4 an analysis that needs to be done, but also planning Mr. Best so
5 I welcome that.

6 MR. BEST: And I must respond to that as a businessperson.
7 That requires business analysis. That requires projection. That
8 requires, you know, what you're really saying is create another
9 business for that space and who would do, I mean that is a
10 stretch.

11 MEMBER SMITH: Is that not what you did for the initial
12 unit?

13 MR. BEST: It fit with what's going on.

14 MEMBER SMITH: Okay.

15 CHAIR HILL: Commissioner John, you had your hand up?

16 MR. BEST: It --

17 VICE CHAIR JOHN: I have a question for Mr. Best. Mr.
18 Best, --

19 MR. BEST: Yes, ma'am.

20 VICE CHAIR JOHN: -- when you said your plans were
21 approved, you were going through the DCRA process and you showed
22 them the plans for the units on the first floor, the new units and
23 the one, the owner suite on the first floor, --

24 MR. BEST: Yes.

25 VICE CHAIR JOHN: -- and the conversion for the unit two,

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1 the Church, --

2 MR. BEST: Yes.

3 VICE CHAIR JOHN: -- and the DCRA said to go ahead or what
4 happened? You said you'd started to do the conversion and then
5 during further review it was discovered that you were expanding
6 the apartment use to the Church. So you needed permission.

7 MR. BEST: Yes.

8 VICE CHAIR JOHN: Okay. Is that what happened?

9 MR. BEST: That's exactly what happened. However, when it
10 went to DHCD, that issue never surfaced. It just automatically
11 changed the Church address from 3633. If you go to the tax
12 office, it has already been changed.

13 VICE CHAIR JOHN: Okay, so DCD and DCRA are two different
14 --

15 MR. BEST: Okay, so they did that then when I did, I
16 applied to DCRA for the construction permit.

17 VICE CHAIR JOHN: Yes.

18 MR. BEST: Some backs in times and the first thing they do
19 is to make sure you in the proper zone to operate. That's one of
20 the first approval process that they do and you don't move until
21 you see that because you know, you got to go through your agency
22 or the bottom line is that they approved it.

23 VICE CHAIR JOHN: DCRA just --

24 MR. BEST: Approved it.

25 VICE CHAIR JOHN: -- DCRA approved the plans for the

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1 Church?

2 MR. BEST: Not, they, all the whole plans, that include the
3 Church.

4 VICE CHAIR JOHN: Did not include the Church at that time?

5 MR. BEST: It did. Everything, including the Church.

6 VICE CHAIR JOHN: Do you have that information somewhere?

7 MR. BEST: Oh, yes. Ms. LaGrant and I went over this.

8 VICE CHAIR JOHN: Okay.

9 MR. BEST: We talked about this, we're missing it all
10 because what they did, they discovered the error six months later.

11 VICE CHAIR JOHN: Okay, so --

12 MR. BEST: And then they say they have to re-send their
13 approval and it threw everything in a whack and we just stopped.

14 VICE CHAIR JOHN: So, okay, thank you, Mr. Best. So, Ms.
15 Myers, I'm trying to understand the application. We're looking
16 at the expansion of the nonconforming apartment building. Is that
17 what we're looking at?

18 MS. MYERS: Yes.

19 VICE CHAIR JOHN: That analysis. And is the Church use and
20 in a residential zone. Right? So residential use would be a
21 matter of right use in that zone. So you're moving from a
22 nonconforming to a conforming use? Am I getting that right?

23 MS. MYERS: Yes, I mean, we're still nonconforming, but
24 right now we have an apartment house use in a single family zone.

25 VICE CHAIR JOHN: Yes, it's nonconforming. So --

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1 MS. MYERS: Yes.

2 VICE CHAIR JOHN: -- you're expanding the apartment use
3 into, okay.

4 MS. MYERS: Yes. I did want to say one other thing. I
5 took a quick look at the matter of right uses for the R-1-B zone,
6 and there's really just a few. It's principle dwelling unit,
7 clerical and with just residences or community SOAR facility.

8 So those are the three matter of right. Now, you do have
9 special exception options, but it, you know, if you all would like
10 us to, you know, discuss that further with the Applicant, you
11 know, if that is the rule of the Board, then we will do so, but
12 for the matter of right ones, it's very limited.

13 And, you know, the other two, the only other one that I
14 guess hasn't really been thought about is the community SOAR
15 facility, but I don't think that's one that the Applicant would
16 pursue.

17 MR. BEST: A community --

18 MS. MYERS: That's about it.

19 CHAIR HILL: Okay, let me do this. And I'll get you, I
20 just want to make sure all my Board members get the information
21 they need to somehow make an analysis. I mean, I'll let you know,
22 I'm kind of comfortable with this so that's why I'm just kind of
23 walking through this, but I do appreciate the questions that you,
24 Mr. Smith, have brought up.

25 And also, Mr. Best, as you understand this, this is a

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1 variance, so therefore it's not something that we easily can pass.
2 We actually have to take the time to go through the steps.

3 There are three prongs we have to, you know, look through
4 and what everyone here is talking about is they're actually taking
5 the time to do what we're supposed to do. And I know and
6 understand that you probably are kind of frustrated at having to,
7 you know, go through these loops and, you know, hoops or what have
8 you to get to where you are now, but I'm trying to help. Right?

9 So just give me a second. So I guess what I'd like to do,
10 I still want to try to come back here because I still want to try
11 to do this. Right? And so if, and Mr. Smith, you're leaving at
12 3:30 so if Ms. Myers, you're around for a little bit today, I
13 can't remember. You're with us whatever. Right? Okay.

14 So why don't you do this? Mr. Best, can you please go
15 ahead and upload the, I mean if you can, the plans are also a
16 little confusing to me I've got to say too. Right?

17 If you want to go ahead and put the first floor and the
18 second floor plans into the Exhibit. Okay? And make sure you can
19 hand write it, I don't care, that actually writes, make sure that
20 the unit numbers are numbered properly so that we can follow along
21 with the second floor. I think that would help Mr. Smith. Is
22 that correct, Mr. Smith?

23 MEMBER SMITH: So can I, I'll just put in a request. He
24 did say on record that the units have been combined. So I don't
25 think it can be a matter of him writing.

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1 I think he needs to submit the plans that were approved by
2 the DCRA for that second floor to be truthfully in this update so
3 that we can ensure that this is actually a reduction of units.

4 CHAIR HILL: Do you have those plans, Mr. Best?

5 MR. BEST: I will send you the before and after.

6 MEMBER SMITH: Okay.

7 MR. BEST: Before.

8 CHAIR HILL: Okay. And then, and so, Mr. Smith, is that
9 going to clarify what you want? I'm trying to, I don't know,
10 you're trying to think that Mr. Best doesn't have the plans that
11 you were looking at?

12 MEMBER SMITH: So, yes, but the plans in the record are
13 confusing, but I do think that he has the building plans for the
14 first floor, but not for the second floor. The reason why I'm
15 asking for it is, you know, we're saying that this is a reduction
16 in units.

17 And it wouldn't increase the amount of units here within
18 an R-1-B zone. Based on what I'm seeing and I'm not refuting that
19 you actually, that it is an actual reduction in units, but we need
20 it within the record to have a correct record.

21 MR. BEST: Okay.

22 MEMBER SMITH: So if you can get that to me, then you know,
23 I think some of the points that I'm asking are moot so that's all
24 I need.

25 MR. BEST: Understood.

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1 MEMBER SMITH: Okay.

2 CHAIR HILL: So, Mr. Best, you submit that. Okay. Hold
3 on, Ms. John is about to ask a question too. You submit that.

4 VICE CHAIR JOHN: I think looking at the first floor which
5 is what the relief is being requested for, not the second floor
6 and so are you saying it's showing clearly the former Church space
7 and unit one.

8 So the issue is expansion of the nonconforming space into
9 that new unit two. So it, the reduction in the units is kind of
10 academic, because really what he's doing is asking for the first
11 floor, he's asking for relief for the first floor so whatever he's
12 approved for on the second floor is neither here nor there.

13 He's asking about the first floor. That's my view. So I
14 will set with that.

15 CHAIR HILL: Okay. So I don't know if that helped me or
16 not, Ms. John.

17 VICE CHAIR JOHN: I'm sorry.

18 CHAIR HILL: That's all right. So I'm looking at this.
19 I mean, I'm trying to figure out this plan because second page on
20 plan, all right, let's still just do this. Okay? So go ahead,
21 Mr. Smith, I mean you're looking at that Exhibit 7, right?

22 MEMBER SMITH: I will explain why I need it. Because
23 within the staff report, one of the criteria is no substantial
24 impairments to the zoning regulations. So based on that analysis,
25 there's no substantial impairment because there isn't an increase

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1 in the nonconformity of an apartment building at the site because
2 the units aren't a wash, it's a fix.

3 Or they over there saying that there's a reduction. I'm
4 not seeing that reduction based on the floor plans. So to me
5 right now, I'm not seeing that reduction, so the point that Ms.
6 Myers is trying to make in the Staff Report, I can't give great
7 weight to the Office of Planning on that prong because of
8 information that's within the system.

9 So that's the reason why I'm asking for the second floor
10 set of plans.

11 CHAIR HILL: Okay, fine.

12 VICE CHAIR JOHN: Fair enough.

13 CHAIR HILL: So, Mr. Best, you go ahead and submit those.
14 Okay, right? Submit the information that Mr. Blake is asking for.
15 Okay? Ms. Myers, I'm going to ask you to just kind of talk
16 through us again what you already just talked through, but take
17 a look at the matter right options. Okay? And we're going to
18 come back with this after lunch. Okay? Mr. Blake?

19 MEMBER BLAKE: It's called the special exception
20 requirements and again, it's really to just address their
21 practicality. I would like to see the both of their uses
22 evaluated.

23 VICE CHAIR JOHN: So I'm confused. Isn't residential use
24 a permitted use in that zone? Is the apartment use that's the
25 problem? Expanding the apartment building which he's converting

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1 from a Church to a residential unit in a residential zone so
2 that's how I'm looking at it.

3 And I can't, you know, don't know why we would look at some
4 of those other uses that you would need a special exception relief
5 for?

6 MEMBER BLAKE: I think from a practical standpoint, you're
7 absolutely right. It is moving to a residential use. Of course,
8 what's allowed in this zone by right is that I think it's a semi-
9 detached or detached dwelling, single-family dwelling.

10 It's not an apartment building so that, the issue, it is
11 moving in the direction of a residential space which is consistent
12 with the community. I mean, it makes sense.

13 If this were a special exception, it makes a hell of a lot
14 of sense. The issue is that it just isn't. That's what my
15 question was.

16 VICE CHAIR JOHN: Okay. Thank you.

17 CHAIR HILL: Okay, Ms. Myers, do you know what we're
18 talking about?

19 MS. MYERS: It sounds like you'd want us to explain why
20 these or talk with the Applicant I guess first, but then explain
21 why the, all of these special exception uses are not viable
22 options.

23 Is that project -- do we understand that the, we're all in
24 agreement the matter of right ones we don't need a further
25 analysis on. It's the special exception ones you want us to focus

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1 on when we come back?

2 VICE CHAIR JOHN: I would like to see something from DRCA
3 if he had approval to go ahead and start renovating the Church
4 into an apartment building, into a residential unit.

5 MR. BEST: All I had was, ma'am, was I saw through the
6 dashboard that the, it had been approved, the zoning had been
7 approved, so we start making preparations.

8 VICE CHAIR JOHN: Okay. Thank you. I misunderstood.

9 MR. BEST: Okay. No, it was never, it was just we saw
10 approval for the zones.

11 CHAIR HILL: All right, Mr. Best. Mr. Best, give me a
12 second. So okay, all right. So I'm going to get the second floor
13 plans, I'm going to get the, Mr. Smith, you don't need the first
14 floor plans or you want them together?

15 MEMBER SMITH: I think the first floor plans are fine so
16 I don't need it, I need the second.

17 CHAIR HILL: Okay. So give me the second floor plans, Mr.
18 Best. Okay?

19 MR. BEST: Before and after?

20 CHAIR HILL: Yes.

21 MR. BEST: Okay.

22 CHAIR HILL: Okay. And then the square footage that Mr.
23 Blake is asking for.

24 MR. BEST: For number two.

25 CHAIR HILL: Okay, for number two. Okay? And then, Ms.

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1 Myers, you can just discuss on the record some of your analysis.
2 Okay? And then we'll come back after lunch.

3 MS. MYERS: Okay.

4 CHAIR HILL: Okay. Mr. Miller, do you need anything or are
5 you good?

6 ZC MEMBER MILLER: Thank you, Mr. Chairman. I had a couple
7 of questions. They aren't critical to my analysis or your, or the
8 VZA's analysis of a use variance. I would be interested and I
9 think Mr. Best could probably answer them off the top of his head.
10 If you indulge me, I don't want to prolong this, but one minute.

11 CHAIR HILL: Yes, sir. Go ahead.

12 ZC MEMBER MILLER: Mr. Best, thank you for bringing forward
13 this application first of all. I am sorry for all of the back and
14 forth you've had to through with DCRA. I know that's frustrating
15 for residents of the District of Columbia and practitioners.

16 And I think there have been improvements made in that
17 regard. But in any event, of the six units, this is that you're
18 going to have, I think I heard you say that the Church space is
19 going to be a two-bedroom, two and a half bath --

20 MR. BEST: Yes, sir.

21 ZC MEMBER MILLER: -- unit. I think I heard you say on the
22 second floor there's a three bedroom, two bath --

23 MR. BEST: The two that was combined is three bedrooms.

24 ZC MEMBER MILLER: All right. So that's two of the six
25 units. How many bedrooms does your unit have on the first floor?

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1 MR. BEST: My, oh, I have two bedrooms.

2 ZC MEMBER MILLER: Two bedrooms.

3 MR. BEST: In my unit.

4 ZC MEMBER MILLER: All right. Three of it though, so far,
5 two of the six are two bedrooms, one's a three bedroom, what are
6 the other three?

7 MR. BEST: The other, number three is a two bedroom.

8 ZC MEMBER MILLER: Yes.

9 MR. BEST: And everything, they're one bedroom. Five and
10 six are one bedrooms.

11 ZC MEMBER MILLER: Okay. And they were previously rental?

12 MR. BEST: Oh, yes.

13 ZC MEMBER MILLER: And now all six units are condominium
14 or going to be condominium?

15 MR. BEST: Now, they have been converted through DHCD as
16 we're gone through that approval process so everything has been
17 approved.

18 ZC MEMBER MILLER: Okay.

19 MR. BEST: And we are moving forward.

20 ZC MEMBER MILLER: Okay.

21 MR. BEST: But, you know, rental was getting a little bit
22 of a situation in the building as well in terms of maintaining
23 tenants so it was just something that was better for the building
24 and the community.

25 ZC MEMBER MILLER: Did any of the tenants who were

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1 previously there stay to purchase a condominium? Just out of
2 curiosity.

3 MR. BEST: It's interesting. I waited as people would
4 leave, I just didn't and there was two that were seniors and I
5 made a commitment to them and I wasn't, but they just said, hey,
6 Mr. Best, we need to go in assisted living anyway so they just up
7 and left and all of a sudden the building was empty. It's been
8 empty for a long time.

9 ZC MEMBER MILLER: They had the right to purchase under the
10 District's, which is why you went through DHCD.

11 MR. BEST: Yes.

12 ZC MEMBER MILLER: Because of the rental housing conversion
13 --

14 MR. BEST: Yes.

15 ZC MEMBER MILLER: -- process. They had the right to --

16 MR. BEST: They waived that, but I still told them they
17 could stay.

18 ZC MEMBER MILLER: Okay.

19 MR. BEST: But, the --

20 ZC MEMBER MILLER: And are there any important building
21 restrictions on your property at all from DHD or from any other
22 source or you just, you sold them or you're marketing them for
23 whatever the market will bring?

24 MR. BEST: Yes, market value. Yes, sir.

25 ZC MEMBER MILLER: And what is, just out of curiosity,

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1 again, not necessary for a use variance analysis, in my own
2 opinion, but what are you marketing the three bedroom or the two
3 bedroom, the Church space? What will you market the two bedroom
4 for? If you can share that.

5 MR. BEST: That, I don't mind sharing it at all. That
6 space will be, it will probably go on the market about like
7 \$550,000.

8 ZC MEMBER MILLER: Okay.

9 MR. BEST: For two bedrooms and two and a half baths, big
10 unit.

11 ZC MEMBER MILLER: Okay. And so you haven't sold that
12 unit, the Church unit?

13 MR. BEST: No, no, no. That's --

14 ZC MEMBER MILLER: You own the other unit. Have you sold
15 the other four?

16 MR. BEST: No, sir. I've sold one, number three. That
17 sold for \$425,000. Number four is on the market now which is a
18 three bedroom, two bath. That's on the market for \$590,000.
19 They're reasonably priced condos, but they are reasonably priced
20 below market really.

21 ZC MEMBER MILLER: Okay. All right, well thank you for
22 that information and good luck with the project and thank you for
23 maintaining it all these years as residents.

24 MR. BEST: Thank you, sir.

25 ZC MEMBER MILLER: As residential and for the Church uses.

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1 MR. BEST: I appreciate that.

2 ZC MEMBER MILLER: That's it, Mr. Chairman.

3 CHAIR HILL: Okay. So, Mr. Best, go ahead and upload that
4 documentation. Ms. Myers, you got me there?

5 MS. MYERS: Yes, I do.

6 CHAIR HILL: Can you just call Mr. Best after this and just
7 go ahead and like walk him through your discussion and then we'll
8 come back to this after lunch, Mr. Smith.

9 MEMBER SMITH: Sorry, I'll be really quick. I know I'm
10 probably belaboring the point. I just want to make sure that, Ms.
11 Myers, that there will be a dialogue of the uses again.

12 Because I think this institution of religious issues which
13 is allowed as a matter of right so can, and the zone, so you know,
14 we're requesting the forces to move to another nonconforming use.

15 Even though this is an apartment, it's not a conforming use
16 within the R-1-B zone. Can you have that dialogue with Mr. Best,
17 go through the matter of right uses and the special exception uses
18 and discuss the reasons why they wouldn't be applicable and to
19 give that reason so that we can, you know, have a full air-tight
20 case?

21 MS. MYERS: Sure, I can go over it with him. I think with
22 the matter of right uses, there's not a lot we can say on that,
23 but the special exception ones I don't think he's really had a
24 chance to think about those as much so I'll talk with him about
25 that.

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1 MEMBER SMITH: Okay.

2 CHAIR HILL: Okay, and Mr. Best, you know, talk with the
3 Office of Planning and if something changes in your mind, then let
4 us know. Okay?

5 MR. BEST: Okay.

6 CHAIR HILL: So we're going to go ahead. Mr. Young, is
7 there anyone here wishing to speak?

8 MR. YOUNG: We do not.

9 CHAIR HILL: Okay. All right. So I'm going to go ahead
10 and close this hearing for now. Mr. Best, go ahead and you know,
11 talk with the Office of Planning, get that stuff uploaded and
12 we'll come back after lunch. At this point, I'm shooting I guess
13 for maybe we'll take lunch at 1:00 just because we're kind of
14 running kind of late already. Does that sound okay with
15 everybody?

16 MR. BEST: Yes.

17 CHAIR HILL: So we'll come back after lunch. But anyway,
18 do this Mr. Best, right now. You're about to say something. What
19 is it, Mr. Best?

20 MR. BEST: We'll be back here at 1:00 or what's that time?

21 CHAIR HILL: Well, I mean, we're going to come back after
22 lunch.

23 MR. BEST: Okay. I'll be available.

24 CHAIR HILL: Yes, yes, yes. I mean, you know, I don't know
25 when we're going to take lunch. But you can kind of --

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1 MR. BEST: Okay.

2 CHAIR HILL: -- you know, I am shooting for like you know,
3 we might come back here at 1:30.

4 MR. BEST: Okay.

5 CHAIR HILL: That is what I'm trying to say, but okay, so
6 I'm going to go ahead and excuse everyone for now and we'll come
7 back after lunch. Mr. Best, please upload all of that stuff right
8 now into the record. Okay?

9 MR. BEST: Will do.

10 CHAIR HILL: All right. Thank you.

11 MR. BEST: Thank you, sir.

12 CHAIR HILL: Please excuse everybody. Okay, do we want to
13 take a break or do we want to do another case real quick?

14 MEMBER SMITH: I'd say do another case for this meeting.

15 CHAIR HILL: Okay. All right. Well I really appreciate
16 you all on the first case back. Okay. All right, Mr. Moy, you
17 can call our second case back please.

18 MR. MOY: Thank you, Mr. Chairman. All right. Second case
19 of the day. This is as amended, or rather, this is application
20 number 20609 of Amilia Care Incorporated, amended for a special
21 exception from the matter of right uses of Subtitle U, Section 201
22 pursuant to Subtitle U, Section 203.12 and Subtitle X, Section
23 901.2.

24 This would construct a three-story and basement addition
25 and to convert an existing detached principal dwelling unit into

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1 a continuing retirement community in the R-2 zone.

2 The property is located at 4507 Eads Street, E-A-D-S
3 Street, Northeast Square 5133, Lot 112. The only thing I have to
4 add, Mr. Chairman, is that there was a late filing last night that
5 was, couldn't be entered into the record.

6 I think it was around 11:30 p.m. last night from, it's a
7 letter or in the form of a Petition in Opposition so that's before
8 the Board. That's because of the 24-hour block.

9 CHAIR HILL: Okay. All right. Ms. Moldenhauer, can I get
10 you to introduce yourself on the record please?

11 MS. MOLDENHAUER: Good morning, Board Member Chair and
12 Members of the Board. I am Meridith Moldenhauer from Cozen
13 O'Connor here on behalf of the Applicant.

14 CHAIR HILL: Okay, great. And who's here with you today,
15 Ms. Moldenhauer?

16 MS. MOLDENHAUER: I have the Applicant, Amilia Alcema and
17 I also have the project architect, Shima Safinia.

18 CHAIR HILL: Got it. Okay. We'll see who we get to when
19 we get to them. If you want to go ahead and walk us through your
20 client's case and why you believe they're meeting the criteria for
21 us to grant the requested relief, I'm going to put 15 minutes on
22 the clock so I know where I am. And you can begin whenever you
23 like.

24 MS. MOLDENHAUER: Great, if Mr. Young could bring up
25 Exhibit 30 which is our PowerPoint slide. We do have a few

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1 preliminary matters. I think Mr. Moy referenced them. Next
2 slide.

3 CHAIR HILL: Right. Can you tell me again? Right? The
4 preliminary is you're trying to get something into the record?

5 MS. MOLDENHAUER: We late filed revised architectural plans
6 and a self-certification. The revised architectural plans, one,
7 reduced the relief, it removed the parking relief and it also then
8 addressed some design requests from the Office of Planning Design
9 team and then we updated an exhibit with additional elevations
10 which also addressed some design comments in elevations from the
11 Office of Planning.

12 CHAIR HILL: Okay.

13 MS. MOLDENHAUER: So we're asking that those are put into
14 the record.

15 CHAIR HILL: Okay, unless the Board has any issues, I'd
16 like to see those exhibits. Are they already in the record, Mr.
17 Moy? You do not know?

18 MR. MOY: I think the items that Ms. Moldenhauer mentioned
19 is in the record, but I'll have staff double check that. If not,
20 we'll then, certainly we'll enter it into the record.

21 CHAIR HILL: Okay, just let us know as we go through this
22 application because I want to make sure I'm able to take a look
23 at it. Particularly how they got rid of the parking.

24 MR. MOY: Okay, the staff tells me it's in the record now.

25 CHAIR HILL: Which, okay, did you just put them in there?

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1 MS. MOLDENHAUER: No, Chairman Hill, they've been in the
2 record for a while.

3 CHAIR HILL: Do you know what exhibit it is?

4 MS. MOLDENHAUER: Exhibit 28, A, B and C. We filed them
5 on February 2nd. It was just they're held after our prehearing
6 statement because we're waiting for --

7 CHAIR HILL: Got it. I'll look it up.

8 MS. MOLDENHAUER: Yes.

9 CHAIR HILL: Okay, great. All right. Again, unless the
10 Board has any issues, we'll go ahead and allow those into the
11 record and then Ms. Moldenhauer, you can begin whenever you like.

12 MS. MOLDENHAUER: Yes, and next slide. So the property
13 located in the R-2 zone we are here today asking for special
14 exception relief for a senior low-income assisted living facility.
15 Next slide. This is a picture of the existing property.

16 You can see here at the property at the bottom of this
17 image, you get the property is located on the red dot here and you
18 can see that Benning Road is within walking distance from the
19 property as well as another minted avenue, Metro Line as well.
20 Next slide.

21 The Applicant who will provide more detail at the Board's
22 request did go out and walk around the community, talk with
23 individuals, many of whom verbally indicated that they were
24 supportive and then she obtained five letters of support.

25 We have the Office of Planning's recommendation of support

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1 and DDOT'S recommendation of no objection. We did present last
2 evening to the ANC and the ANC, I don't know if they're present
3 today, but they determined not to take a vote last night.

4 We did reach out to the ANC back on December 2nd,
5 communicated with them back and forth via email and calls from
6 December and January. We then were able to attend their executive
7 meeting in January on January 25th. That is when we made some of
8 the changes in regards to the parking changes and presented to,
9 with them last night.

10 And they have, you know, asked for some additional
11 community outreach. Next slide.

12 CHAIR HILL: So they asked for additional community
13 outreach and they didn't take a vote?

14 MS. MOLDENHAUER: Correct. The SMD indicated that they
15 would have wanted to have a single member district meeting and
16 again if she's present, she can elaborate on that. I don't know
17 if she is.

18 They indicated last night that they might want to hear what
19 the Board says today and so I don't know if the single member
20 district representative is present here today.

21 CHAIR HILL: Got it. Mr. Young, do you know if the SMD is
22 here or not? And actually, Mr. Young, while you kind of look
23 around, Ms. Moldenhauer, go ahead and keep going.

24 MS. MOLDENHAUER: Sure. It's Commissioner Stephanie
25 Audain, just to help.

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1 CHAIR HILL: Okay, great.

2 MS. MOLDENHAUER: Somebody look for their name.

3 CHAIR HILL: Okay, thank you.

4 MS. MOLDENHAUER: I'll now turn it over to my client to
5 kind of give a little bit of her background on operating assisted
6 living facilities and then talk a little bit about the project.

7 MS. ALCEMA: Yes, I would like to thank all of you for
8 giving me your time. This is Amilia Alcema. I serve disability
9 residents who are 60 years and older for over 20 years.

10 And also I have been serving with seven who are over seven
11 years. And I am also a member of DC Health Care Association. I
12 was selected as a license nursing or magnificent trainer of the
13 year in 2017 by the District of Columbia.

14 And I also serve as the Chair for Education with the Board
15 and I also serve in 2018 and I also serve as the Chair of Finance
16 in 2017. I currently work as original director of a proration for
17 health Alliance Services which is currently a consulting firm.

18 I currently serve over 889 clients who are 60 years and
19 older in the District of Columbia. And I also serve around 700
20 employees in the District of Columbia. There is a substantial
21 need for this service for residents who are 60 years and older and
22 who cannot afford the \$15-\$20,000 assisted living.

23 So that's why I am putting a request and humbly requesting
24 for us to use the property as an assisted living. I have modified
25 the parking and I have --

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1 MS. MOLDENHAUER: Mr. Young, next slide. I think that
2 might just be helpful. Sorry, just trying to help out.

3 MS. ALCEMA: And I also went in the neighborhood for over
4 the whole afternoon that day and I knocked on doors. I went from
5 the bottom of the street to up the street, up E Street, tried to
6 cover the whole, you know, impacted area and spoke with the
7 residents.

8 Some, all of them told me they actually did receive the
9 notice even before I came in on the 23rd of January. They told
10 me they received the notice and they knew the project was going
11 to go in place.

12 And some of them, they told me actually, I did not actually
13 receive one single opposition. When I went in the neighborhood
14 the whole afternoon, knocking on doors and for introducing myself,
15 some people spoke with me and the hand was some people told me,
16 you know, they could not come out right now, but the ones that
17 came out and most of them came out, I spoke with them.

18 And they told me that they did receive the notice and if,
19 and I asked them if they could sign it, told me, well, if they
20 have a position, they would have said something so the fact that
21 they don't have no position means that, you know, they have for
22 the project.

23 I also speak with some, a resident by the name of James
24 Pritt and he actually signed for me. He lives in 4512 E Street.
25 He signed. And I also spoke with Ms. Sean who also signed. She

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1 actually told me that would be helpful for her son if we could,
2 you know, if we could do that because he could get some community
3 hours and also maybe do a part-time job.

4 And I also spoke with a resident who actually look like
5 she's over 60 years as well. Her name was Ms. Virginia Griffin.
6 She actually signed the Petition and Ms. Simmon also signed the
7 Petition and also the letter of support signing the Petition and
8 also I spoke with someone by the name of Leroy.

9 Mr. Leroy, I know and actually I spent a long time speaking
10 with him because actually he is the type of residents that, you
11 know, I am targeting to assist and he told me how he welcomed the
12 project. And during my tour and during my visit, I did not
13 receive any opposition.

14 CHAIR HILL: Okay, great. Ms. Alcema, how do you say your
15 name, ma'am?

16 MS. ALCEMA: Alcema.

17 CHAIR HILL: Alcema. All right, Ms. Alcema.

18 MS. ALCEMA: Alcema. Thank you.

19 CHAIR HILL: Thank you.

20 MS. MOLDENHAUER: Okay, so now we can turn to the next
21 slide and we'll turn to the project architect to walk through the
22 structure. Is Shima Safinia online?

23 MS. SAFINIA: Yes. Hi. I have a --

24 MS. MOLDENHAUER: Great.

25 MS. SAFINIA: This is Shima -- yes?

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1 CHAIR HILL: No, go ahead. I'm sorry. You're introducing
2 yourself for the record.

3 MS. SAFINIA: Yes. This is Shima Safinia. I'm the design
4 associate at the project and I'm representing Carballo
5 Architecture today. So by right, the structural addition, the
6 existing home, which is like a single story home is like by right.

7 We are proposing two-story addition and a six feet rear
8 addition also. The front that is existing but we are proposing
9 to enlarge it to actually address some of the offset zoning and
10 ANC comments.

11 We are providing an ADA accessible ramp in the front to
12 provide access to the first floor of the building and also a new
13 side egress, a stairway that can be seen on the side plan in later
14 slides.

15 We're also proposing five parking spaces at rear of the
16 project of the rear public alley that is hooked in right and
17 they're also proposing some landscaping improvements. Next slide
18 please.

19 Okay, here is our site plan. And the ADA ramp can be seen
20 in the front. The second means of egress which is an exterior
21 staircase can be seen on the plan. The parking spaces are shown
22 in the rear of the property and there will be three feet and four
23 feet clearance spaces on each side of the parking space for a
24 passage.

25 We initially had the parking spaces at three so we had

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1 three parking spaces but we increased it to five to address ANC
2 comments. And the parking spaces will have access to the 15-foot
3 public alley in the rear of the property. Next slide please.

4 The front portion, this is the first floor plan. The front
5 portion of the first floor is a large, shared dining and living
6 area. And this space will be used as an entertainment area when
7 not a mealtime.

8 And then there is also five bedrooms in the rear portion.
9 Next slide please. The second and third floor are dedicated
10 solely to bedrooms. Next slide please. Okay, in the basement we
11 have three additional bedrooms.

12 The kitchen area is located in the basement, there is an
13 office for staff, also break room for staff. We're also proposing
14 a commercial laundry unit in the basement to serve the residents.

15 CHAIR HILL: Where's the beauty room?

16 MS. SAFINIA: The beauty room is gone.

17 CHAIR HILL: Oh, Okay.

18 MS. SAFINIA: Yes, we had to change the plan, we had to
19 change some, we had to make some changes in the layout. Next
20 slide please. Okay, these are the proposed elevations.

21 So in the front elevations, like you can see the new second
22 floor and third floor and we had to change the front with the
23 layout to address OP comments. You can also see that we enlarged
24 the existing front porch to also address OP comments. Next slide
25 please.

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1 MS. MOLDENHAUER: Thank you very much. So the request is
2 for as we said, we removed the parking relief and so our only
3 requested relief is under the special section requirement for
4 continuing care retirement community under Subtitle U, 203.1G.
5 Next slide.

6 We believe that the request for an assisted living facility
7 is in harmony with the general zoning intent and regulations as
8 assisted living is a residential use consistent with the R-2 zone.

9 The R zone is identified as predominately characterized by
10 lower moderate density residential. This project is built to all
11 of the R-2 zone standards in regards to height, size, density and
12 the R zone is also intended to encourage aging in place.

13 The product meets the important public policy goals as
14 currently there is no assisted living facilities in Ward 7. The
15 Applicant discussed the fact that she served Ward 7, but she
16 serves Ward 7 for more intensive senior services not this type of
17 program which currently there is no open assisted living
18 facilities in Ward 7.

19 It allows residents to stay in their community as they age
20 and allows for low-income residents to be provided these services
21 as needed. Next slide. There would be no adverse effect on the
22 room properties.

23 As indicated, the project is built to height of side yard.
24 Lot occupancy is permitted in the R-2 zone, maintains that each
25 hatch nature with side yards and rear yards.

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1 The parking now exceeds the parking requirement and is also
2 all of the parking accesses off of a 15-foot wide alley. There
3 was currently a curb cut on E Street. That curb cut will be
4 closed as indicated by DDOT allowing for more street parking and
5 all of the, you know, services will be off of the alley.

6 And this was continuing an ongoing residential use of the
7 property. Next slide. There are five different sub-conditions
8 for 203.1G. I'm happy to walk through all of them. I've only
9 pulled out two based on, you know, kind of what we had heard so
10 far in regard to community questions.

11 Number four is the useful use and related facilities shall
12 provide sufficient offshoot parking spaces for employees,
13 residents and visitors. We changed the plans from three spaces.
14 Four are required under zoning to five.

15 We believe that will meet their needs for the employees.
16 We have worked with providing a rotating schedule as well as
17 encouraging employees to use public transit as indicated.

18 Benning Metro is .5 miles, just about a good, less than a
19 10-minute walk as well as other bus stations that are located near
20 the property off of Benning Road. We're also proposing to label
21 one of the five spaces for a guest or visitor parking with like
22 a time restriction so that way more guests can cycle through the
23 property and that can be coordinated with the employees on site.

24 Sub-condition number five, the use, including any outdoor
25 spaces provided shall be located and designed so that it will not

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1 likely become objectionable to neighboring properties because of
2 noise, traffic or other objectionable conditions.

3 The building is built by right, it will be self-containing
4 programs. Most of the activities identified will occur in that
5 multi-space room. There will be meals served and in between
6 mealtimes, there will be programming and there will be limited
7 outdoor uses that we believe will be consistent with, you know,
8 any other homeowners' outdoor use in this zone.

9 That concludes our presentation. Will you go to the next
10 slide please, just, yes, questions? We are happy to address
11 questions of the Board and hear comments from the community.

12 CHAIR HILL: Okay, thanks, Mr. Young. Okay, Mr. Smith, one
13 second. Just real quick, so the DDOT stuff for the TEM plan,
14 that's not necessary now because you're removing parking. Is that
15 correct, Ms. Moldenhauer?

16 MS. MOLDENHAUER: Yes, that's correct.

17 CHAIR HILL: Okay. And then, did you just say that there's
18 no CCRCs in Ward 7?

19 MS. MOLDENHAUER: My understanding is that there's one that
20 is under construction that have gone through these before, but
21 there are currently no assisted living facilities in Ward 7.

22 MEMBER SMITH: I think there's one that we were
23 considering, maybe before the new year. I think that's the one
24 you're referencing, Ms. Moldenhauer.

25 I have two questions. So the first question, you know,

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1 relates to the criteria of having no impact. So the first one is,
2 given the amount of residents that would be living here, where
3 would trash be located? I didn't see that on your plans. Where
4 would trash be housed on the property? Is there a trash enclosure
5 anywhere?

6 MS. MOLDENHAUER: The trash would be located in an
7 enclosure on the side yard. I don't believe those are showing
8 that. We're happy to ensure that, obviously, the trash is located
9 in an enclosed structure, you know, that would not create any
10 noise. There is an alley here, so it can all be removed and taken
11 by the alley.

12 MEMBER SMITH: Okay. So you said it would be located in
13 an enclosure in that side yard?

14 MS. MOLDENHAUER: Yes, but closer to the rear. Yes.

15 MEMBER SMITH: To the rear. Okay. My next --

16 MS. MOLDENHAUER: Not to the front, yeah.

17 MEMBER SMITH: Okay. My next question is -- now, this is
18 getting into the impact to residential -- and this is, you know,
19 a single-family residential neighborhood. And I believe it's, you
20 know, the -- what you're proposing is largely in scale with what
21 we see out there. But I think what is fairly unique is this large
22 stair deck construction that you're putting into the side yard.

23 You know, my question is two-part. Was there any questions
24 that came up from the ANC about the design of the stairs, this
25 large stair structure that's going to the top floor, and its

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1 impact to the privacy of adjacent properties? Because this, you
2 know -- and was there any consideration of locating it closer to
3 the rear?

4 And I understand you had, you know, other considerations
5 to pursue with the rear, that you had to meet the parking
6 requirement so that the special exception could go away. But you
7 are overparked currently, now, in your other -- in your current
8 design. Was there any consideration of that, you know, the size
9 of that, given the size of this within a residential neighborhood,
10 privacy concerns? Why was this stair not incorporated into the
11 design of the home?

12 MS. MOLDENHAUER: I'll let the architect address maybe some
13 of the aesthetic aspects or the restrictions of putting it into
14 the building. But we did originally have the stair in the rear,
15 but then it was creating rear yard relief that was necessary, due
16 to the code requirements.

17 And so we had actually encouraged the applicant and their
18 architect to remove it from the rear and to place it on the side,
19 because then we could comply with side yard and rear yard
20 requirements, and maybe that's a design relief that should be
21 requested. I don't know. But we were trying to be as, you know,
22 compliant as possible. And so we moved it. But I'll let -- I
23 think it might be helpful to have the architect speak to the
24 aesthetic and some of the design considerations that they had.

25 MEMBER SMITH: So to follow up, if we're going to the

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1 architect, was there any consideration of screening near this
2 large stair structure?

3 MS. SAFINIA: Sorry, can you -- pardon, your second
4 question?

5 MEMBER SMITH: Was there any consideration of screening
6 between the stairs structure and the property next door?

7 MS. SAFINIA: No, but that is definitely something -- no,
8 but that is definitely something we can consider. We can, like,
9 put a screen wall between the property next door and the
10 staircase. But, like, as Meridith mentioned, we had the staircase
11 located in the rear of the property, in the first place, but to
12 comply with rear setback and also parking requirements, we had to,
13 like, relocate it, like, to the side of the property.

14 And I know we're, at the moment, proposing one extra
15 parking space. But even if we didn't want to, we still would not
16 be able to fit the egress staircase in the rear, and provide four
17 parking spaces. It would be down to three parking spaces, which
18 would be not enough to serve the nature of the building.

19 MEMBER SMITH: Okay. All right. I think that's the only
20 questions that I have. You know, if you can come up with some
21 screening, that would be great. But I would like to hear from the
22 ANC, to see if they came up -- when we get there. So that's all
23 the questions I have, Mr. Hill

24 CHAIR HILL: Okay, thank you. I'm going to bring in the
25 ANC commissioner. If you could, Mr. Young? Mr. Young?

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1 MR. YOUNG: Yes, sorry. Can you repeat that?

2 CHAIR HILL: Yeah, yeah, could you bring in the ANC
3 commissioner? I think she's here.

4 MR. YOUNG: Yes.

5 CHAIR HILL: Mr. Young, nice to hear your voice again.

6 MR. YOUNG: You, too.

7 CHAIR HILL: Commissioner Audain, can you hear me? You're
8 on mute, Commissioner, if you can hear me. Okay, while we wait
9 for the commissioner to come on, does anybody have any -- does
10 anyone have any questions for Ms. Moldenhauer? Further questions?

11 No one's raising their hand. Oh, Commissioner Audain? No?
12 Yeah? No? Okay. Well, Commissioner, if you can hear me, if you
13 can speak up when you get an opportunity? Ms. Vitale, can you
14 hear me?

15 MS. VITALE: Yes, I can.

16 CHAIR HILL: Could you please introduce yourself and give
17 your report?

18 MS. VITALE: Certainly. Good morning, Mr. Chair and
19 members of the Board. Elisa Vitale, with the Office of Planning
20 for BZA Case 20609. As stated, the applicant revised the
21 application and modified the relief request. This was after OP
22 had filed its report. It removed the parking special exception
23 relief, so, you know, that portion of the OP report's no longer
24 relevant.

25 OP is recommending approval of the use-related special

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1 exception. And this would be to allow a continuing care
2 retirement community in the R-2 zone. The application meets the
3 criteria in U 203.1(g) for the special exception. As stated, the
4 applicant is proposing an assisted living facility with 24
5 residential units.

6 The applicant had initially proposed, you know, as was
7 briefly discussed, some ancillary services. The criteria just
8 indicated those services may be provided. You know, there's not
9 a requirement in the criteria related to those services. I think
10 the applicant has stated on the record today that the beauty room
11 has been eliminated. I think there was also talk of a garden
12 area. We had requested that the applicant label those on the
13 plans. I don't see that on the revised plans. I just think that
14 if that is in fact still proposed, it would be helpful for that
15 to be clearly delineated, just so the ancillary services are
16 clear.

17 The applicant is now providing all the required parking,
18 plus one additional space beyond the minimum requirement. As
19 stated, OP does not believe that the use should be objectionable.
20 It meets the development standards for the R-2 zone, with respect
21 to height and bulk. It is essentially a residential use. The
22 applicant's providing all the required parking.

23 OP did not recommend any special treatment, but certainly,
24 I think there's been discussion today about screening for the
25 additional egress stairs, so this -- you know, the special

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1 exception criteria contemplates special treatment, so that's
2 something that could certainly be included in the approval. The
3 application also meets the general special exception criteria
4 found in Subtitle X, Chapter 9. This concludes the OP report.
5 I am happy to answer any questions that you might have. Thank
6 you.

7 CHAIR HILL: Okay. This goes back to Ms. Moldenhauer.
8 Right? So the whole thing about the beauty room, pharmacy, and
9 the outdoor garden space -- so the beauty room is gone? And then
10 where's the outdoor garden space and the pharmacy? Or is that
11 gone, too?

12 MS. MOLDENHAUER: So we did end up having to make some
13 design modifications. We also reduced the number of units down
14 to 22 units. So in some of that redesign, trying to provide some
15 of the different areas, we had to remove the beauty room.

16 The pharmacy was always going to be a service provided, not
17 a separate room. It was more going to be a fact that the staff
18 would provide the assistance in helping, you know, go on to the
19 internet, you know, obtain pharmacy medications, and make sure
20 their medications were then delivered, and, you know, brought to
21 their rooms.

22 CHAIR HILL: Okay. The plans that are in your slide deck,
23 those are the current plans?

24 MS. MOLDENHAUER: Correct.

25 CHAIR HILL: And are those also in the --

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1 MS. MOLDENHAUER: Exhibit --

2 CHAIR HILL: -- 20A?

3 MS. MOLDENHAUER: Correct.

4 CHAIR HILL: Okay. And let's see. Is there a garden
5 space?

6 MS. MOLDENHAUER: The garden space was supposed to be on
7 the outside, along the side yard. We did not specifically label
8 that, because those would be in raised planter boxes that would
9 not be a structure over four feet, but they would be located on
10 the side yard.

11 CHAIR HILL: Is that still the plan?

12 MS. MOLDENHAUER: Yes.

13 CHAIR HILL: Ms. -- I'm sorry -- Alcema? Can you hear me?

14 MR. ALCEMA: Yes.

15 CHAIR HILL: Can you confirm that you're still doing the
16 planter boxes?

17 MS. ALCEMA: Yes, sir.

18 CHAIR HILL: Okay. Okay. Does anybody have any questions
19 for the Office of Planning?

20 (No audible response.)

21 CHAIR HILL: Okay. Commissioner Audain, can you hear me?
22 Commissioner? Commissioner Audain? Okay. Mr. Young, is there
23 anyone here wishing to speak?

24 MR. YOUNG: Yes, we do. We have one person signed up.

25 CHAIR HILL: Okay. Could you please bring them in? And

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1 Commissioner Audain, maybe you can call the number. Like, go
2 ahead and call the 202-727-5471, if you can hear me. Or is there
3 a way, Mr. Young, to text Commissioner Audain that? That would
4 be helpful. Is Mr. --

5 MR. YOUNG: I'll have the staff try and reach out to her.

6 CHAIR HILL: Okay, great. Is it Mr. Lusane?

7 MR. LUSANE: Yes.

8 CHAIR HILL: Okay. Can you hear me, sir?

9 MR. LUSANE: Yes, sir.

10 CHAIR HILL: Could you please introduce yourself for the
11 record?

12 MR. LUSANE: My name is David Lusane. I live in 4509 Eads
13 Street, is the property directly next to 4507, the proposed
14 property for the project. And --

15 CHAIR HILL: Okay. Give me one second. So as a member of
16 the public, you'll have three minutes to provide your testimony.
17 Can you see the screen? There's a clock on the screen.

18 MR. LUSANE: Yes. I see a --

19 CHAIR HILL: Okay. Yeah. And you can begin whenever you
20 like.

21 MR. LUSANE: Okay. So I am actually representing 15
22 community members I've spoken to, who are all in opposition of the
23 project itself, and also, the relief that the applicant was
24 requesting. Our concerns are over increased density, on parking
25 limitations that already exist on the street. Across the street,

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1 there's apartments that use the street, and there's only a few
2 houses on the street that actually use or actually have access to
3 a driveway.

4 Also, we have concerns about increased street traffic from
5 visitors and deliveries. We understand that, you know, this is
6 an opportunity for people to age in place, but there are elders
7 who live in the houses, who own their houses, on the street, who
8 actually would like to age in place without being interrupted from
9 things like first responders, an increase in traffic, street
10 parking.

11 Ultimately, I would like to share, and actually see if it
12 can be included in the record, the signatures that are collected
13 and the email that I've prepared that includes those signatures,
14 and a map showing the houses that are in opposition to the
15 project.

16 CHAIR HILL: Okay. Give me a second, Mr. Lusane. Go ahead
17 and finish your testimony, and then we'll come back around to your
18 questions, because I have a question about your 15 community
19 members. So go ahead.

20 MR. LUSANE: Sure. There are also concerns that my wife
21 and I have over light obstruction from, you know, the house being
22 so close to our house, and going up two levels. We have concerns
23 about the number of people that will actually be in the building.

24 This is a single-family community. You know, all the
25 houses are single-family, except for one-unit or possibly two-unit

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1 apartments across the street. But we're talking about, you know,
2 inputting a 24-unit building -- or bedroom -- with 24 residents,
3 that increased the density of our street substantially.

4 We just see that there's a need for single-family houses,
5 and the house that's there now has been vacant for years, as I'm
6 told by community members. So, you know, it doesn't seem that
7 anything else has hardly even tried to find a way to use that
8 house. So I just would like -- since I'm representing these
9 voices from our street, and the blocks adjacent, I would like to
10 have all this included in the record.

11 CHAIR HILL: Okay. Give me a second, Mr. -- which is your
12 address again, Mr. Lusane?

13 MR. LUSANE: D-L-U-S-A-N-E, @gmail.com.

14 CHAIR HILL: No, no, no, no, your physical address.

15 MR. LUSANE: 4509 Eads Street.

16 CHAIR HILL: Okay, you're 4509.

17 MR. LUSANE: Yeah.

18 CHAIR HILL: Okay, so as you're facing the property, you're
19 the property to the left.

20 MR. LUSANE: Correct.

21 CHAIR HILL: Okay. All right. Let's see. Yeah, Mr.
22 Lusane, I would need something in the record that says that you
23 represent these 15 people, number one. Right? And then let me
24 get back to you. We may end up -- given the fact that your
25 testimony's here and everything, we may end up deciding this

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1 later. Also asking for further clarification, because I haven't
2 seemed to be able to get anything from the ANC yet. So I'm
3 waiting to see what happens with them. But before I move on, does
4 the Board have any questions for Mr. Lusane?

5 (No audible response.)

6 CHAIR HILL: Okay. Does the applicant have any questions
7 for Mr. Lusane?

8 MS. ALCEMA: I also want to put in the record --

9 MS. MOLDENHAUER: Amilia, right now, we're just asking
10 questions, so --

11 MS. ALCEMA: Sorry.

12 MS. MOLDENHAUER: No questions.

13 CHAIR HILL: Okay, great. All right. So Mr. Lusane, why
14 don't you go ahead and put your -- you know, something that says
15 that you have the representation of these 15 people, and then
16 also, you said you had a diagram or something with the people that
17 were opposed?

18 MR. LUSANE: Yes. I have actually one PDF file that has
19 all of the signatures.

20 CHAIR HILL: Okay. Did you present at the ANC meeting?

21 MR. LUSANE: I was not aware of the ANC meeting. And I
22 emailed the ANC. Nobody got back to me, regarding this issue.

23 CHAIR HILL: Okay. So you missed the ANC meeting. Okay.
24 Let's see. Okay. So go ahead and put that into the record.
25 Okay? And the Board -- if the Board has any issues with it, you

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1 can raise your hand, because we'll go ahead and probably put this
2 up to take a look at later anyway, in terms of either we get to
3 a decision or continue the case. I'm waiting to see what happens
4 with my Board members. So Mr. Lusane, go ahead and put those into
5 the record. Okay?

6 MR. LUSANE: Okay. I just emailed them. Is that what I
7 should do? Or is there another process?

8 CHAIR HILL: Mr. Moy, can you answer that question?
9 Because I actually, at this point --

10 MR. MOY: Yes, generally -- we have that, so the staff can
11 upload that into the record now --

12 CHAIR HILL: Oh, great.

13 MR. MOY: -- since you just allowed it into the record.

14 CHAIR HILL: Okay, Mr. Lusane. We'll go ahead and do that
15 now. Okay?

16 MR. LUSANE: Yes.

17 CHAIR HILL: Okay, great. All right, thank you, Mr.
18 Lusane, for your testimony. We're going to excuse you now.

19 MR. LUSANE: Thank you.

20 CHAIR HILL: Okay. Do I got Commissioner Audain? I still
21 have no commissioner. Okay. Ms. Moldenhauer, did you present
22 last night? Or did somebody from your firm?

23 MS. MOLDENHAUER: So I presented last night, as well as,
24 I presented at their executive committee meeting.

25 CHAIR HILL: When was the executive committee meeting?

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1 MS. MOLDENHAUER: It was -- hold on. Let me just check my
2 notes. Executive committee meeting was on January 25th.

3 CHAIR HILL: Okay. And so they didn't -- what did the ANC
4 ask for?

5 MS. MOLDENHAUER: The executive committee meeting, the ANC
6 had expressed only concerns about the parking, and so that's when
7 we removed the parking relief, increased the parking requirement,
8 and also addressed kind of how staff would have staggered
9 schedules and encouraged them to take public transit.

10 Last night, at the ANC meeting, no one was present in
11 opposition. We presented, and then Commissioner Audain asked the
12 ANC -- or did not propose a motion, but asked to see what happened
13 at today's meeting.

14 CHAIR HILL: Okay. All right. So Commissioner Audain, can
15 you hear me still? No? Okay. All right. This is what I
16 propose, then. If you, Mr. Moldenhauer, can get something in the
17 record that shows the screening that Mr. Smith was asking for --
18 oh, go ahead, Mr. Smith?

19 MEMBER SMITH: Can I follow up on that? That's just me
20 looking at the floor plans again, and given some of the comments
21 that I heard from the gentleman that was at 4509 Eads Street --
22 and Ms. Moldenhauer or Ms. Alcema, you may be able to help me with
23 this.

24 I'm looking at your floor plans. You already have an
25 interior stair. What is the reasoning why -- to include another

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1 exterior stair of that size and magnitude on the rear of the
2 building?

3 MS. MOLDENHAUER: I don't know the answer, if it's an
4 architectural building code issue, so I'll let our project
5 architect answer.

6 MEMBER SMITH: Okay.

7 MS. MOLDENHAUER: I just don't know.

8 MS. SAFINIA: Yeah, so for assisted living facilities,
9 there needs to be two means of egress. And in, like, residential
10 houses, like regular, like, single-families, the windows, if the
11 windows are egress, they're considered a second means of egress.
12 But for residential -- for, sorry, for assisted living facilities,
13 it needs to be, like, a true -- like, be a standard size of
14 staircase.

15 MEMBER SMITH: Okay.

16 MS. SAFINIA: So two staircases are needed.

17 MEMBER SMITH: Okay.

18 CHAIR HILL: Okay. And yeah, Mr. Smith, I guess that --
19 even though that person who was testifying was testifying for
20 other issues, their property's to the left of that house, you
21 know, meaning it's only --

22 MEMBER SMITH: Right. I recognize that. But, you know,
23 I'm just looking at the special exception criteria, too. 91.2(b),
24 would not tend to affect adversely the use of the neighboring
25 property. So that was my concerns, regarding privacy. This is

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1 a sizeable stair system within a single-family neighborhood. So
2 I can see that, for me, being, you know, a concern. So that's the
3 reason why I wanted to ask the question.

4 CHAIR HILL: Okay. So Ms. Moldenhauer, can you get some
5 screening into the record for us?

6 MS. MOLDENHAUER: Yes, we will work with our project
7 architect to try to provide some options for screening.

8 CHAIR HILL: Okay. All right, so screening, and then I
9 guess, if you can get something from the ANC, ask -- I mean, no
10 one's here, but, I mean, I don't think that -- I don't know how
11 this -- I don't want to -- I hope that this hearing provided
12 further information for the ANC, in terms of the clarification
13 that we're looking at, in terms of the standard with which to
14 grant or deny the special exception.

15 I would also refer to the ANC -- to the Office of
16 Planning's report, as well as the testimony that the Office of
17 Planning just gave. And if you could, Ms. Moldenhauer, get us
18 something from the ANC, that would be helpful. Let's see. So
19 does anyone need anything else from the applicant? Commissioner
20 Miller?

21 ZC MEMBER MILLER: Thank you, Mr. Chairman, and thank you
22 for the applicant for bringing this application forward. I just
23 had a couple clarifying questions. It's 22 units, not 24, I
24 think, is what you said. And are they single-occupancy? Or are
25 they -- are they all single-occupancy units?

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1 MS. MOLDENHAUER: Yes.

2 ZC MEMBER MILLER: Okay. And they're low-income seniors
3 who need assistance with their living. What's the definition of
4 low income in this particular project, if you happen to know that?

5 MS. MOLDENHAUER: I'll let the applicant answer that.

6 MS. ALCEMA: Low income, defined as, you know, people who

7 --

8 ZC MEMBER MILLER: Can you hear me?

9 MS. ALCEMA: Can you hear me?

10 ZC MEMBER MILLER: Yes.

11 MS. ALCEMA: Okay. Low income is defined as, like, you
12 know, the type of residents who would not be able to afford the
13 \$15,000 and the \$20,000 assisted living fees, you know, that is
14 currently, you know, required to live in an assisted living in the
15 District of Columbia. And from what I'm seeing, we are losing a
16 lot of residents of the District. Sometimes they go to Maryland
17 or Virginia, because they cannot afford staying in the District.
18 And these other type of clients, I am trying to assist.

19 ZC MEMBER MILLER: I'm sorry, can you repeat that income
20 level again, then?

21 MS. ALCEMA: Some level of residents who cannot afford,
22 like, the \$8,000 and \$15,000, you know, monthly fees of assisted
23 living. So it would be, like, a lower income.

24 MS. MOLDENHAUER: I think he's asking for kind of a
25 general, like, income range. If you don't know that --

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1 MS. ALCEMA: No, I don't know that off the top of my head.
2 But it would be, like, the type of residents, like, let's say, who
3 would need assistance to be able to live in the District. Not
4 like the residents who cannot afford, like -- I have a resident
5 who has a home, and, you know, they cannot afford a \$15,000 income
6 to go to an assisted living.

7 Most residents in the District cannot afford, you know,
8 such type of, you know, care. And that's why sometimes they end
9 up in long-term care, where they not really should be, or they end
10 up leaving the District and go to Virginia or Maryland.

11 MS. MOLDENHAUER: Okay. Let me see if I can help.

12 ZC MEMBER MILLER: Okay.

13 MS. MOLDENHAUER: Most of your clients are going to be on
14 publicly-assisted programs. Correct?

15 MS. ALCEMA: Yes. Yes. Yes.

16 MS. MOLDENHAUER: So individuals who are of income levels
17 that qualify for publicly-assisted -- does that help, Commissioner
18 Miller?

19 ZC MEMBER MILLER: Yes. Thank you.

20 MS. ALCEMA: Thank you.

21 ZC MEMBER MILLER: My other question was about the staff.
22 I think in your prehearing statement, or maybe you said it today,
23 there are going to be three home care aides and one nurse there
24 at any one time? Or is that the total? Are they on shifts? Are
25 they there through the night?

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1 MS. ALCEMA: Yes, they will -- yes, they will be also
2 standard. Like, I can share the schedule with you, because, in
3 fact, I even worked on the schedule. Like, the first med tech
4 will come on, like, 7:00 a.m. to 6:15, and the second one will
5 come at 7:15 to 6:30 p.m.

6 And so, like, that will not -- we will not have issue with
7 parking, even though we already met the requirement. I want to
8 ensure we don't have issue with parking, and at the same time,
9 ensuring we're providing -- we are assisting our residents.

10 And then the third one will come at 7:30 to 6:45, and the
11 nurse will be there from 8:00 a.m. to 7:30. And the second shift
12 will be on, like, 7:30 to 6:45. So when the first med tech leave,
13 then the second med tech will take over. So I've worked on the
14 schedule very, very well, to ensure we don't have any issue with
15 parking.

16 ZC MEMBER MILLER: Okay. And so there'll be four staff
17 people there at any one time?

18 MS. ALCEMA: Yes, there will be four staff, but they're not
19 going to come at the same time.

20 ZC MEMBER MILLER: Okay. How many will be there at one
21 time? One? Two?

22 MS. ALCEMA: Two. Two to three, because I have one at 7:00
23 to 6:30. The second one will come -- the first one will come at
24 7:00 to 6:30, to 6:15. And then she will leave and the second one
25 will come over at 6:30 to 8:45 a.m.

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1 ZC MEMBER MILLER: Okay. And the -- I think, Ms.
2 Moldenhauer, I think you answered this in response to Chairman
3 Hill's question earlier, I think, or maybe in your statement. But
4 you are complying with all the DDOT conditions that are -- and
5 recommendations that are in their report?

6 MS. MOLDENHAUER: So originally, the DDOT report referenced
7 only requiring parking relief, so I do think that there's one
8 comment that was brought up in the DDOT report that we have not
9 yet addressed, which was bike parking or long-term bike parking.
10 And, you know, the requirement would be where we would end up
11 having to remove the breakroom completely, or remove one of the
12 bedrooms and go down a unit, if we had to provide long-term bike
13 parking onsite.

14 And so that was, you know, a question that we need to kind
15 of work out with DDOT, because the DDOT bike parking only applies
16 to apartment buildings. It doesn't have a different standard for
17 this type of senior, you know, affordable units. And so that's,
18 you know, still outstanding, as to whether or not there would be
19 a different standard for the senior units, or whether we're going
20 to have to remove a unit and provide that onsite.

21 ZC MEMBER MILLER: So one way or the other, you will meet
22 the bicycle -- whatever the bicycle requirement is, either by
23 reducing the units, or by providing the parking. You're not going
24 to be seeking flexibility to have relief from that parking
25 requirement, I guess, is what I'm asking?

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1 MS. MOLDENHAUER: No, we're not seeking relief for that
2 requirement.

3 ZC MEMBER MILLER: Okay. Thank you. Thank you, Mr.
4 Chairman.

5 CHAIR HILL: Okay. So I guess, Ms. Moldenhauer, if you can
6 find some -- if you could provide some clarity on that with DDOT?
7 Meaning that I'd like to approve whatever the plans are that
8 you're actually going to be submitting, meaning that if you're
9 going to lose a room for longer-term bike parking, we'd like to
10 know ahead of time. Okay?

11 MS. MOLDENHAUER: We can do that.

12 CHAIR HILL: Okay. All right. So that's still
13 outstanding. By the way, for my Board members, the testimony is
14 in the record from the party that was in opposition. And Ms.
15 Vitale, are you there?

16 MS. VITALE: Yes, I am.

17 CHAIR HILL: So in terms of density -- and I mean, I guess,
18 you know, they're not asking for parking relief, and they're
19 providing five parking spaces. So does the Office of Planning
20 look at how, you know, density might take into account anything
21 for the neighborhood there?

22 MS. VITALE: I'm not sure I understand your question, when
23 you say what -- the density issue. The continuing --

24 CHAIR HILL: How do 24 units -- sorry. I'm sorry, go on?

25 MS. VITALE: Well, no, I was just going to say, the

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1 criteria for the special exception for the continuing care use,
2 that's what's evaluated in reviewing the proposed use. And the
3 R-2 zone, which is a residential zone that, you know, permits
4 single-household dwellings, that residential zone contemplates
5 continuing care uses by special exception.

6 If you propose assisted living -- I think it's limited to
7 eight for certain uses that fall within that continuing care
8 retirement community use category, if you will. However, if
9 you're doing assisted living, you can go beyond the eight units.

10 And so in this instance, we've heard the applicant's
11 proposing 22 units. And they've responded to the other special
12 exception criteria, and in OP's analysis, we believe that they
13 meet those criteria. So the density or the number of individuals
14 in the building is -- that's folded into the review criteria for
15 the use, because it's not matter-of-right, it's via special
16 exception. Hopefully that answers your question.

17 CHAIR HILL: Yeah, that's fine. So I understand. So you
18 -- I understand.

19 MR. LUSANE: So can I make a comment?

20 CHAIR HILL: Who was that?

21 MR. LUSANE: This is Mr. Lusane.

22 CHAIR HILL: Oh. No, Mr. Lusane, I'm sorry, Mr. Lusane.
23 You weren't supposed to even be there. Like, I was just asking
24 a question of the Office of Planning, and how they were looking
25 at the standard for which it has to review the criteria. Let's

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1 see.

2 So, okay, as I said to my fellow Board members, the
3 information is in the record, there, if you want to take a look.
4 All right. So let's see. So what we're going to get now is
5 something from the ANC. Right? As to their position. We're
6 going to also try to get something from the applicant, in terms
7 of the -- what's it called? Screening. The screening for the
8 stairwell. Then also -- let's see. I guess -- is Mr. Lusane
9 still there now? I'm jumping around.

10 MR. LUSANE: Yes, sir.

11 CHAIR HILL: You're still there. That's so funny, Mr.
12 Lusane. Mr. Lusane, what was your comment?

13 MR. LUSANE: Sorry to interrupt. I just wanted to make a
14 comment. You know, the community members expressed to me that
15 nobody is opposed to having an assisted living facility or senior
16 care facility on our street. But the concern is that it's
17 changing the character of the street. It's not in line with the
18 single-family dwellings that are here.

19 And in terms of density, we just don't understand why
20 someone wants to increase our numbers on the street by that much,
21 when we already have affordable senior housing in Ward 7. There's
22 a project called the Residences at Kenilworth. It's delivering
23 155 affordable senior continuing care units.

24 So, you know, the concerns mainly were, you know, that this
25 property has been vacant, and people wanted to see something

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1 happen with it, but they didn't necessarily think that, you know,
2 20-something people, added to the numbers on our street, when you
3 have to factor in visitors, you know --

4 CHAIR HILL: Got it.

5 MR. LUSANE: -- service providers, and, you know, all types
6 of things.

7 CHAIR HILL: I got you. So Mr. Lusane, we're looking under
8 U 203.1(g). That's what basically is the special exception
9 criteria that we're looking at. So just so you know, you can take
10 a look at that, as well as the ANC. Does anybody have any
11 questions for Mr. Lusane, now that I opened it back up? And if
12 so, raise your hand.

13 All right. I don't see anything. Okay, Mr. Lusane. Thank
14 you. I'm going to excuse you again. All right. Let's see. So
15 Ms. Moldenhauer, again, the screening, something from the ANC, and
16 then if you are going to change the layout, due to DDOT and the
17 long-term bike parking, if you can include that? Am I missing
18 anything from my Board members?

19 (No audible response.)

20 CHAIR HILL: Okay.

21 MS. MOLDENHAUER: I believe Mr. Smith asked -- or Board
22 Member Smith asked for the trash to be labeled, which we'll do,
23 as well as labeling the gardening.

24 CHAIR HILL: Okay. Great. Let's see. Do my fellow Board
25 members have any other things they'd like to see or hear before

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1 we put this on for a decision? And if so, raise your hands.

2 MEMBER SMITH: The screening.

3 CHAIR HILL: Yeah, I'm sorry, Mr. Smith. I did mention the
4 screening.

5 MEMBER SMITH: Okay.

6 CHAIR HILL: But thank you for clarifying. How long will
7 that take you, Ms. Moldenhauer? I guess the ANC is what you don't
8 know.

9 MS. MOLDENHAUER: Yeah, we could get these responses back
10 to you in a week. The question is whether the Board is going to
11 leave the record open for a whole 'nother month for us to try to
12 get back before the ANC.

13 CHAIR HILL: What does my Board -- does my fellow Board
14 members have -- I guess my problem is, what's the time concern
15 with the project, Ms. Moldenhauer, in terms of, like, going back
16 before the ANC again?

17 MS. MOLDENHAUER: It's just timing. And I think it's up
18 to the Board now. And obviously the ANC -- you know, we're happy
19 to delay this. We'd be delaying it another month until, you know
20 --

21 CHAIR HILL: Ms. Alcema, can you hear me? In terms of your
22 --

23 MS. ALCEMA: Yes, Mr. Chairman.

24 CHAIR HILL: In terms of your project and financing, how
25 does that work for you?

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1 MS. ALCEMA: If I could please get the approval, so I can
2 start the project, that would be extremely helpful.

3 CHAIR HILL: Okay, so you don't know. I shouldn't say you
4 don't know. You want it when you want it. Okay. So let's see.
5 Let's go ahead and see what we can get from the ANC, and try to
6 put this on for a decision in two weeks, and see if we can get
7 something from the ANC.

8 And then Ms. Moldenhauer, if we don't actually get anything
9 from the ANC, if you can submit something into the record that
10 explains what the situation is with the ANC? Because Ms. Alcema,
11 we may delay it again, if we, the Board members, want to get a
12 full vote. I mean, we will be having the record remaining open
13 for the ANC's -- anything the ANC wants to put in there.

14 So does the Board have anything that I'm missing, or wants
15 anything that I haven't stated? And if so, raise your hand.
16 Commissioner Miller?

17 ZC MEMBER MILLER: Yeah, I'm sorry, Mr. Chairman. I meant
18 to ask this when I had the mic earlier. Ms. Alcema or Ms.
19 Moldenhauer, do you have -- well, Ms. Alcema, are you operating
20 any other continuing care retirement facilities in the District
21 currently?

22 MS. ALCEMA: No, I operate nursing homes, skilled nursing
23 facilities. And I currently have -- I operate four of them. And
24 all of them are three- to four-staff facilities. I actually
25 operate Deanwood Rehab and Wellness Center. When I came to

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1 Deanwood in 2015, it was about to be closed. Same as was about --
2 it was a provisional license. And under my leadership with the
3 team, we were able to turn it around. So I do have the track
4 record in assisting.

5 ZC MEMBER MILLER: So when you submit something in addition
6 in response to the Board's request, Ms. Moldenhauer, maybe if you
7 could just include a brief line in there about the other
8 facilities -- in this case, I guess, they're nursing home
9 facilities in the District -- that are operated by the applicant,
10 and if there's any statement you want to make about how well-
11 managed they are, or any impact on the neighborhood that they're
12 in.

13 I don't know if they're embedded, if they're located right
14 in the middle of a single-family residential neighborhood, but if
15 there are, and they're well managed, and you want to say that,
16 that might be helpful to your case.

17 MS. MOLDENHAUER: We'll put that in the record. Thank you.

18 MS. ALCEMA: Thank you.

19 ZC MEMBER MILLER: Yes.

20 CHAIR HILL: Mr. Blake, you had your hand up.

21 MEMBER BLAKE: Yes, I did, Chairman Hill. I would love,
22 if possible, some clarification on a couple other matters that do
23 relate to the community area, the intents and use, which would be
24 just some color on the resident transportation strategy.

25 And also, the outdoor recreation space. I'd want to get --

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1 you talked about how it moved around a little bit. I just wanted
2 to make sure I understood exactly what was remaining for
3 recreational space. But I think the resident transportation
4 issue, just to understand how that would work, and also,
5 deliveries and pickups, as well, would be very helpful.

6 I think the trash collection issue was something of
7 concern, because I think there would be cooking on the premises,
8 which could mean there could be a lot of residual. And I was just
9 curious to know -- I just wanted to make sure we understood how
10 those things were going to take place. So maybe just a paragraph
11 to just touch on that would be helpful.

12 MS. MOLDENHAUER: I definitely understand what you're
13 asking for, and we will put together something. I know I've
14 spoken with the client about, you know, ensuring loading off of
15 the alley, not on the street. I heard Mr. Lusane concerned about
16 street access or street traffic, but we'll put that together.
17 We'll talk with the ANC about that. And we'll also make sure to
18 file something with the Board.

19 CHAIR HILL: Okay. I'm going to turn back to my fellow
20 Board members again. Like, I don't really know -- and I don't see
21 Mr. Smith. Oh, he's there. And if somebody wants to raise their
22 hand? Like, what do you all think about trying to do this on a
23 decision in two weeks, or trying to go back until the ANC gives
24 us something? And I'm going to start with anybody who raises
25 their hand first.

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1 Nobody has an opinion yet. Okay. So we'll stick with my
2 plan, and then see what happens? Okay. So my plan is, we're
3 going to come back for a decision here in two weeks, and then
4 we'll see what we want to do. Okay? All right. So Ms.
5 Moldenhauer, you've got --

6 MS. ALCEMA: Thank you so much for your time.

7 CHAIR HILL: Thanks, Ms. Alcema. Ms. Alcema, again, I
8 don't know what's going to happen in two weeks. We may wait for
9 the ANC. I don't know. So we'll see what we get from the ANC.
10 I don't want to wait for the ANC. I want to be able to
11 deliberate. But we'll have to see what we get, if anything.

12 All right. Am I missing anything from my fellow Board
13 members? I asked for people from the public. Ms. Moldenhauer,
14 you know everything that we want. All right. I'm going to go
15 ahead and close the hearing and the record, except for what we
16 asked for, and set this for a decision on February 23rd, unless
17 we decide otherwise. Okay.

18 MS. MOLDENHAUER: Thank you very much.

19 CHAIR HILL: Thank you all very much.

20 MS. ALCEMA: Thank you.

21 CHAIR HILL: Bye-bye. Okay. So now we're basically up to
22 lunch, I guess. Do you all want to -- sure, Mr. Moy?

23 MR. MOY: Before we get to that part, can I take a step
24 back in terms of my timeline? So you just stated the Board is
25 going to set this for decision-making on February the 23rd?

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1 CHAIR HILL: Oh, yes, the extra stuff. Right. Yes.

2 MR. MOY: Okay. February 23rd, which is fine, because you
3 have two appeals on that day, so this would be the only other case
4 for decision-making. That was a special public hearing, sir. I
5 just wanted to remind you of that. You can, certainly, of course,
6 add another --

7 CHAIR HILL: Oh, no, that's fine. That's fine. I forgot.

8 MR. MOY: Just want to -- just wanted to remind you. It's
9 good.

10 CHAIR HILL: I'm out of practice as to what I do. But
11 okay, go on.

12 MR. MOY: You're doing great. So and the other thing I
13 wanted to mention for the transcript is that staff has tried to
14 make contact with the good commissioner. But we called, she
15 didn't pick up the telephone, so we left a voice message for her.
16 This is Commissioner Audain. And we've gotten no response. So
17 I just wanted to state that for the record. All right? We made
18 that attempt.

19 Okay, so getting back to this -- so this is set for
20 decision-making on March -- or rather February 23rd. And so I'm
21 going to tee up that the Board would like the applicant to make
22 her filings by a deadline of, let's say -- if she can do it with
23 a week, that'd be great. That would be February the 16th. If
24 that's too early, then I would suggest Friday, February the 18th.
25 And there's no responses from any parties. Is that correct?

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1 CHAIR HILL: Yeah, I mean, the ANC always has an
2 opportunity to respond. Correct?

3 MR. MOY: That's correct.

4 CHAIR HILL: Yeah, if you can give them until the 18th, I
5 guess, then that'll still give us -- oh, wait, because then OP --
6 not OP -- let's do the 16th. They said they can get us something
7 by the 16th.

8 MR. MOY: Okay. February 16th for everybody. And then
9 we'll leave open for the ANC to respond, prior to the decision on
10 February 23rd. Correct?

11 CHAIR HILL: Yeah, and that'll give our legal department
12 time to put something in a report for us, if we get anything.

13 MR. MOY: Yes. Okay. All right.

14 CHAIR HILL: Okay. All right. So I don't really care.
15 What do you guys want to do? You want to do lunch? You want to
16 take a break and come back and do that last case again, and then
17 go take lunch? Or what do you want to do?

18 VICE CHAIR JOHN: Lunch.

19 CHAIR HILL: Okay. Great. All right. Then let's go ahead
20 and do lunch. You want to say 12:50? Okay. Let's say 12:50.
21 All right. Thank you. Bye-bye.

22 (Whereupon, the above-entitled matter went off the record
23 at 12:18 p.m. and resumed at 1:09 p.m.)

24 CHAIR HILL: Okay, great. Mr. Moy, are you there?

25 MR. MOY: Yes, sir.

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1 CHAIR HILL: Okay. You want to call back 20589 for us?

2 MR. MOY: The Board is back in its public hearing session
3 after a quick lunch recess. And the time is at or about 1:09 p.m.
4 And I believe, Mr. Chairman, you wanted to return to Case
5 Application Number 20589, of John Best?

6 CHAIR HILL: Yes, please.

7 MR. MOY: Okay. For the record, I would like to reread the
8 caption, as advertised, for a use variance from the nonconforming
9 use requirements of Subtitle C, Section 204.1, pursuant to
10 Subtitle X, Section 1002. This would convert a one-story church
11 in an existing multiunit residential building to a principal
12 dwelling unit in the R-1B zone, the property located at 1801 Otis
13 Street, Number 2 Northeast, Square 4202, Lot 204.

14 CHAIR HILL: Okay. Let's just see if Mr. Best is there or
15 not. Maybe Mr. Best took that 1:30 that I mentioned as, like, a
16 real time.

17 MR. MOY: No, he should be in. We called him.

18 CHAIR HILL: Oh, okay. Oh, there we go. Great. Okay.
19 Mr. Best, could you introduce yourself for the record again,
20 please? You're on mute, Mr. Best.

21 MR. BEST: John Best, applicant.

22 CHAIR HILL: Okay, great. Thank you, Mr. Best. Ms. Myers,
23 are you there?

24 MS. MYERS: I am.

25 CHAIR HILL: Okay. Mr. Best, I see the exhibit that you

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1 put into the record that we had asked for, concerning the second
2 floor. Did you know what the square footage of -- the square
3 footage was that Mr. Blake had asked for?

4 MR. BEST: Yes.

5 CHAIR HILL: Hold on, I've lost Mr. Blake. Oh, there we
6 go. Got it. Okay. Go ahead, Mr. Best.

7 MR. BEST: Unit Number 2 is 1,219 square feet.

8 CHAIR HILL: Okay. All right, Ms. Myers, did you talk to
9 Mr. Best about the different options?

10 MS. MYERS: Yes, I did. We talked about 30 minutes
11 earlier.

12 CHAIR HILL: And what did you talk to him about?

13 MS. MYERS: We went over the matter-of-right uses and the
14 special exception uses, as requested. As I mentioned, it's a
15 pretty limited list for both, but especially for matter-of-right
16 uses.

17 The principal dwelling, single, you know, house situation,
18 would require him to remove the building, so that's not an option.
19 The church option, as we know, is not an option. And community
20 solar facility is not an option. That's mostly for, like, an
21 outdoor situation.

22 And for special exception use, we kind of went through all
23 the different options under that, so I'll just kind of list them
24 for you. He and I talked about daycare or eldercare, and he says
25 that liability and maintenance costs would be the primary problem

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1 that he would have with that. And specifically with daycare, it's
2 in close proximity to quite a few schools in the area, so a
3 daycare use in that space would be competing against the different
4 programs that those schools may have, so it's unlikely to really
5 be a space that would really work for a daycare.

6 As emergency shelter, again, liability and maintenance
7 costs are his primary concern with that. And then he knows that,
8 even -- actually, even more primarily than that, he could say --
9 he said that the community would be very against it being used as
10 an emergency shelter space. Community center, again, liability
11 and maintenance costs, as well as, it would be difficult to find
12 a tenant, and then it may not -- unlikely to be profitable enough
13 to support the lease costs.

14 The community-based facilities or a continuing care
15 retirement option -- community care retirement community option,
16 the space is not big enough to really operate either one of those
17 uses. Healthcare facility, it's in close proximity to a few
18 different healthcare options in the area, so it likely would not
19 work, because there are other healthcare facilities in the area.

20 And a performing arts space, he doesn't believe that he
21 could find a tenant. And if there were a tenant that was
22 interested in it, it's very unlikely that they would be willing
23 to wait around to go through the special exception approval
24 process for the space, so he's not very optimistic that that would
25 work either. So those were the ones we went over. And my

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1 understanding from him is that the other options provided in the
2 regulations would not work for the space.

3 CHAIR HILL: Okay. Thanks, Ms. Myers. Let's see. Does
4 anybody have any questions for the applicant or the Office of
5 Planning? And if so, please raise your hand. Okay. All right.
6 Let's see. Mr. Smith, you've got the plans there. Correct?

7 (No audible response.)

8 CHAIR HILL: Okay. I see you nodding your head. Mr. Best,
9 do you have anything you'd like to add at the end here?

10 MR. BEST: No. Thank you.

11 CHAIR HILL: Okay. And again, Mr. Best, this stuff got
12 approved by DCRA, is what you're saying, and then it got kicked
13 back to us after they realized that you needed the relief?

14 MR. BEST: A portion of it. Just the first floor got
15 kicked back.

16 CHAIR HILL: Right. Just the first -- yeah, the portion
17 that you needed relief for.

18 MR. BEST: Yeah. And that is the portion that we
19 originally had the Zoning approval in January, and it rescinded
20 it May 8th, five months later.

21 CHAIR HILL: Got it. Okay. All right. One final thing,
22 Mr. Blake?

23 MEMBER BLAKE: Mr. Best, I sent you an email, to Mr. Best.
24 It's an interesting question -- in that five-month period of time
25 between those two events, did you do any construction or anything

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1 based on what you got from the DCRA?

2 MR. BEST: Since it was vacant, yes, certain things, I'm
3 allowed to do, such as replace windows. Only with a postcard,
4 really, for windows. Other things, we got started in the
5 building, but as soon as they began, like, preliminary stuff,
6 bringing in -- and plus, it was during the pandemic. We weren't
7 doing much, but we were trying to get ahead of the game, because
8 you could imagine, not having an income for the last two or three
9 years, trying to convert this building over, I was trying to
10 expedite it as much as I could.

11 I was very disappointed with that five-months delay at
12 Zoning, but working with Mr. LeGrant, I'm okay. I'm cool with it
13 now, because -- a lot of nuances in this city, in terms of how you
14 build, and keeping it safe. So I'm on board with that. But this
15 one, we just thought -- it's a living. Nothing but residents,
16 around here. And I just thought by removing the commercial units,
17 making it all tenants, would be better for the community.

18 MEMBER BLAKE: Just to clarify, Mr. Best, you're saying
19 that after the DCRA gave you permission to go and do the
20 construction work, that's when you started doing things. So you
21 removed the door, say, for the church and the -- well, closed up
22 the windows at that point?

23 MR. BEST: No, ma'am -- sir. Once my tenants left in 2019,
24 I never had attended the church, the last church that's -- when
25 they left, there was certain things I wanted to do to the windows

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1 anyway, because when storms come, those big windows are a
2 liability. So I always wanted to remove them. I had one to fall,
3 one time. And I said, if I ever get the opportunity, I was going
4 to remove those windows, for safety reasons.

5 MEMBER BLAKE: So that didn't happen after DCRA said you
6 could go and start doing it. That happened before.

7 MR. BEST: Maybe. I don't know. Maybe, because I didn't
8 really go into that unit until we had submitted the drawings and
9 everything for the entire building. And not only this. Pepco had
10 a big heavy-up thing, had to go below grade. A lot of things went
11 on in this building. And when we saw, sir, that it had been
12 approved by Zoning, just Zoning review, we took some preliminary
13 actions, in terms of bringing in sheetrock. And I started doing
14 the windows. I don't know. It could've been after.

15 But at the point when I learned -- now, to be quite frank
16 with you, when I learned that I was notified that it had been --
17 approved in error, is the exact documentation, and therefore it's
18 not approved, so we shut down. Everything got left hanging. And
19 we went to Number 3, and we went to Number 4, the places where we
20 could get it done, because we're going to comply with the
21 regulations.

22 CHAIR HILL: Okay. All right. Thanks, Mr. Best. I see
23 Mr. Blake nodding.

24 MEMBER BLAKE: Yeah.

25 CHAIR HILL: Okay. All right. Unless anybody has anything

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1 else, I already asked whether there was any public testimony.
2 There was not. So I'm going to go ahead and close the hearing and
3 the record, and excuse everyone, please. Thank you, Mr. Best.

4 All right. I guess I can just see if you'd all want some
5 more time, and we can do a decision on this next week, or what you
6 all would like to do. I'm going to go around the table and see
7 what people would like to do. I'm going to start with you, Mr.
8 Blake.

9 MEMBER BLAKE: Thank you, Chairman Hill. I would actually
10 appreciate the opportunity to read through this again, and
11 consider the additional information we heard today, and factor
12 that in. I would like the additional time to look at it. But if
13 others are willing to go today, I would do that, as well. But I
14 would prefer more time.

15 CHAIR HILL: That's fine, Mr. Blake. So, I mean, I don't
16 have any problem if we -- would next week be all right for you,
17 Mr. Blake?

18 MEMBER BLAKE: Yes.

19 CHAIR HILL: Okay. Unless any of my fellow Board members
20 have any issues, we'll put this on for a decision next week. No
21 one's raising their hand. All right, Mr. Moy, we're going to go
22 ahead and close the hearing and the record, and put this on for
23 a decision next week.

24 MR. MOY: Yes. The hearing date for next week's decision
25 would be February the 16th.

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1 CHAIR HILL: Okay. Great. All right. Okay. Mr. Moy, I
2 forget -- so there's a holiday on the 21st. And then we have a
3 special hearing on the 23rd for those appeals. Is that correct?

4 MR. MOY: Yes, sir.

5 CHAIR HILL: Now, just out of curiosity, had we not
6 approved that special hearing, we would've had that day off?

7 MR. MOY: Yes, sir.

8 CHAIR HILL: Okay. Well, I'm sorry, everybody. All right.
9 Okay.

10 MR. MOY: This is a -- this is a hard-working Board, sir.

11 CHAIR HILL: Not for me. I was, like, off for a while, you
12 know. All right. Okay, Mr. Moy, if you want to call our next
13 case?

14 MR. MOY: So this would be -- okay, good. All right.
15 Before the Board for consideration is Case Application Number
16 20614, of Philip and Kjersten Drager, D-R-A-G-E-R. This
17 application was captioned advertised for special exceptions from
18 the rear addition requirements, Subtitle E, Section 205.4,
19 pursuant to Subtitle E, Section 205.5 and 5201, and Subtitle X,
20 Section 901.2, and for the lot occupancy requirements of Subtitle
21 E, Section 304.1, pursuant to Subtitle E, Section 5201 and
22 Subtitle X, Section 901.2.

23 This would construct a rear addition to an existing
24 attached two-story with cellar principal dwelling unit in the RF-1
25 zone. Property's located at 133 Kentucky Avenue Southeast, Square

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1 1014, Lot 25.

2 CHAIR HILL: Okay. All right. Great. Ms. Fowler, can you
3 hear me?

4 MS. FOWLER: Yes, I can.

5 CHAIR HILL: Hi, could you introduce yourself for the
6 record, please?

7 MS. FOWLER: Hi, everybody. Nice to see you. I'm Jennifer
8 Fowler with Fowler Architects. I'm here representing the
9 homeowners on this project.

10 CHAIR HILL: Okay, great. Ms. Fowler, if you could walk
11 us through your clients' project, and why you believe that they're
12 meeting the standard for us to grant the relief requested?

13 MS. FOWLER: Sure.

14 CHAIR HILL: I'm going to put 15 minutes on the clock so
15 I know where we are, and you can begin whenever you like.

16 MS. FOWLER: Okay. Thank you. So this is a two-story plus
17 cellar row dwelling. The Board actually saw a case for this
18 property back in 2016, to construct the rear addition that's
19 currently existing. Basically, it's a second-floor extension for
20 bedroom space, with an open deck porch on the first floor. And
21 at that time, we did get relief for the lot occupancy, which is
22 at 67.7 percent, and we also had 202.2 relief, which was required
23 at that time.

24 So the addition was built in 2017. And the clients have
25 done some other improvements to their home, and just recently have

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1 decided that they are not using the open deck space, and would
2 prefer to enclose the first floor. So we are asking for your
3 permission to enclose the first floor.

4 And again, we're asking for the lot occupancy. And since
5 the time this addition was built, the 205.4 regulation was put in
6 place, the ten-foot rule. So the addition is -- it complies on
7 the side at 131. It's ten feet beyond the rear wall there. But
8 we are going 15'1" beyond the rear wall of 135.

9 However, because of the fact that this was an existing
10 footprint, we're basically just filling in the space beneath an
11 existing structure. We feel there's very minimal impact to the
12 neighbors. The neighbor at 135 sits -- the orientation will mean
13 there won't be -- minimal shadows cast on that side, as well as,
14 there's an existence of a privacy fence that's on the side of the
15 deck, that leaves only about three feet of open space, kind of
16 above there, between the fence and the addition above.

17 And that house at 131 is separated by a nine-foot dogleg,
18 so two 4'6" doglegs. And I believe most of the shadow that's
19 going to be cast is already being cast on that property, because
20 of the second floor. The second-floor addition is 25'10" tall,
21 currently.

22 We do have support from the two adjacent neighbors.
23 They're comfortable with the change, the modification here. HP
24 has reviewed it at staff level, and we have support from the
25 Restoration Society and the ANC 6B. so overall, it's been very

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1 well received. And I will leave it open to questions at that.
2 Thank you.

3 CHAIR HILL: Okay, thanks, Ms. Fowler. Does the Board have
4 any questions for the applicant? Mr. Blake?

5 MEMBER BLAKE: Very small question. Ms. Fowler, I noticed
6 you did quite a few revisions or a couple revisions to the
7 architectural plans. What was going on there just out of
8 curiosity?

9 MS. FOWLER: I think -- Let me look back at the record.
10 I don't even recall what we've changed.

11 MEMBER BLAKE: Okay. It was must have been minor then.
12 Thank you very much. I'm good.

13 MS. FOWLER: Yeah, I think it was just -- just minor
14 changes. I can look pretty quick. We had -- There was a burden
15 of proof revision and -- You got me on this question.

16 MEMBER BLAKE: We can come back to it later.

17 MS. FOWLER: Okay. There wasn't any substantial changes.
18 I think it was more of something -- feedback from the office when
19 we filed.

20 MEMBER BLAKE: Okay. Thank you, Ms. Fowler.

21 MS. FOWLER: Thank you.

22 CHAIR HILL: Can I turn to the Office of Planning please?

23 MS. FOTHERGILL: Good afternoon, Chairman Hill, members of
24 the Board. I'm Anne Fothergill for the Office of Planning for BZA
25 Case 20614. And the Office of Planning has recommended approval.

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1 And found that the application meets the criteria from Subtitle
2 E, Section 5201 and there's no special exception criteria of
3 Subtitle X. And I'll rest on the record in support of the
4 application. And I'm happy to take any questions.

5 CHAIR HILL: Okay, thank you. Does the Board have any
6 questions for the Office of Planning? Mr. Young, is there anyone
7 who can speak?

8 MR. YOUNG: We do not.

9 CHAIR HILL: All right. Mr. Moy?

10 MR. MOY: Yeah. Just a quick reminder, Mr. Chairman. at
11 about 12:30 p.m. one of the opposition individuals followed the
12 supplemental letter around 12:30 today. So clearly that's within
13 the 24-hour block. So if the Board wants to address, we're going
14 to allow that into the record. It's a supplemental filing.

15 CHAIR HILL: All right. Is it for 20614?

16 MR. MOY: It's for this -- for this application. I think
17 the individual had filed an earlier letter, but he must have added
18 -- I haven't even seen it or read it yet myself.

19 MS. FOWLER: I think that might be for my other case. I
20 don't think there's any --

21 MR. MOY: Oh, is it?

22 CHAIR HILL: I think it's the other case.

23 MR. MOY: Okay, fine. All right. All right, I stand
24 corrected.

25 MS. FOWLER: 20615, I believe is the one that has --

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1 Thanks.

2 CHAIR HILL: Okay. Can the staff go ahead and put that
3 in for -- Unless the Board -- No, I'll do one case at a time.
4 Let's see. All right, I'm going to go ahead -- Ms. Fowler, do you
5 have anything to add at the end?

6 MS. FOWLER: No, thank you.

7 CHAIR HILL: Okay. I'm going to close the hearing in the
8 record. If you can excuse everyone, Mr. Young. Okay. I'm
9 getting tired of talking, so I'm going to go around the table.
10 And Mr. Smith, if I can begin with you.

11 MEMBER SMITH: Sure. Based on the testimony that we
12 received and the information within the record, I do believe that
13 the Applicant has met the burden of proof for us to be able to
14 grant the special exceptions for lot occupancy and the rear
15 addition requirements. I do believe that -- looking at the
16 proposed addition, I do believe that the addition is within
17 character with the adjacent -- with the surrounding neighborhood
18 and is in character with the adjacent properties.

19 So I do believe that the Applicant has met all the criteria
20 as listed under X901.2 for us to consider approval of the special
21 exception. I would note that ANC 6B is in support of the
22 application. It has no issues or concerns for the proposed
23 project. So I give great weight to OPs staff report and support
24 the application.

25 CHAIR HILL: Okay, thank you. Commissioner Miller?

1 MEMBER MILLER: Thank you, Mr. Chairman. I concur with
2 Board Member Smith's comments and believe that the Applicant has
3 met their burden of proof in this case. And I'm ready to proceed.

4 CHAIR HILL: Okay, great. Vice Chair John? You're on
5 mute, Vice Chair John.

6 VICE CHAIR JOHN: I almost finished. I'm so sorry. So I
7 said that I'm in support of the application and note that there
8 is no change in the existing and proposed lot occupancy. And with
9 respect to the rear addition, I believe that the privacy fence and
10 the existence of the dog-leg on the other side would mitigate
11 potential impacts to life and air and privacy. And other than
12 that, I agree with everything that's been said.

13 CHAIR HILL: Okay, great. Thank you. Mr. Blake?

14 VICE CHAIR JOHN: For efficiency sake, I won't add anything
15 to that. And I would agree that the Applicant met the burden of
16 proof and should be granted special exception relief.

17 CHAIR HILL: Okay, thank you. I actually don't have
18 anything to add on this. So I'm going to go ahead and agree with
19 all of my fellow board members and make a motion to approve
20 Applicant No. 20614 as captured and read by the Secretary. And
21 ask for a second, Ms. John?

22 VICE CHAIR JOHN: Second.

23 CHAIR HILL: Motion made and seconded, Mr. Moy. Take a
24 roll call.

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

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1 please respond with a yes, no, or abstain to the motion made by
2 Chairman Hill to approve the application for the relief requested.
3 The motion to approve was seconded by Vice Chair John. Joint
4 Commissioner Rob Miller?

5 MEMBER MILLER: Yes.

6 MR. MOY: Mr. Smith?

7 MEMBER SMITH: Yes.

8 MR. MOY: Mr. Blake?

9 MEMBER BLAKE: Yes.

10 MR. MOY: Vice Chair John?

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: Chairman Hill?

13 CHAIR HILL: Yes.

14 MR. MOY: The staff voted. Recorded the vote as 5-0-0.

15 And this is on the motion made by Chairman Hill to approve. The
16 motion to approve was seconded by Vice Chair John. Also in
17 support of the motion to approve, there is Zoning Commissioner Ron
18 Miller, Mr. Smith, Mr. Blake, and of course the Vice Chair and the
19 Chairman. The motion passes -- carries on the vote of 5-0-0.

20 CHAIR HILL: Okay, great. Thank you, Mr. Moy. Mr. Moy,
21 I think you can go ahead and call our next case when you get a
22 chance.

23 MR. MOY: Okay. So this case application was No. 20615
24 with Thomas Picarsic, P-I-C-A-R-S-I-C and Katherine Kuzma, K-U-Z-
25 M-A. Caption advertised for special exceptions for side yard

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1 requirements, Subtitle E Section 20744, pursuant to Subtitle E
2 Section 5201 and Subtitle X Section 901.2. Lot occupancy
3 requirements of Subtitle E Section 304.1, pursuant to Subtitle E
4 Section 5201 and Subtitle X Section 901.2, which would construct
5 a two-story rear addition and a two-story accessory garage to an
6 existing semi-detached two-story principal dwelling unit in the
7 RF-1 Zone. The property is located at 751 10th Street SE (Square
8 950, Lot 84).

9 The preliminary matter here, Mr. Chairman is that -- is
10 that there's a request for party status in opposition. And I
11 believe it's under Exhibit 34. Because of our 24-hour block,
12 there is a Letter of Opposition that had been submitted, as well
13 as the Applicant's PowerPoint slide deck if you will. And the
14 Applicant's motion to waive the filing deadline to allow exhibits
15 into the record that updates -- that updates -- that involves a
16 revised sub-certification and responses to the party status
17 request. That's the majority of the filings.

18 CHAIR HILL: Okay. Give me one second. Okay, let's see.
19 Now I'm a little confused. All right. Ms. Fowler, could you
20 introduce yourself for the record please?

21 MS. FOWLER: Hi, everybody. I'm Jennifer Fowler with
22 Fowler Architects representing the home owners.

23 CHAIR HILL: Okay. Mr. Sullivan, you're here?

24 MR. SULLIVAN: Yes, Mr. Chair. I'm also representing the
25 Applicants.

1 CHAIR HILL: Okay. I didn't see you before. Okay. Could
2 you introduce yourself for the record please?

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

5 CHAIR HILL: Okay. Mr. DuPont, can you hear me?

6 MR. DUPONT: Yes, sir.

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

9 MR. DUPONT: My name is Stephen DuPont, architect.

10 CHAIR HILL: Okay. I'm looking for Mr. and Mrs.
11 McCulloch. Are they there, Mr. Young? Oh, there we go. I've got
12 one. Mrs. McCulloch, can you hear me? Okay.

13 MS. MCCULLOCH: Yes, I can.

14 CHAIR HILL: Could you introduce yourself for the record?

15 MS. MCCULLOCH: Margaret McCulloch, I'm one of the owners
16 of the adjacent property at 747 10th Street SE.

17 CHAIR HILL: Okay. And Mr. McCulloch, is that you also?
18 Could you introduce yourself for the record?

19 MR. MCCULLOCH: Yes. I'm Robert F. McCulloch, Jr. And I'm
20 also co-owner of 747 10th Street SE.

21 CHAIR HILL: Okay. Are you in different places?

22 MR. MCCULLOCH: Yes.

23 CHAIR HILL: Okay. Oh, okay. I thought you guys -- Are
24 you guys both -- Are you guys both requesting party status in
25 opposition?

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1 MR. MCCULLOCH: Yes.

2 CHAIR HILL: Okay. Are you both living at the same
3 property?

4 MR. MCCULLOCH: No.

5 CHAIR HILL: Do you both own that property?

6 MR. MCCULLOCH: Correct.

7 CHAIR HILL: Okay. All right, who will be the primary
8 speaker? If we do grant party status, who will start first?
9 Let's put it that way.

10 MR. MCCULLOCH: I will.

11 CHAIR HILL: Okay, all right. All right, let's see. Mr.
12 Sullivan --

13 MR. BLANCHARD: Mr. Hill? I'm sorry.

14 CHAIR HILL: Yes.

15 MR. BLANCHARD: This is Lyle Blanchard. I'm representing
16 the McCulloch's.

17 CHAIR HILL: Oh, got you. Okay. I'm sorry. Mr.
18 Blanchard, could you introduce yourself for the record please?

19 MR. BLANCHARD: Yes, thank you. I'm Lyle Blanchard with
20 Greenstein DeLorme and Luchs and I'm representing the party in
21 opposition, Robert McCulloch and Margaret McCulloch.

22 CHAIR HILL: Okay. And Mr. DuPont is with you. Is that
23 correct, Mr. Blanchard?

24 MR. BLANCHARD: That's correct. Yeah, the McCulloch's --
25 I think Mr. McCulloch and Mr. DuPont will be our two witnesses.

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1 CHAIR HILL: Got it. Mr. Sullivan, who's here with you
2 today?

3 MR. SULLIVAN: So it's myself, Ms. Fowler, and the home
4 owners -- the Applicants are here, although I think Ms. Kuzma
5 might have had to jump off for her work.

6 CHAIR HILL: No, I see her there.

7 MR. SULLIVAN: Mr. Picarsic is here. Tommy, if you want
8 to introduce yourself.

9 CHAIR HILL: I think they're both here. Okay, let me start
10 with Ms. Kuzma. If you could introduce yourself for the record.

11 MS. KUZMA: Yeah. I'm Kat Kuzma. I'm one of the home
12 owners of 751.

13 CHAIR HILL: Got it. Mr. Picarsic?

14 MR. PICARSIC: Thomas Picarsic, home owner of 751.

15 CHAIR HILL: Okay, great. So let me see, I lost it. The
16 attorney -- Oh, there we go. Mr. Blanchard, so -- Well, actually
17 let me just get it. So your client is applying for party status
18 or requesting party status. And how they're meeting the criteria
19 is that are the adjacent property owners. Is that correct?

20 MR. BLANCHARD: That is correct.

21 CHAIR HILL: Okay. All right. Unless the Board has any
22 issues with this being the adjacent property owner, I would go
23 ahead and approve party status for them and we can go ahead and
24 have this hearing. If my board members have any objection to
25 that, please go ahead and raise your hand. And I'll get to you

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1 in one second, Mr. Moy. My fellow board members are not raising
2 their hand. Oh, I'm sorry. Ms. John, you are raising yours?

3 MR. MOY: Ms. John?

4 VICE CHAIR JOHN: Second for the day. I believe there is
5 a Letter in Opposition to party status in response to the party
6 status request. I don't know if the Applicant is opposed to the
7 party status request.

8 CHAIR HILL: Okay, great. I'll ask Mr. Sullivan in one
9 second. That reminds me of another item, which was that there was
10 a couple of items that had not been entered into the record. Mr.
11 Moy, is that correct?

12 MR. MOY: Yes.

13 CHAIR HILL: If you could go ahead and add those into the
14 record unless the Board has any issues with that. And then let
15 us know when they're in there so we can take a look. Mr.
16 Sullivan, did you have an objection to party status?

17 MR. SULLIVAN: We do not.

18 CHAIR HILL: Okay.

19 MR. SULLIVAN: No, we just filed a short response to the
20 substantive aspect of it. But no, not opposing the status itself.
21 No.

22 CHAIR HILL: Got it. Which exhibit is that one in that
23 you're referring to?

24 MR. SULLIVAN: It's one of the ones that was filed Monday,
25 so I don't know if it's in or not.

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1 VICE CHAIR JOHN: 488 -- Exhibit 488?

2 MR. SULLIVAN: Yeah, it's 48(b) -- 48(b). And 48(a) is a
3 revised self-cert. I hadn't realized that the lot occupancy
4 changed slightly. And we hadn't updated the Form 135, so we did
5 that on Monday as well. And also I filed my Letter of
6 Authorization --

7 (simultaneous speaking)

8 CHAIR HILL: I see those in there. And so Mr. Moy, I'm
9 going to let everything into the record. Mr. Blanchard, have you
10 been before us before? I can't remember. I think so. Yes?

11 MR. BLANCHARD: Occasionally, yes. Not as much as Mr.
12 Sullivan, but yes.

13 CHAIR HILL: Okay. Nobody's been as much as Mr. Sullivan.
14 The only person who's here more than Mr. Sullivan is me. Let's
15 see. So Mr. Blanchard, what we're going to do is Mr. Sullivan's
16 going to have an opportunity to present his client's case. And
17 then you'll also have an opportunity to ask questions of Mr.
18 Sullivan. Then you will have an opportunity to present your case.
19 Mr. Sullivan will have an opportunity to ask questions of you.

20 Then we're going to hear from the Office of Planning.
21 Everybody will have an opportunity to ask questions of the Office
22 of Planning. If there's anybody here wishing to speak from the
23 public, we'll have an opportunity to hear from them. Everyone
24 will get a chance to ask everyone questions. And then at the end,
25 Mr. Sullivan will have an opportunity for any kind of rebuttal.

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1 You'll have an opportunity to ask any -- rebut his rebuttal. And
2 then Mr. Sullivan will get a conclusion. And that's what we're
3 going to do today. So I just wanted to let you know that. Mr.
4 Moy?

5 MR. MOY: Yeah. Just a quick reminder, Mr. Chairman. I
6 would suggest that I administer the oath to the McCulloch's
7 because they did not sign up in advance so they were not
8 administered the oath.

9 CHAIR HILL: Great. Okay. So Mr. McCulloch, I can see
10 you. Mr. McCulloch or Ms. McCulloch -- Mr. McCulloch or Ms.
11 McCulloch, I can see you or I could -- I can see you. If you
12 could just take the oath that's going to be administered by Mr.
13 Moy please.

14 MR. MOY: Do you solemnly swear or affirm that the
15 testimony you're about to present in this proceeding is the truth,
16 the whole truth, and nothing but the truth?

17 MR. MCCULLOCH: I do.

18 MS. MCCULLOCH: I do.

19 MR. MOY: Thank you.

20 CHAIR HILL: Okay. I love the oath. The oath is my
21 favorite. Okay, let's see. All right. Mr. Sullivan, I'm going
22 to go ahead and let you begin by presenting your case as to how
23 you believe your Applicant is meeting the criteria for us to grant
24 the relief requested. I'm going to put 15 minutes on the clock
25 just so I know where we are. Mr. Young, if you can make sure you

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1 start that clock. And Mr. Sullivan, you can begin whenever you
2 like.

3 MR. SULLIVAN: Thank you, Mr. Chair. Marty Sullivan with
4 Sullivan and Barros on behalf of the Applicant. Mr. Young, if we
5 could have the PowerPoint please. I just want to do a very brief
6 introduction before turning it over to Ms. Fowler. Next slide
7 please.

8 So 751 10th Street SE is a two-story single family in the
9 RF-1 Zone. Applicant's proposing an addition to the rear and an
10 accessory building with a garage. Asking for two areas of relief;
11 304.1 for total lot occupancy to go to 68.3 percent lot occupancy.
12 And the other area of relief is special exception relief from the
13 prohibition against eliminating an existing nonconforming side
14 yard. The Applicant will be providing some new open courts around
15 existing courts, which are on the neighboring property. We enjoy
16 the support of ANC 5(b) and the Office of Planning. And
17 additionally, have support letters from at least eight neighboring
18 resident home owners. Next slide please. I'll turn it over to
19 Ms. Fowler.

20 MS. FOWLER: Okay, this is Jennifer Fowler here. I'll work
21 you through some photographs and the plans. You can see the
22 existing front facade on the left here and the very small side
23 yard that's existing. I know the view on the right is the
24 backyard kind of looking from the yard area towards the subject
25 property -- the apartment building to the left. Next slide.

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1 And then some additional photos for context. Looking at
2 the apartment building up on the top left. On the top right, you
3 can see the house adjacent who has supported the project. And the
4 view of the backyard from the yard and from the alley. Next
5 slide.

6 Some additional photos for context. You have the light
7 well -- one of two light wells up on the top left of the slide
8 that we'll have a lot of discussions around. The top right photo
9 is looking from the inside of the property's second floor bedroom
10 window. You can see the one-story structure that we're planning
11 to expand. And then this is another kind of shot of the space
12 between the two houses. It's only about 18 inches wide. Next
13 slide.

14 And then you have some alley views for context for the
15 garage. You can see there are a number of two-story Carriage
16 Houses on this block and tall garages. Some of which are
17 original, some are new and built in the last few years. Next
18 slide.

19 Okay, this will walk you through the plans. Next slide.
20 You can just skip to Slide 10. These are just more repeats of the
21 photos that you've already seen. Actually go back one slide.
22 Sorry. This slide gives you a little bit more context of the
23 window walls. So the top left picture, you can see that narrow
24 side yard. And then that's the first window well, the one that's
25 on the eastern end of the building. And then you can just kind

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1 of view up at that light well. Just another close-up shot of the
2 side yard at the bottom there. And then the bottom right is kind
3 of one of these -- this is the window well basically looking over
4 the fence where you can see kind of where the basement windows
5 are. Next slide.

6 This is a block plan showing the overall alley system.
7 Next slide. Okay, so on the site plan, a couple of things I
8 wanted to point out. If you look on the right side kind of off
9 10th street, this is the narrow side yard that's existing. From
10 the property line to the building is 1 foot 11-1/4 inches.
11 However, the building encroaches approximately 5 inches at various
12 over the property line, which really only leaves a 1 foot 6 inch
13 space between the two buildings. So it's really essentially
14 nonusable, nonfunctional side year. You really can't even fit a
15 trash can through there. You have to walk sideways.

16 So moving back from there, you can see the first kind of
17 the court that we've created where we've kind of attached to the
18 party wall. And the portion I know that actually shows you our
19 original filing. This is what the owner initially wanted to do.
20 So we had the facade of -- the east facade, slightly forward from
21 where it is now. And we also had a flat facade up against the
22 court that was on the west -- the west end of that building. So
23 those two yellow trunks are kind of areas where we have eliminated
24 square footage. And this was in response to feedback we got from
25 the neighbors next door throughout the ANC process. The usual

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1 proposal for ANC was the full build and then we went back and
2 revised and offered this compromise, which we felt kind of
3 addressed the light and air concerns revolving around the courts.

4 So the current occupancy is 42.3 percent. The original
5 filing was 69.9 percent. And with this revised filing, we are at
6 68.3 percent. We're only asking for adding 173 square feet on the
7 first floor and on the second floor, 355 square feet. Next slide.

8 These are just existing floor plans; first floor, second
9 floor. There's no basement on this house, two-story. Next slide.
10 And this is the proposed works, so you see on the first floor on
11 the lower part of the slide, we have an existing kitchen with a
12 dining space. And we've created this well that mirrors the one
13 at the apartment building. Both of those -- both of the wells.
14 And then you can see the garage is basically a standard one-car
15 garage that's 20 feet deep with a stair going up to a second floor
16 kind of family space. Now on the second floor of the house, we
17 have the Owner's bedroom with bathroom. Next slide.

18 And so you see the roof plan here. You can see those wells
19 are carried up through open to the sky on this slide. Next slide.
20 This is the south elevation, so if you're kind of cutting through
21 the house to the south looking at the new extension, you can see
22 a small section of addition that will be visible from the south
23 neighbor. They have a roof deck on the back of their house. And
24 they actually testified at the ANC meeting, they were very
25 supportive of this project. And they were actually happy to have

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1 some privacy -- added privacy to their house for their deck.
2 Because currently the apartment building windows look right onto
3 their property.

4 The yellow portion that you see there is what was the
5 original filing. In addition to creating the courts, we've also
6 reduced the height by 2 feet for the addition. So we were
7 originally at 24 feet and we reduced it to 22 feet in a good faith
8 effort to address concerns. Next slide.

9 So this is the view looking if you're kind of cutting
10 through the apartment building and what you would see from the
11 courts. On the left well, the yellow portion is what we
12 originally had filed. So you see the higher height. And that was
13 the chunk of wall that you would have seen from -- that was
14 projecting down the court. And then looking at the right-hand
15 court, you can see the little bit of yellow where we reduced the
16 height. And then all the way to the right, you can see the two-
17 story garage. Next slide.

18 And then on the left at the slide here, you have -- the far
19 left view is looking from -- if you're standing in the court with
20 10 Street behind you looking towards the back alley. So this is
21 the section of wall that's kind of facing 10th Street. And again,
22 the 2 feet reduction. So it actually brings it down lower than
23 the existing -- the front of the existing house.

24 The second image is the yard view. So we have HardiePlank
25 siding and doubling windows with some sliders on the first floor.

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1 And we have that 2 foot reduction in height. And then you have
2 the alley elevations, which are kind of brick Carriage House
3 traditional looking elevations. Next slide.

4 And then we just have some example images. Kind of the
5 esthetic that we're looking for. Next slide. And this is a map
6 of kind of the neighbor support letters that we have. So we have
7 a lot of support in the alley system for this proposal. You know,
8 they made sure to reach out to neighbors across the alley. The
9 one with the grey star was notified. We weren't able to get a
10 signature, but they were aware of the project. Next slide.

11 Okay. So sun studies, we basically did three different
12 conditions for the sun study. So we start with the existing
13 conditions. And then the second image is the proposed two-story
14 addition with garage. And then we looked at what would be a
15 matter-of-right three-story addition on the main house with a 3-
16 foot side yard. And by 3-foot side yard, that would actually be
17 a 2 foot 7 wide space because the building encroaches into the
18 property. So that's what we compared in the sun study. So next
19 slide.

20 This is just showing you what this matter-of-right addition
21 would look like from a different angle because it hard to see in
22 the 3D that there is a space there. And the zoning regulations
23 allow us to continue a nonconforming side yard as long as we
24 maintain 3 feet. So this is kind of what that would look like
25 from a different perspective. Next slide.

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1 So these are the Winter times. And as usual we work with
2 the solstice. And we've shown some kind of example times during
3 the day. The takeaway from Winter is in the basement of the wells
4 currently with no addition, there's no sunlight -- no direct
5 sunlight going into the basement window wells light windows. With
6 the proposed addition, there will be some blockage to the first
7 floor windows in the mid-day hours, early afternoon. And there
8 will be some partial blockage to the second floor windows in the
9 Winter. But if you compare it to the matter-of-right option, the
10 matter-of-right will block all of the windows, except for the
11 third floor windows. So that's kind of what you'll see here. So
12 this is 9:00 a.m. existing on the top. Proposed is the second
13 picture. And then the third one is the matter-of-right. And then
14 you go -- Next slide.

15 So this is going to 11:00 a.m. You can see that while
16 there is some impact with the proposal, it's definitely greatly
17 mitigated over what the impact would be with a matter-of-right
18 proposal. Next slide. 1:00 p.m., again looking at that
19 comparison. Next slide. And then you have by 3 o'clock, the
20 matter-of-right would be much greater impact here. Next slide.
21 Okay and in the Spring and Fall, again the same thing -- same
22 situation. The basement has no sun -- direct sunlight into those
23 windows any time during the day in the Spring. The proposed
24 addition will impact the first floor windows somewhat in the
25 midday, but will not impact the second floor windows because the

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1 angle of the sun. The matter-of-right in the Spring would block
2 all of the first and second floor windows. So again, just showing
3 that this proposal is actually going to be less impactful than
4 what we could do by right. So this is the 9:00 a.m. slide. Next
5 slide. We've got 11:00 a.m. Next. This is 1:00 p.m. And next
6 slide. 3 o'clock. So at 3 o'clock, it's virtually the same for
7 all of the conditions because the sun is -- basically the court's
8 casting some shadows there. Next slide.

9 In the Summertime, the basement window does get some light
10 in the midday. With the proposal -- the proposed plans, there
11 will be some partial basement blockage, but it will still get some
12 sun in the midday. And then with the matter-of-right would
13 completely block the basement windows full-time. So this is the
14 9:00 a.m. condition. Next slide. This is the 11:00 a.m. Next.
15 1:00 p.m. Next. And 3:00 p.m. So in the Summertime, there's a
16 lot less impact because of the angle of the sun being so high.
17 So a lot of the shadows are already kind of being cast by the
18 corners of the wells. Next slide.

19 So that concludes my part of the presentation. Marty, do
20 you have -- do you want to take over?

21 MR. SULLIVAN: Thank you, Ms. Fowler. I'll just go through
22 the specific requirements for the special exception criteria.
23 This is for both areas of relief, light and air available to
24 neighboring properties shall not be unduly affected as you just
25 saw from Ms. Fowler's presentation. But the matter-of-right

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1 potential situation is actually worse than what the Applicant is
2 proposing here. And I'll note also -- I mean this is all in the
3 context of -- This is a row house district. So there is no side
4 yard requirement. There is a requirement that you can't eliminate
5 an existing side yard. So if it wasn't for that foot and a half
6 space at the front of the building, it would be a court. And a
7 court could be closed in as a matter of right.

8 Likewise, if you were to raise the building, which of
9 course we can't do because of historic preservation. But if that
10 were permitted and Zoning permits it, you could rebuild and
11 completely block those nonconforming courts on the neighboring
12 property, which are actually at risk openings. So this
13 accommodation provided by the Applicant was -- I don't believe was
14 necessary technically, but it was a gratuitous accommodation on
15 their behalf to satisfy the -- try to satisfy the neighbor and to
16 satisfy the ANC, which of course they did.

17 The addition also meets all of the development standards;
18 the height is very limited. It's only two stories. The
19 neighbor's building is four stories. And this building is two
20 stories without even a basement as you heard Ms. Fowler testify.
21 Granting relief will not tend to affect adversely the use of
22 neighboring property. There is no right of egress from these
23 windows. It's already very limited as you can see. And as noted,
24 there's not going to be a difference between the matter-of-right
25 and proposed -- not a negative difference on the light and air to

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1 these windows. So if these -- if there are rooms behind these
2 windows, which are legally permitted, then this won't affect that
3 at all. Next slide please.

4 Sorry, I think that's it. That's for the -- (audio
5 interference) privacy, but there's no impact on privacy. It's
6 actually improved. There are no windows on the north side of the
7 accessory building. They're just facing east into the yard. Any
8 impact claim from the neighbors on privacy is largely a function
9 of their decks. They have three levels of decks. And their
10 building is at approximately 75 percent lot occupancy with those
11 decks and that's without an accessory building. So that's why
12 their decks are so close to this proposed accessory building.

13 So that's all I have, Ms. Fowler unless you have something
14 to add. We are available for questions and Mr. Picarsic is
15 available for questions as well. Thank you.

16 CHAIR HILL: Okay. Does the Board have any questions for
17 the Applicant at this time and/or -- I mean I'm going to have some
18 questions a little later. I wanted to hear from everybody else.
19 But does the Board have any questions right now? And if so, raise
20 your hand. Okay. Let's see. Mr. Blanchard, can you hear me?

21 MR. BLANCHARD: Yes.

22 CHAIR HILL: Do you have any questions for Mr. Sullivan?

23 MR. BLANCHARD: I don't believe for Mr. Sullivan, but I do
24 have for Ms. Fowler.

25 CHAIR HILL: Okay. Go ahead.

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1 MR. BLANCHARD: Okay. Ms. Fowler, you just testified that
2 the front existing side yard, which is not being closed in by the
3 Applicant's proposal is nonfunctional. But doesn't it provide air
4 circulation? Yes or no?

5 MS. FOWLER: There are no windows on either wall that are
6 abutting that side yard. So I don't believe that it's adding to
7 any like air circulation. There's no windows on that --

8 MR. BLANCHARD: I'm not asking you about -- Excuse me.
9 I'm not asking you about windows. I'm asking you about air
10 circulation that would come as air -- as a breeze that goes from
11 the front of the building to the rear of the building.

12 MS. FOWLER: I don't know.

13 MR. BLANCHARD: Or in the other -- Or in the other
14 direction. Okay, you don't know. And then you -- Is it correct
15 you testified that there would be no direct sunlight to the
16 basement windows in your sun studies with the proposals -- First
17 of all, let me say there is no matter-of-right proposal as far as
18 the third story addition. Is that correct?

19 MS. FOWLER: I'm sorry. Can you repeat your question? MR.
20 BLANCHARD: Yes. My question is there is no third story being
21 proposed.

22 MS. FOWLER: No, there is not a third story being proposed.
23 We are just showing the difference between matter-of-right and
24 what we're proposing.

25 MR. BLANCHARD: Okay. And that with the proposed revised

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1 drawings that your sun studies show, there is no direct sunlight
2 to those basement windows, which are below grade in the party in
3 opposition's courtyards.

4 MS. FOWLER: Right. To the best of my knowledge, there's
5 no -- currently no sun reaching those basement windows in the
6 Wintertime. In the Spring, I couldn't -- I don't have the exact
7 measurements of the windows. I was not granted access. But in
8 the Summertime, there is light going to the basement windows. So
9 it's not a blanket statement. In the Summertime, there is --

10 (simultaneous speaking)

11 MR. BLANCHARD: -- The Summertime is when you get the most
12 light --

13 MS. FOWLER: Yes.

14 MR. BLANCHARD: -- because of the angle of the sun in the
15 sky. As far as Winter and Spring and Fall.

16 MS. FOWLER: Right.

17 MR. BLANCHARD: All right. That's the end of my questions.
18 Thank you, Mr. Hill. Thank you, Ms. Fowler.

19 CHAIR HILL: Thanks Mr. Blanchard. All right. Mr.
20 Blanchard, they went about 18 minutes, so you'll also have the
21 same amount of time for your presentation. And you can begin
22 whenever you're ready.

23 MR. BLANCHARD: Okay, thank you. So again, my clients own
24 a nine-unit apartment building. It's located at 747 to 749 10th
25 Street, which is located immediately adjacent to the Applicant's

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1 property at 751 10th. And based on that property's location, the
2 749 building (audio interference), they are uniquely impacted by
3 the Applicant's proposed addition and accessory building. Thank
4 you for granting party status.

5 To summarize our client's position, the Applicant has still
6 failed to meet its burden even with these revised plans. Unlike
7 the Court of Appeals case cited in the Applicant's filing
8 yesterday, the party in opposition is not arguing that there's an
9 easement by prescription for light and air. Rather, the Applicant
10 is asking for something they're not entitled to. The issue comes
11 back to creating an objectionable condition by eliminating the
12 side yard.

13 Paraphrasing the Office of Planning's hearing report for
14 Zoning Commission Case No. 19-23 on the regulation of the yards,
15 side yards are needed for light and air in buildings in the
16 District of Columbia. And that dates all the way back to 1897's
17 Congressional Zoning Act, which was carried forward into the first
18 zoning regs in 1920. And further to 1958 and the most recent 2016
19 zoning regulations. They required at least a 5 foot wide side
20 yard and not less than 2 inches per foot of building height, not
21 less than 2 inches per foot of building length.

22 On February 22nd of 2019 as the Board knows, the Zoning
23 Commission adopted maintaining a 5 foot side yard if you provide
24 one for new construction. And in the case of an existing building
25 with a nonconforming side yard as we have here, the side yard

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1 shall not be reduced or eliminated. That's what the zoning regs
2 provided in Section E-207. Provided further that the width of the
3 side yard adjacent to an extension or addition shall be a minimum
4 of 3 feet. We agree that there's no guarantee of light and air,
5 but the 2016 zoning regulations as amended in early 2019,
6 established this 3 foot minimum requirement.

7 Matter-of-right, the Applicant can build whatever it wants
8 to on his yard as long as they provide the side yard of 3 feet.
9 However if the Applicant wants zoning relief, they must show
10 pursuant to Section X901.2 that the elimination of the side yard
11 will not tend to adversely affect the neighboring property. And
12 further, the Applicant has the full burden of proving no undue
13 adverse impact pursuant to Section 901.3. As you're about to hear
14 from Mr. McCulloch and Mr. DuPont, this burden has not been yet
15 met. So I'm going to turn to Mr. McCulloch and recognize him for
16 his statement.

17 MR. MCCULLOCH: Thank you. Forgive me in advance for poor
18 public speaking, but I do have a statement that I'd like to read.
19 Our family is renting below-market rent-controlled apartments at
20 747-749 10th Street SE for the last 50 years ever since our father
21 purchased the building in 1971. The proposed project will forever
22 compromise the quality of housing available at our historic 1912
23 apartment building. The special exceptions that the Applicants
24 are asking for are not theirs by right and they should not be
25 granted.

1 BZA exception criteria are clear. The impacts on us and
2 our tenants as the adjacent neighbors actually do matter. To
3 allow the elimination of the existing side yard and to enclose our
4 courtyards with 22 foot high walls would drastically impact light
5 and air to 18 windows in a 120 year old building that not does not
6 have central air conditioning. Four out of the nine units in the
7 building will be dramatically affected. They will permanently
8 lose a significant portion of their light and air. The below
9 ground windows of the two basement units will be most
10 significantly impacted as they will go from having significant
11 ambient and some direct sunlight to looking straight up into a 28
12 foot tunnel.

13 The effect of this project on our tenants and their day to
14 day life will be dramatic. Our 70 foot long building is split
15 down the middle by a long stairwell, which runs east to west.
16 This creates long, thin railroad style apartments running from the
17 front of the building to the rear of the building with smaller
18 apartments existing in the basement. The 70 foot long southern
19 wall of our building currently contains two open courtyards, which
20 face the neighbor's side yard. With the existing side yard, these
21 courtyards provide ample air flow and sunlight to the middle rooms
22 of four of the five apartments on the southern side of our
23 building. There are a total of 13 middle rooms in these four
24 apartments, which light and air will be dramatically impacted.
25 This includes five bedrooms, two dens, four bathrooms, and two

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1 large walk-in closets, all of which rely on the open side courts
2 for their light and air.

3 The existing side yard between our building and the
4 neighbor's house is 6 foot 5 inches wide in the area adjacent to
5 our courtyards with a 1 foot 6 inch gap running between the front
6 porch into the two buildings. This side yard was created for a
7 reason when the neighbor's house was built in 1937 to provide
8 light and air. This existing side yard allows for direct air flow
9 between the buildings from 10th Street, all the way to the rear
10 yards. Side yards exist for a reason and they are in the zoning
11 regulations for a reason.

12 In addition to our concerns about the side yard, the
13 neighbor's proposing a massive two-story accessory building that
14 would cast huge shadows on our rear yard and rear porches. The
15 proposed accessory building will span the entire length of our
16 rear yard right up to our rear porches and raises very real
17 privacy concerns with its second story windows just feet from
18 where our tenants sit on their rear porches. The criteria for the
19 special exceptions are the impact on our air, light, use, and
20 enjoyment. This is not about whether the neighbor deserves it or
21 anything to do with the footprint that they're working with or
22 similar projects that have gone through elsewhere. The following
23 impacts add up and together they unduly and substantively impact
24 our tenants use and enjoyment of their apartments personally.

25 1. The proposed addition of the accessory building

1 substantially visually intrude upon the unique charm, character,
2 look, and feel of the light and airy interior and the rear
3 portions and yard of our historic apartment building from 1912.
4 2. There's a loss of spaciousness and openness. This is about
5 esthetics. The look and feel, the spaciousness that our tenants
6 enjoy. Our tenants largely work from home, especially recently.
7 They spend much of their time at home in their apartments and
8 weather permitting, on their rear sun porches and in their sunny
9 communal backyard. They will not just lose the views that they
10 love, they will gain huge 22 foot brick walls encroaching right
11 on top of them, both within their apartments and in the rear
12 portion yard.

13 3. The light will be unduly affected. As mentioned
14 previously, the proposed extension and accessory building will
15 indeed impact direct and ambient sunlight on an extensive part of
16 our backyard and porches, as well as the 18 windows on the south
17 facade. Because there's a southern exposure for the courtyards,
18 this project will significantly block sunlight from noon through
19 sunset every day, all year round. The most extreme impact would
20 be in the Winter. As it stands, multiple apartments will go from
21 being full of light and air to being cave-like.

22 4. Loss of fresh air. The air flow will be unduly
23 affected, especially to the basement units. The bedrooms,
24 bathrooms, and kitchens of the two basement units will go from
25 currently having fresh air from directly above, to instead looking

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1 up into a stagnate 28 foot tunnel with no fresh air flow. Similar
2 effects will be had on the air in multiple rooms in the first and
3 second floor units, which rely on the open courtyards for cross
4 breezes. The cumulative impact of all of these negative effects
5 on our apartments add up to a substantial and undue impact.

6 Any vibrant project would need to maintain 3 feet between
7 the buildings. If our neighbor were to maintain the required side
8 yard of 3 feet, the effect of our units would be far less, even
9 if they build a third story. We contend that the Applicant should
10 reconfigure their design, extending into their ample rear yard and
11 pulling back to preserve the side yard. Thank you.

12 CHAIR HILL: Mr. McCulloch, I want to ask you a couple of
13 questions.

14 MR. MCCULLOCH: Sure.

15 CHAIR HILL: Briefly, are the units in your building below
16 market rate? Can you tell us about what the rentals are?

17 MR. MCCULLOCH: They are below market rate and it also
18 happens to be a rent-controlled building. For apartments right
19 near a metro in Barracks Row, these are very low rents and you
20 could spend minutes on Zillow and see that, that's the case. The
21 three small one-bedroom basement units rent for an average of
22 \$1,228 each. The two units on the first floor are one-bedroom and
23 they rent for \$1,795. And the four units on the second and third
24 floors are two-bedrooms and they rent for \$2,050.

25 CHAIR HILL: And are you concerned that if the project is

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1 built as proposed, you may lose some of your tenants?

2 MR. MCCULLOCH: Absolutely. We have already heard
3 rumblings, particularly from the basements tenants that if their
4 apartments become caves that they're not going to want to live
5 there anymore.

6 CHAIR HILL: Okay. And Mr. Sullivan keeps mentioning at-
7 risk windows. Are you concerned about at-risk windows and can you
8 tell us --

9 MR. MCCULLOCH: Well, I mean it's a building code issue
10 that's not applicable to this BZA case. And we've consulted with
11 a code expert and we will take remedial measures as appropriate,
12 depending on the outcome of this case.

13 CHAIR HILL: Okay. And is it possible to reconfigure the
14 units if the project is built as proposed?

15 MR. MCCULLOCH: No. I mean we'd have to tear down the
16 building essentially, which is not feasible.

17 MR. BLANCHARD: All right. Thank you, Mr. McCulloch. I'd
18 now like to call on Mr. DuPont to testify. No. Before I go
19 there, could Mr. Young pull up Exhibit 22 on the record? There
20 are some photographs of windows in the units. Mr. Young, are you
21 able to do that?

22 MR. YOUNG: Yes, just give me one second.

23 MR. BLANCHARD: So I'm sorry, it's Exhibit 34, not 22. So
24 Exhibit 34 for the board members is the request for party status.
25 Attached to that exhibit is Exhibit A of Exhibit 34. Exhibit A

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1 consists of several photos taken within the apartment building
2 units. And those photos are of windows facing the Applicant's
3 property. And I'd just like to mention while we're waiting for
4 that, I skipped it in my opening remarks. But there are eight
5 letters in opposition from tenants within the building, as well
6 as a letter in partial opposition from the Capital Hill
7 Restoration Society. Thank you.

8 So Mr. McCulloch, can you tell us what these photos show
9 briefly?

10 MR. MCCULLOCH: So this is the second floor apartment,
11 which is Apartment 3, which faces the Picarsic's property. So the
12 second floor, you can see that there is a lot of direct sunlight
13 coming through from the south. So this would be an afternoon
14 photograph. And this was taken actually at 4:30 on January the
15 10th. And that would be the picture from the -- Excuse me one
16 second while I look at my floor plan here. That is from the
17 western most air shaft -- courtyard.

18 (simultaneous speaking)

19 MR. MCCULLOCH: That's the western courtyard there.

20 MR. BLANCHARD: Mr. Young, can you flip to the last three
21 of those photos -- the basement -- they're labeled "Basement
22 Apartment A Bathroom". Yes. And Mr. McCulloch, that is looking
23 into --

24 MR. MCCULLOCH: That is showing light within the eastern
25 air well -- courtyard, excuse me. The eastern courtyard. So

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1 that's a window that directly faces the Picarsic's rear yard.

2 MR. BLANCHARD: And then the next two photos, Mr. Young
3 quickly. Yeah, you can stop there. Thank you.

4 MR. MCCULLOCH: That is the rear basement apartment.
5 There's a front and rear basement apartment, which face the south.
6 And this is the one-bedroom window in this apartment. And you can
7 see that there is -- well, a view of the sky that the cat sits and
8 stares at all day. So that will all be -- That will be a 28 foot
9 tunnel.

10 MR. BLANCHARD: And then Mr. Young, if you could show
11 Exhibit 40(c). Exhibit 40(c) is not this photo, but it shows the
12 side -- the existing side yards. We can get to that photo.
13 Almost there. There we go. Mr. McCulloch, what does this show?

14 MR. MCCULLOCH: This shows the existing side yard viewing
15 from our rear porch towards 10th Street. And this is Picarsic's
16 home currently.

17 MR. BLANCHARD: Okay. And you would -- This is the
18 existing side yard that's 5-1/2 --

19 MR. MCCULLOCH: Yes. And again, there is a foot and a half
20 between the buildings in the front. So you can see that there's
21 ample space for air to flow from 10th Street towards the rear
22 yard. So that is absolutely not useless space. That is space
23 that air passes through and provides air to the -- to the side
24 yard and our courtyards.

25 MR. BLANCHARD: Okay. Thank you, Mr. McCulloch. Mr.

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1 DuPont.

2 MR. DUPONT: Yes, sir.

3 MR. BLANCHARD: Mr. DuPont, you've testified before the BZA
4 before, have you not?

5 MR. DUPONT: I have, yes.

6 MR. BLANCHARD: On more than one occasion?

7 MR. DUPONT: Yes, sir.

8 MR. BLANCHARD: So Mr. Hill, I'd like to qualify Mr. DuPont
9 based on his CV that's in the record as --

10 CHAIR HILL: Actually Mr. Blanchard, that's all right. I
11 think Mr. DuPont's already in our book as an expert witness if
12 that's your point.

13 MR. BLANCHARD: Okay, great. Thank you. So Mr. DuPont,
14 please tell us about your sun studies. I believe those are
15 Exhibit 40(a).

16 MR. DUPONT: Yes. We did --

17 MR. BLANCHARD: Mr. Young can put those up.

18 MR. DUPONT: We did a number of sun studies. And I think
19 that while ours are animated for the day, they replicate very
20 closely the sun studies that were provided by Ms. Fowler. So I
21 don't need to go through all of them in particular. In fact, I'm
22 looking at Exhibit 28, which is the Applicant's sun study, the
23 first page. And I think that, that angle and view, which is also
24 shown in our sun study I call southwest low. Any of the three
25 from that point of view give you a sense of what's going on at the

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1 back of the proposed addition where it meets the existing
2 apartment house. And then if you look at Exhibit 28, the next
3 page, you can see down the slot between the two buildings.
4 Essentially sun studies --

5 MR. BLANCHARD: I'm sorry. Mr. DuPont, just to help Mr.
6 Young find the right one, are you referring to your slides?

7 MR. DUPONT: When I say Exhibit 28, I'm referring to Ms.
8 Fowler's slide.

9 MR. BLANCHARD: Oh, Ms. Fowler's slides, okay.

10 MR. DUPONT: When I'm referring to mine, I don't know what
11 exhibit number they are.

12 MR. BLANCHARD: I can help you with that.

13 MR. DUPONT: Okay. But it's the same angle as the first
14 slide of Exhibit 28. Sun studies to me are a bit peculiar because
15 if you're looking from the point of view of the sun, you don't see
16 a shadow, but what you do see is the blockage. And if you go back
17 to the photograph of the cat looking upward, what you see is from
18 inside. You don't see the sun shining at you. What you see is
19 the blockage of the sky. And in these basement apartments where
20 there's direct sunlight on a very limited basis, the blockage of
21 the sky is pretty essential. And then I think from the other
22 point of view of the ventilation, to block off the side yard
23 completely at one end of the other will reduce ventilation. And
24 24 feet above grade, plus another 5 or 6 feet below grade and
25 you're down 30 feet in a shaft, that's not very pleasant.

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1 In thinking about the relative value of the two buildings
2 and what they deserve and I think they have an obsolete, not
3 quite, but actually in pretty good condition, 1912 apartment house
4 that houses eight or nine apartments. And we have a smaller
5 residential unit, which is completely justified. But I don't
6 think that the apartment house is going anywhere any time soon.
7 And to compromise all of this, seems a little bit harsh. I think
8 that if it were possible to maintain the 3 foot side yard at the
9 addition and extend the addition a few feet further back into
10 their yard, it would be a benefit -- benefit to the apartment
11 house. I don't think it would harm the neighbor to the south at
12 all. And actually the addition could then have some windows on
13 their north side for ventilation and reflective light as well.
14 I do recognize it would require reconfiguring the interior, but
15 that's what we do all day.

16 MR. BLANCHARD: Thank you, Mr. DuPont. Can you expand a
17 little bit on the benefits of light and air circulation from your
18 perspective?

19 MR. DUPONT: Access into these shafts is problematic to
20 begin with. The less light and air, the more mold and dampness
21 you're going to have down there. Air conditioners drip
22 constantly. The rain won't evaporate. Leaves will gather. It's
23 a difficult condition. And admittedly it's a difficult condition
24 from both parties point of view. But given as I said, I don't
25 think the apartment house is going anywhere any time soon, if

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1 there was any chance of giving back a little bit for the 70
2 percent lot occupancy, I think it would be great.

3 MR. BLANCHARD: Thank you, Mr. DuPont. Mr. Hill, I believe
4 that concludes our opposition and chief.

5 CHAIR HILL: Okay. Thanks, Mr. Blanchard. All right, does
6 the Board have any questions for Mr. Blanchard? And if so, raise
7 your hands. All right. Mr. Sullivan, do you have any questions
8 for Mr. Blanchard?

9 MR. SULLIVAN: Not for Mr. Blanchard. I think I have one
10 question for Mr. DuPont.

11 CHAIR HILL: Okay, great. Go ahead.

12 MR. SULLIVAN: Mr. DuPont, you stated that the matter-of-
13 right situation would be better than what is being proposed here.
14 And Mr. McCulloch stated that even at three stories, the matter-
15 of-right situation would be better than what's being proposed.
16 You also stated I think that you deferred to Ms. Fowler's shadow
17 studies as being pretty similar to yours. So first of all, are
18 you aware that the actual distance is not 3 feet for matter-of-
19 right, but it would be 2 feet 7 inches because of the
20 encroachment?

21 MR. DUPONT: Yes, sir.

22 MR. SULLIVAN: So what you're saying is the distance of 2
23 feet 7 inches at three stories matter-of-right being 35 feet in
24 height would be a better situation than a 22 foot high building
25 with the courts being provided?

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1 MR. DUPONT: Actually, I think somebody else said that.
2 But in fact, I would agree. I think, yes.

3 MR. SULLIVAN: Okay, thank you. Question for Mr. McConnell
4 please. Mr. McConnell, you stated that the 751, the Applicant's
5 building was built specifically to accommodate your building. Do
6 you have any evidence of that?

7 MR. MCCULLOCH: I assume you're speaking to me?

8 MR. SULLIVAN: Yes, Mr. McConnell.

9 MR. MCCULLOCH: I'm Mr. McCulloch, but okay.

10 MR. SULLIVAN: Mr. McCulloch, I'm sorry.

11 MR. MCCULLOCH: So I'm sorry, could you repeat the
12 question?

13 MR. SULLIVAN: You stated that -- First, you stated that
14 the Applicant's building was built after your building. And then
15 you stated that it was built specifically to accommodate your
16 building. Do you have any evidence of that?

17 MR. MCCULLOCH: Well first off, I did not say it was
18 specifically built to accommodate our building. I said it was
19 created as it was to provide air and light. The air is certainly
20 for both buildings. And I could stand corrected, but I think any
21 architect who looks at this, it's obvious that there's a cut-out
22 -- a dogleg cut-out opposite our courtyards. And there is also
23 a side yard existing to allow air flow from the front to the rear
24 of the building. And as far as I know, that's the point of the
25 side yard.

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1 MR. SULLIVAN: So you're not -- you're not aware of any
2 legal easement -- air rights easement --

3 (simultaneous speaking)

4 MR. SULLIVAN: Correct?

5 MR. MCCULLOCH: No, I'm not.

6 MR. SULLIVAN: You stated that you're very concerned about
7 your tenants situation changing. They moved in and their situation
8 is going to change. Did you inform your tenants that they were
9 moving into units that had windows that were at-risk?

10 MR. MCCULLOCH: Again, that is --

11 MR. BLANCHARD: Objection. You know, Mr. Sullivan, that's
12 -- the windows are not at-risk with the current proposal.

13 MR. SULLIVAN: I'm just asking a question about something
14 he stated. He stated that his tenants were concerned about the
15 change in the situation. And I just wondered if he informed them
16 that, that situation was subject to change because he was on the
17 property line there?

18 MR. BLANCHARD: That's a building code issue. That's not
19 applicable to this BZA case. We're concerned with light and air.

20 MR. SULLIVAN: Are you a building code expert, Mr.
21 McCulloch?

22 MR. MCCULLOCH: I'm not a building code expert.

23 MR. SULLIVAN: Okay, thank you. I have no further
24 questions.

25 MR. BLANCHARD: Cross, Mr. Hill?

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1 CHAIR HILL: What do you mean? He asked -- I love this
2 part.

3 MR. BLANCHARD: Sorry. So I would -- Mr. Hill, I would
4 like to -- I would like to ask a follow up question to Mr.
5 McCulloch based on what Mr. Sullivan just asked.

6 CHAIR HILL: Yeah, I'm just curious. Ms. Bajaj?

7 MS. BAJAJ: Yes, I'm here.

8 CHAIR HILL: I always forget how this works. So Mr.
9 Sullivan asked questions for Mr. McCulloch and now -- and maybe
10 Ms. Nagelhout if she is here would know. And Mr. Blanchard, I'm
11 going to let you ask your question because we're not like that,
12 you know, formal. But since I haven't been back in a while, I'm
13 trying to get reacclimated. Mr. Sullivan asked a question of the
14 presentation and now Mr. Blanchard wants to ask a question of that
15 answer. Ms. Nagelhout, do you know if that's the right way to go?

16 MS. BAJAJ: So the opposition can ask a followup.

17 CHAIR HILL: All right. Mr. Blanchard, go ahead.

18 MR. BLANCHARD: Okay, thank you. Mr. McCulloch, Mr.
19 Sullivan asked you if you were aware or if you told your -- if
20 you're aware of at-risk windows. Have you consulted with a
21 building code consultant about those windows?

22 MR. MCCULLOCH: Yes, I did mention this earlier. But we
23 did consult with a code expert and we'll take remedial measures
24 as appropriate, depending on the outcome of this case.

25 MR. BLANCHARD: Thank you.

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1 CHAIR HILL: Okay.

2 MR. BLANCHARD: That's it. Thank you, Mr. Hill.

3 CHAIR HILL: And Ms. Bajaj, we can talk later about it
4 because I'm still trying to remember the orders of these things.
5 And so I don't know if that's completely the way that I recall it
6 going down. But Mr. Sullivan -- All right, Mr. Sullivan.

7 MR. SULLIVAN: Thank you, Mr. Chair. If I may, Ms. Fowler
8 has been handling this case from the beginning and if she could
9 ask a question of Mr. DuPont as a witness on cross.

10 CHAIR HILL: Ms. Fowler, do you want to go ahead and ask
11 a question?

12 MS. FOWLER: Yeah, I just had a followup about the sun
13 study. Mr. DuPont, you mentioned that you are certain that the
14 matter-of-right is less impactful to the building than the
15 proposed. Did you actually do that sun study on your own? How
16 did you come to that conclusion?

17 MR. DUPONT: I did my sun studies on my own, yes.

18 MS. FOWLER: Did you do one that compared the matter-of-
19 right to the proposed?

20 MR. DUPONT: I did not. I actually even wonder whether the
21 matter-of-right would be approved by HP and CHRA. But it wasn't
22 even my comment. In looking at the comment, I do feel that having
23 an opening at both ends regardless of the height of the addition
24 will improve airflow at least a little bit. And in fact would
25 also allow you to have some windows on that wall or some

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1 transparency and light coming in on that wall that isn't available
2 now.

3 MS. FOWLER: Did you look at the sun study and see that
4 with a matter-of-right, it would block out pretty much all of the
5 sun -- direct sunlight to the windows on the courts?

6 MR. DUPONT: I did not look at the third story because I
7 never even considered it. It never occurred to me.

8 MS. FOWLER: But you said in your testimony --

9 MR. DUPONT: No, I didn't say that. That was not me that
10 said that.

11 MS. FOWLER: You said that you thought it was going to be
12 better with the side yard than without.

13 MR. DUPONT: I was asked the question. The comment was
14 actually made by someone else.

15 MS. FOWLER: Okay.

16 MR. DUPONT: Once I was asked the question, in thinking
17 about it, I mean obviously having the slot through is going to
18 better than not having the slot through. And I think that airflow
19 will be improved --

20 (simultaneous speaking)

21 CHAIR HILL: Ms. Fowler, they didn't do a -- they didn't
22 do a sun study with the third floor versus the second floor.

23 MR. DUPONT: No, it never occurred to me to do that.

24 CHAIR HILL: Okay.

25 MS. FOWLER: Okay, thank you.

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1 CHAIR HILL: All right. Anybody else got a question?
2 Okay. I'm turning to the Office of Planning.

3 MS. THOMAS: Yes. Good afternoon, Mr. Chair and members
4 of the Board. Karen Thomas with the Office of Planning for Case
5 No. 20615. The Office of Planning is recommending approval of the
6 addition to the single family home at 751 10th Street and its
7 related addition of an accessory structure to the rear of the
8 home. OP reviewed the application as it would relate to the
9 impacts of to the abutting neighboring property, including to the
10 south at No. 753 and to the north at No. 749 to 747.

11 The current condition of the home on the lot shows it's a
12 semi-detached structure with a variable separation running through
13 the side between 1.9 feet, 9.4 feet, and 6 feet. We see that
14 Exhibit 2 of the initial plans showed that the proposed addition
15 eliminated a portion of that separation to adjoin the abutting
16 apartment building right along the partial wall. And for the
17 homeowners to the south, the proposed addition aligned with the
18 furthest rear wall on the ground floor, but would extend the rear
19 wall -- extend beyond the rear wall of the upper level where
20 there's a deck beyond that.

21 The initial submission caused concerns with the apartment
22 owner at No. 747 with expected loss of light and air to the
23 apartment building. And this was expressed by the owner. OP
24 discussed the Applicant to consider adjustments and other options
25 to the plan to mitigate the demolished light or air that may be

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1 reflected into the apartments where there are windows around, two
2 6 feet wide court areas that face the adjoining property line in
3 the area of the proposed addition. The Applicant then amended the
4 plans to show that there would be a 6 foot separation maintained
5 from the east court. The addition would adjoin the party wall
6 thereafter. And then there would be another court area 6 feet
7 wide and 3 feet deep opposite the neighbor's court. I think
8 that's the west court to maintain a light well for those units.
9 The effect of that light well seems to be -- seems to be about 9
10 feet by 6 feet.

11 OP, we reviewed the shadow studies provided by the
12 Applicant and the actual photos of the existing condition. The
13 lot of which shows that there are in fact existing shadows during
14 different periods of the day, which are caused by the two-story
15 structure to the apartment building. The studies compared the
16 existing situation, a matter-of-right addition, and initial and
17 proposed scenarios of Fall and Spring and during the Summer and
18 Winter, the shortest and longest days of the year. And based on
19 these studies, there seemed to be little to no additional
20 significant shadowing to the cellar units. The first and second
21 story windows would lose some direct light and would be shadowed
22 between 11:00 a.m. and 1:00 p.m. during the Spring and Fall
23 assuming this study. This study appears to indicate that a
24 matter-of-right addition and three stories while maintaining a
25 small side yard of 3 feet as requested by the neighbor would also

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1 impact light to the windows in the court.

2 The revision to the subject application to effectively
3 provide complimentary courts 6 feet x 3 feet on their property
4 would seem to mitigate any adverse impact of the addition on the
5 light and air to residence of the apartment building. And the
6 addition to the accessory building should not have a significant
7 impact to light and air to the rear decks of the adjacent
8 apartment building. There is an existing tree, I believe along
9 the property line, which would currently provide some shade to the
10 first floor deck and second floor deck. And any additional shade
11 from the garage would be or should be negligible. And those are
12 the points of which we note that with respect to this application.
13 And I will rest on the record of the rest of my report. Thank
14 you.

15 CHAIR HILL: Thank you, Ms. Thomas. Does the Board have
16 any questions for the Office of Planning? Ms. Thomas, I have
17 questions that I haven't asked. So those reduced areas that the
18 Applicant has made in their design, was that through discussions
19 with you or was that through discussions with -- and I can ask Ms.
20 Fowler -- or was that with discussions with the McCulloch's?

21 MS. THOMAS: Initially, I spoke to the architect, Ms.
22 Fowler and she told me she would come up with a -- they would go
23 back and come up with something. And I wasn't sure if they
24 designed that with them, but this is what she came up with. And
25 when I looked at it and I said okay, because in fact, the wall

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1 that faces the property line would be pulled back 3 feet. So then
2 they wouldn't be in fact looking at a wall along the property
3 line. They will be looking at a wall that is on the neighbor's
4 property, 3 feet back onto the neighbor's property. So they have
5 an effective separation of whatever their deck is -- the
6 neighbor's deck is, plus 3 feet. And like I said, it seems as if
7 it's 6 feet on their side. I could be wrong. But whatever that
8 is, X + 3 feet. So they will not be looking directly at a wall
9 on the property line from, like you see where that fence is. It
10 will actually be pulled back. So it might even be a little
11 better. From where you see the cat is looking out at a fence,
12 there would be no fence there. There would be nothing there. But
13 3 feet behind that would be a wall.

14 CHAIR HILL: The building.

15 MS. THOMAS: The building. Yes, the building. You have
16 the two side --

17 CHAIR HILL: Give me one second, Ms. Thomas. Mr. Young,
18 can you pull up the slide deck from the Applicant's presentation
19 for me and go to Slide 12? Thank you. So Ms. Fowler, I'm going
20 to ask you. I mean that area that's reduced, like those are
21 things that you did because of talking with the Office of Planning
22 and/or the ANC and/or the party in opposition?

23 MS. FOWLER: Yes. So when I presented the plans originally
24 to the ANC, it had the wall along the property line. It had the
25 wall encroaching kind of halfway through that front -- the eastern

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1 well. And so they kind of indicated that they wanted to see a
2 compromise. And one suggest was to pull back that front facade
3 to align with the court. So we went back and decided to do that,
4 in addition to kind of adding the 3 foot well that's --

5 CHAIR HILL: The 3 feet well is basically the 2 feet 7
6 inches. You're matching it up with that other wall, is that
7 correct?

8 MS. FOWLER: Yeah, it's 3 feet from the property line and
9 it's 2 feet 7 inches from the face of the building. Yeah.

10 CHAIR HILL: Got it. Three feet from the property line,
11 but because of the encroachment, that's why you're getting the
12 2.7.

13 MS. FOWLER: The 2 feet 7 only comes up if you're looking
14 at a matter-of-write addition. That would be setback from the
15 building wall as if we complied with the 3 feet. In this case,
16 the 3 feet is from the property line because there's no wall
17 there. So it's actually a 3 foot setback. But she makes a good
18 point about the fence because the fence wouldn't necessarily need
19 to be there. You know, there won't be any access to that space.
20 So that essentially would help with that view.

21 CHAIR HILL: Okay, let's see. All right. Okay, Mr. Young,
22 you can drop that slide deck for me. Thanks. All right, let's
23 see. Okay. Mr. Sullivan, do you have any questions for the
24 Office of Planning?

25 MR. SULLIVAN: No, thank you.

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1 CHAIR HILL: Okay. Mr. Blanchard, do you have any
2 questions for the Office of Planning?

3 MR. BLANCHARD: Maybe Mr. DuPont. I don't know if Mr.
4 DuPont has any questions.

5 MR. DUPONT: I do have one question. In that closed court,
6 who's going to maintain the ground area in there? It's going to
7 fill up with leaves and other debris. And the tenants in 747 are
8 not going to maintain that part. I think really the side yard is
9 kind of necessary.

10 MS. THOMAS: I don't know. That will be something that the
11 Applicant and the new property owner would have to work out.
12 Right now, the 1.9 foot fourths of yard, they can't maintain that.
13 I don't know. I don't know. I think that needs to be an
14 agreement.

15 CHAIR HILL: Okay. All right. Mr. Dupont, anything else
16 for the Office of Planning?

17 MR. DUPONT: No. Since that area is not accessible, I
18 guess the fence really isn't needed. I was thinking it would be
19 needed for like safety. But it's not an area anybody can get to,
20 so the fence would not be needed.

21 CHAIR HILL: And how's it get -- How do you guys take care
22 of it now?

23 MR. DUPONT: It's not closed now.

24 CHAIR HILL: It's not closed now.

25 MR. DUPONT: The area on the apartment side are accessible

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1 through windows.

2 CHAIR HILL: Yeah, you go through the windows.

3 MR. DUPONT: By the 751, there are no -- the closed court
4 has no access at all.

5 CHAIR HILL: Okay.

6 MS. THOMAS: That would be their concern, I guess.

7 CHAIR HILL: All right, Ms. Thomas. All right. Okay, is
8 there anyone here wishing to speak, Mr. Young?

9 MR. YOUNG: Yes, we have one witness sign up.

10 CHAIR HILL: Okay. If you could please bring in the
11 witness. Is it Ms. League? Ms. League, can you hear me? Ms.
12 League? I think you're on mute, Ms. League, perhaps.

13 MS. MCCULLOCH: She just texted me asking if there was a
14 phone number.

15 CHAIR HILL: Sure. Who just spoke?

16 MS. MCCULLOCH: I'm sorry. Margaret McCulloch.

17 CHAIR HILL: Okay. Okay. Ms. League, there's a phone
18 number right there on your screen, 202-727-5471 and/or Ms.
19 McCulloch, if you can text her that number.

20 MS. MCCULLOCH: Yeah, she said her computer died two
21 minutes ago. What's the number again?

22 CHAIR HILL: Sure. 202 --

23 MS. MCCULLOCH: Yeah.

24 CHAIR HILL: --727 --

25 MS. MCCULLOCH: 727--

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1 CHAIR HILL: -- 5471.

2 MS. MCCULLOCH: Okay, I just texted her. It will take her
3 a minute to kind of get all glued in there. So before -- and
4 we'll get Ms. League in a second. Mr. Sullivan, do you have any
5 rebuttal?

6 MR. SULLIVAN: Rebuttal -- Are we on rebuttal generally for
7 the case or rebuttal to that --

8 CHAIR HILL: It was rebuttal to the case.

9 MR. SULLIVAN: Yeah, we do have some. I'd like to ask
10 Jennifer -- Ms. Fowler if she has anything to add to rebuttal.

11 MS. FOWLER: Sure. I wanted to point out that this
12 building was built in 1874. It was built before the apartment
13 building just in case that wasn't clear. And I also wanted to
14 point out that, you know, where we are attaching the addition to
15 the building is where we already have a solid wall -- in essence,
16 a party wall. I'm not sure if that was discussed, but that is a
17 shared wall that we're attaching to.

18 And just to point out, this a very modest addition. The
19 apartment building towers over this property and it also --
20 there's literally no privacy to this property based on all these
21 windows. So we feel like this is a modest addition. And the
22 impacts that we've shown in the sun study, while there is some
23 impact, it is not an undue impact just based on experience with
24 other projects that have been approved by this Board. And we feel
25 like it's a modest proposal and we've culminated the concerns that

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1 were raised, kind of throughout this process as much as we could.
2 Thank you.

3 CHAIR HILL: Okay. Mr. Blanchard, that was a little bit
4 more of an inclusion and a rebuttal, I don't know. But Mr.
5 Blanchard, do you have any questions concerning the rebuttal?

6 MR. BLANCHARD: So Ms. Fowler said that our client's
7 building towers over --

8 CHAIR HILL: It was a question -- I mean I'm asking you if
9 you have any questions concerning her rebuttal. I mean, I don't
10 know. I feel like I'm playing Jeopardy. If you want to ask her
11 a question -- make your statement in the form of a question, you
12 may go ahead and do so.

13 MR. BLANCHARD: Ms. Fowler, isn't your client's property
14 to the south and therefore the sun is being blocked by the
15 towering of the addition?

16 MS. FOWLER: I'm confused by your question, but our
17 building is to the south of the apartment building. So I wasn't
18 implying that the apartment building is casting shadows on 751.

19 MR. BLANCHARD: Thank you.

20 CHAIR HILL: Okay. All right, okay. Okay, thanks, Mr.
21 Blanchard. All right, let me see. Did we get the witness back on
22 the line?

23 MR. YOUNG: Yes. She's calling in. I'll unmute her now.

24 CHAIR HILL: Hello?

25 MS. LEAQUE: Can you hear me?

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1 CHAIR HILL: Yes. Can you hear me?

2 MS. LEAQUE: Yes. I'm so sorry about that. My computer
3 decided to die right as I was trying to enter the conversation.

4 CHAIR HILL: That's all right. Could you introduce
5 yourself for the record please?

6 MS. LEAQUE: Yes. Hello. My name is Mira League and I am
7 a neighbor to 751 10th Street.

8 CHAIR HILL: Okay. When you say "neighbor", Ms. League,
9 are you in the apartment building?

10 MS. LEAQUE: Yes, sir.

11 CHAIR HILL: Okay, great. And are you one of the units
12 that is affected by the windows?

13 MS. LEAQUE: Yes, I will be. I'm Apartment No. 3 on the
14 second floor.

15 CHAIR HILL: On the second floor, okay. All right, Ms.
16 League, you'll have three minutes to give your testimony and you
17 can begin whenever you'd like.

18 MS. LEAQUE: All right. I appreciate your time. My name
19 is Mira League and I'm a neighbor. I moved in, in April and I
20 really enjoy everything about this apartment. Ours is a really
21 unique historic building, built in 1912 with these amazing window
22 columns that were put in, in order to have light and air around
23 the entire building. Ours is obviously kind of a special case.
24 We're a low level apartment building surrounded by townhomes. And
25 I believe that does take some sort of special consideration.

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1 Everything about this apartment is very full of light, full of
2 air. And with the proposed additions, unfortunately we would have
3 the displeasure of looking straight out into a brick wall.

4 In this time of kind of continued work-from-home, this is
5 very unfortunate. Really it is -- would be very disheartening to
6 look out into this brick wall and to these tubes of windows. And
7 I really do hope that some other kind of compromise -- I really
8 appreciate the compromise that was reached already, but some other
9 compromise. There's no reason that the building itself can't be
10 pushed back a little bit more into the yard and continue to free
11 up the side yard as it was and provide continued light and air
12 within our apartment building. I really appreciate your time and
13 consideration. I really hope that you continue to allow us to
14 have kind of this light, air, and enjoyability truly with our
15 apartment building.

16 CHAIR HILL: Okay. Thank you, Ms. League. Does the Board
17 have any questions for the witness? Okay. Mr. Sullivan, do you
18 have any questions for the witness?

19 MR. SULLIVAN: No, thank you.

20 CHAIR HILL: Shaking your head no. Mr. Blanchard, do you
21 have any questions for the witness?

22 MR. BLANCHARD: Ms. League -- Yes, I do. Ms. League, did
23 you submit a letter as well for the hearing record?

24 MS. LEAQUE: I did. Yes, sir.

25 MR. BLANCHARD: Okay. I just want to remind the Board that

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1 this is in the exhibits as a Letter of Opposition.

2 (simultaneous speaking)

3 MS. LEAQUE: I also put in different photographs in one of
4 the exhibits that the McCulloch's sent in. And I think they
5 really show the amount of light that this apartment gets.

6 MR. BLANCHARD: Thank you, Ms. Leaque.

7 CHAIR HILL: Okay. Thank you, Ms. Leaque. Ms. Leaque, I
8 don't know what's going to happen, but you know, I do suggest you
9 take a look at the record if you get a chance and look at what
10 some of the things is that we're struggling with in terms of like
11 what the matter-of-right option is between what you might be
12 looking at as versus what they're proposing. And so I would just
13 encourage you to take a look at that as well when you get an
14 opportunity.

15 MS. LEAQUE: Of course. Thank you.

16 CHAIR HILL: Thank you, Ms. Leaque. Okay. Mr. Young, did
17 you excuse Ms. Leaque?

18 MR. YOUNG: Yes, I did.

19 CHAIR HILL: Okay, great. Mr. McCulloch, can you hear me?

20 MR. MCCULLOCH: I can, yes.

21 CHAIR HILL: I'm curious. On the other side of the
22 building, it looks like there's a window well there, that another
23 building is built up against that property line. Can you tell me
24 what's on that side and how that window well -- you know, how is
25 that window well kind of affected? And how tall is that building

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1 on the other side? Or am I not looking at it correctly?

2 MR. MCCULLOCH: It is true that -- Yeah, the building on
3 the opposite side, in I think 1971, that courtyard was enclosed.
4 It's only the one courtyard towards the front of the building,
5 which is enclosed. It's a northern exposure as opposed to
6 southern, so the amount of light impact is far less than the
7 impact that this proposed plan will have. There's also only one
8 basement unit on that northern side, so they still have light
9 through the courtyard that has not been enclosed toward the rear
10 of the building. But having said that, for those units that look
11 out into that one courtyard, it's miserable to look out and to
12 stare into a wall.

13 CHAIR HILL: No, I've got it. So it's enclosed. And how
14 high does that other building go?

15 MR. MCCULLOCH: Margaret -- I'm asking my sister. She
16 knows exactly how high.

17 CHAIR HILL: Does it go up to like the second story or
18 something? That's what I'm trying to understand.

19 MS. MCCULLOCH: Yes, this is Margaret McCulloch speaking
20 here. It does go above the second floor. I don't know exactly
21 where it stops. I know it's three stories, but we are set up
22 because of our basement level. So somewhere around the third story
23 it stops, but I don't know the exact measurement.

24 CHAIR HILL: Because that one's built on the property line,
25 correct?

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1 MS. MCCULLOCH: I believe so.

2 CHAIR HILL: Okay. Let's see. Mr. Blanchard, you want to go
3 ahead and give a conclusion? It's not the regulations, but I
4 always like everybody to have a little bit of a conclusion. And
5 then Mr. Sullivan can give his conclusion.

6 Before I do that, does anybody have any further questions
7 of anyone? And I'm looking at my fellow Board members. Sure,
8 Commissioner Miller?

9 ZC MEMBER MILLER: I should have asked this earlier, of Mr.
10 McCulloch. You said, I thought I heard you say, that anyhow the
11 Board decides in this case, I assume you meant if they decided in
12 favor of the application, you were going to institute some
13 remedial measures, I guess, for the corresponding lack of light
14 or air. Can you elaborate on what those remedial measures are?
15 Maybe I misunderstood your statement.

16 MR. MCCULLOCH: Regarding light and air, there are no
17 remedial measures. As far as that's concerned, we're totally
18 stuck. There's nothing to be done.

19 Unfortunately, the way this building is laid out, it's
20 split down the middle, east to west, by the stairwell in the
21 first three floors, and there's a hallway directly down the middle
22 in the basement, so there's really no way to reconfigure these
23 apartments, in the basement in particular. They're just going to
24 lose their air flow and the light.

25 CHAIR HILL: Mr. Commissioner, you're on mute.

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1 ZC MEMBER MILLER: Sorry. What was your reference to
2 remedial measures? What did you mean by that?

3 MR. MCCULLOCH: I'm not sure what you're referring to,
4 because there are no remedial measures for light and air.

5 ZC MEMBER MILLER: I don't know if it was for light and air
6 as you just stated. I thought I heard you say that, so I thought
7 you -

8 CHAIR HILL: Mr. Miller, I think Mr. McCulloch said
9 something about the at-risk windows, and he was going to do
10 something with the at-risk windows. Is that what you were speaking
11 to?

12 ZC MEMBER MILLER: That's what I thought he was speaking to,
13 and I wanted to find out what those remedial measures were. But
14 I don't seem to be getting anywhere.

15 CHAIR HILL: Okay. Thank you, Commissioner. Ms. Fowler, I
16 just want clarity on this last issue. I'm continuing to look at
17 this one slide that I pulled up earlier, and the lowering of the
18 height of the building and the cutout for the window well, and you
19 pulling that wall back, those are things that you guys just
20 thought of on your

21 own, without talking to the McCullochs?

22 MS. FOWLER: Yeah, that is correct. The homeowner can speak
23 a little bit more to the interactions with the neighbors. He did
24 meet with them directly to try to work out a compromise, but were
25 never able to come to a conclusion.

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1 CHAIR HILL: Mr. Sullivan, you had your hand up first.

2 MR. SULLIVAN: I'll defer to Mr. Picarsic.

3 CHAIR HILL: Mr. Picarsic, I'm just trying to understand how
4 you got the lowering of the height, the pulling that wall back,
5 and then the additional cutout that you're creating.

6 MR. PICARSIC: Yes, and so we met with the property owners,
7 I believe it was in August, toured them through our thoughts and
8 plans. They had major concerns about the side yard. Then we talked
9 about the accessory unit, and it was really all about the side
10 yard.

11 We went back and looked at plans to see if we can not
12 include the side yard, and we came through a bunch of different
13 plans. We couldn't make something work on our side, so we
14 proceeded with the plans that were originally submitted, and
15 through the ANC committee hearing. There was concerns raised about
16 light and air, so in that meeting I proffered pulling back that
17 eastern wall a little bit, and then Jennifer and I came back
18 following that call and looked at pulling that western well back
19 three feet and lowering the height.

20 But from the adjacent property owners, it's always been
21 three feet on the side yard and there was really no compromise on
22 their end, other than three feet on the side yard. But we
23 continued to move forward with this adjusted plan to try to give
24 a little bit back to them, knowing that they had concerns.

25 CHAIR HILL: Okay. Hey, Ms. Fowler, there aren't any windows

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1 in that window well on your clients' side, is that right?

2 MS. FOWLER: Clearly we don't have any windows shown.
3 Really, just for concerns for privacy. Like our previous
4 discussion, you might want to have some way to access that space
5 to maintain it, but otherwise they have no interest in windows
6 facing the court of the apartment.

7 CHAIR HILL: Got it. Mr. McCulloch, you had your hand up?

8 MR. MCCULLOCH: I just wanted to mention briefly that when
9 we did meet with Mr. Pacarsic in August, he actually suggested to
10 us the possibility of maintaining a three-foot side yard. That was
11 his initial proposal to us. What is being proposed now is far
12 worse than what he initially suggested.

13 CHAIR HILL: Mr. Pacarsic, I'll give you an opportunity to
14 respond.

15 MR. PICARSIC: Yes, and it was not our proposal. We walked
16 through the plans that we originally showed to everyone, and
17 originally submitted the concerns about the side yard, side three
18 feet. We said we'd take a look at seeing if we could do three
19 foot, not that that was something that we could do, something we
20 would look at.

21 We were not able to make it work, and so we moved forward
22 and submitted the original plans as we walked through with the
23 property owners. But it was not something we said that we could
24 do, we said it was something we could look at and see if we could
25 make it work. It was not something that we could make work.

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1 CHAIR HILL: Okay. Anybody else got anything else? I'm going
2 to go with the conclusion from Mr. Blanchard.

3 MR. BLANCHARD: Thank you, Mr. Hill. What is heard, the
4 Applicant has made some concessions, but those concessions are not
5 sufficient to carry its burden. There still will be significant
6 undue effect on the, substantially adverse effect on the use of
7 the joining of the apartments, especially the basement apartments.
8 Ms. Fowler testified those basement windows, except for the high
9 summer, will lose a substantial amount of light and air.

10 We appreciate the concessions that were made on the
11 courtyard closest to 10th Street, but the reflection of the
12 courtyard on our clients' property with a three-foot or two-foot-
13 seven enclosed court on their side, just doesn't make it. It is
14 not sufficient.

15 We don't really have any objection at all to the special
16 exception relief or lot occupancy, and we believe that Ms. Fowler
17 is talented enough to come up with a solution that would work by
18 pushing into the rear yard and leaving a side yard, so that no
19 special exception for the side yard would be required.

20 That is our conclusion. Thank you.

21 CHAIR HILL: Okay, thanks, Mr. Blanchard. Mr. Sullivan?

22 MR. SULLIVAN: Thank you, Mr. Chair, and members of the
23 Board. In closing I'd like to bring it back to, well, first of
24 all, there's two ways the Board could look at this. They could
25 look at it in the absolute way, in the technical/legal way, these

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1 are at-risk windows, these are non-conforming courts with at-risk
2 windows, and they deserve no special protection. They don't grant
3 an easement on the neighbor's property, and despite Mr. Blanchard
4 saying that's a building code issue, this comes from the Fabes-
5 Stigletts (Phonetic) case, which has been incorporated into the
6 design realm in multiple BZA and Zoning Commission orders, many
7 times. What that stood for, what FIZ (phonetic) stood for, is that
8 one may obstruct his neighbor's windows at any time, and no action
9 can be maintained for obstructing the view.

10 So you can look at this as adverse windows. Basically what
11 747 is saying, because we have windows on your property line, we
12 are entitled to that space, and you are not entitled to seek
13 special exception relief under the same standards you otherwise
14 would have if we didn't have these windows here.

15 They made a distinction in one of their filings, I'm not
16 sure is they said it today, that if it was a matter of right, yes,
17 we could block their windows. But special exception, we can't.
18 They don't provide any support for that argument. In fact, the BZA
19 has borne this out many times, where we have received, or the
20 Applicants have received special exception relief, and for rear
21 yard in some cases, up to including case, which I think I put in
22 the record, is case 100 K Street SE, when 30 windows were blocked
23 for 100 percent rear yard relief as a result of that.

24 So the Board can look at it like that. I don't think the
25 Board even has to get there, because if you look at the special

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1 exception test, even ignoring the at-risk situation, it's been
2 definitively proven by Ms. Fowler's shadow study that there's no
3 change, no negative change, in sunlight to a 747 building between
4 the matter or right and proposed.

5 They seem to have been relying on, since that was made
6 apparent in this hearing, they've been talking about air flow.
7 They talked about would closing the one and a half foot side year
8 affect air flow. I don't know what kind of air would get through
9 anyway, but this is a row house district. There's no minimum court
10 width here.

11 So there is no inherent intent or purpose in having open
12 side yards in the RF zone if we raise the property and block the
13 windows. In fact, you saw that the windows were blocked from the
14 other side, and that property on the other side could do another
15 addition, matter of rights addition, and block those windows
16 there.

17 So there's no impact on light. Mr. Blanchard said we didn't
18 meet our burden, but it sounds like his expert actually agreed
19 with our expert on that. Privacy has not been an issue at all.
20 There's no windows on our side. It will actually improve privacy.

21 The only other thing that I would mention, the status of
22 the building being subject to rent control is not relevant to the
23 special exception criteria.

24 That's all I have. I want to note, again, too, which Ms.
25 Fowler testified to, that this building is an Applicant's

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1 building, was built well before the 747 building, despite their
2 testimony to the contrary. Not that that matters, either. It's not
3 a first-to-build. An average window doesn't get a right to
4 infringe on neighbor's property. Otherwise, there would be no such
5 thing as an at-risk window.

6 In closing, we stated the clear at-risk situation. However,
7 the Board doesn't need to reach that, because even if not
8 considering that, there is shown to be no substantial negative
9 effect on neighbor's use of the property, and their light and air
10 is not unduly affected, and the privacy is not unduly affected.
11 Thank you.

12 CHAIR HILL: Okay. Thanks, Mr. Sullivan. Does anybody have
13 any questions for anybody? Yes, Ms. John?

14 VICE CHAIR JOHN: Thank you, Chairman Hill. Actually, I've
15 asked this question before, but just looking at Exhibit 27. This
16 is for Ms. Fowler. There's a notation here that there's a proposed
17 open court, which I recognize as the one that mirrors the court
18 on 747.

19 But on the 10th Street side, do I understand that that
20 small area, which is the 1.94, plus or minus, that still remains
21 open? Or is it closed? That's the narrow strip from 10th Street
22 back to where the six-foot court is.

23 MS. FOWLER: Right. That will remain open. But technically,
24 I think from zoning terms, that would be called a, well, it's an
25 open court, right, because it has property line on one side, it's

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1 got three sides, and it's open to the street.

2 VICE CHAIR JOHN: That's what I was trying to be clear
3 about, that that would be open. So the issue of air flow, there
4 would still be air flow from 10th Street to the new court. Is that
5 correct?

6 MS. FOWLER: That is correct. The court at the back that
7 will not access that court, that side yard.

8 VICE CHAIR JOHN: Okay. And there are no windows on the
9 party walls where the addition is, between the two courts and at
10 the back.

11 MS. FOWLER: Correct. There are no windows along the narrow,
12 the 18 inch wide space. There's a big party wall on the apartment
13 side, and then a brick wall along 751, and then there's existing
14 windows and a back door that will be remaining entering into that
15 court. And there will be no windows on the rear court.

16 VICE CHAIR JOHN: Okay. Thank you.

17 CHAIR HILL: Anyone else have any questions for anyone? I'm
18 going to close the hearing for the record. Thank you all very much
19 for your participation, and sorry that it goes one way or the
20 other, because that's what happens.

21 There's three ways we can do this. We can either take a
22 break and then deliberate. We can either deliberate, we can either
23 put this off for next week. I'm ready to talk about it, so it's
24 up to you guys.

25 VICE CHAIR JOHN: We can talk about it.

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1 CHAIR HILL: Okay. You want to take a break and talk about
2 it, or you want to talk about it? Ms. Johns, I feel that she's
3 ready to talk. Mr. Smith, Mr. Blake, and Commissioner Miller,
4 where are you guys in terms of deciding?

5 MEMBER SMITH: We can talk about it.

6 CHAIR HILL: We need a break, or we can just talk about it?

7 MEMBER SMITH: We can talk about it.

8 CHAIR HILL: Okay. I can start. It really is disappointing
9 that there is an issue at all, that we have to come to a decision,
10 right? I'm going back to the regulations, which is where we're
11 supposed to be and starting at, not at 5201.4, which seems again
12 to be the light and air issue, and whether or not it is unduly
13 affecting.

14 What seems to be the big discussion is that courtyard is
15 sitting east, and what is to happen to the light and air to those
16 windows. Unfortunately, those windows are actually at-risk
17 windows. Those windows aren't actually supposed to be there.

18 Whether they're there or not, if those windows were built
19 right on the property line, then what we would be looking at is
20 whether or not they were going to keep that one and a half foot
21 side yard, which is an odd side yard. If they could tear down the
22 building, they would be able to tear down the building, and they
23 would be able to build up to the property line and block any
24 windows that would be on that side of the building.

25 It's kind of odd to talk about those windows, because

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1 they're not necessarily what we're supposed to be talking about.
2 But I am going to talk about it because they're there, and the
3 Applicant is making a concerted effort to try to allow light.

4 In terms of the air flow, that one and a half foot side
5 yard is actually still going to be there for that first court. So
6 they're getting the same amounts of air that they would have
7 gotten before, and now they Applicant has pulled back that other
8 wall so that it is not blocking any of the windows in that
9 courtyard.

10 Unfortunately, the other courtyard, there is going to be
11 some light that is going to be blocked, but again, is it unduly
12 affecting? And I don't, granted from the shadow studies, I don't
13 necessarily think it's unduly affected, meaning even the way it
14 is now, they don't get a tremendous amount of light, right, versus
15 what they would be allowed to build by right. If nothing was
16 allowed to be built there, the light that they have is the light
17 that they have.

18 But they would be allowed to build by right a third story,
19 and that third story they can at least build it up to the one and
20 a half foot side yard, which again, I think blocks all those
21 windows anyway.

22 So I don't see the difference between the matter of right
23 and what is being proposed, because they have now been at least
24 accommodating to the point where they're actually getting the
25 three feet side yard because they've created that little court.

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1 I guess that's my discussion on that little court, in terms
2 of why I can agree with the Office of Planning's analysis.

3 In terms of the lot occupancy, I'm comfortable with the lot
4 occupancy. It really all came down to those windows that are at-
5 risk windows, but the Applicant is being accommodating to provide
6 a court for those windows.

7 If the Applicant were not accommodating to provide a court
8 toward those windows, I don't know what, necessarily, my vote
9 would have been. Meaning, if they even came to us with a proposal
10 which was a matter of right, that they were still trying to get
11 rid of their one and a half foot side yard,

12 If they were going to build up to the one and a half foot
13 side yard that's currently existing, I don't know where my vote
14 would have been. But the way it is now, I think that they have met
15 the criteria for us to be able to grant the application based upon
16 the regulations, and based upon the analysis that I'm going to
17 agree with the Office of Planning, and also that of the ANC.

18 The ANC also spoke with the Applicant and came to the
19 conclusion that they were able to agree with this application. I
20 think that, in terms of just the discussions from the application,
21 the Applicant's building was there before the apartment building,
22 not that that, you know, I'm just speaking clearly, thinking
23 through some of this, and that the building on the opposite side
24 of the party that stands in opposition, they build right up to the
25 property line. They don't even have the kind of space that the

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1 Applicant has created, giving them that additional three feet for
2 the courtyard.

3 So it's unfortunate that there will be some air that will
4 be blocked. It's unfortunate there is going to be some additional
5 light that's going to be blocked from this expansion, but I do
6 think that it is a small expansion, in considering that that
7 apartment building is a big apartment building, next to the
8 Applicant's home, but regardless, I think the Applicant has met
9 the burden of proof per the regulations, that I'd be able to get
10 behind.

11 So I'm going to start with that, and I'm going to go around
12 the table. I'm going to start with Mr. Smith, if you'd be willing.

13 MEMBER SMITH: Sure. Mr. Hill, I don't really have anything
14 additional to add to what you were saying, so I completely agree
15 with your analysis on this. Those windows are at-risk windows in
16 the basement, and based on the sun studies, and based on what I've
17 seen, and just the orientation of where these windows are located,
18 I don't think they get much light as it is anyway.

19 The building was built by-right with a third addition
20 leaving even less light, then what currently exists if it's built
21 in accordance with the design that received the special exception.
22 I agree with you. I don't know where my vote would have been if
23 this was a request where they weren't providing some additional
24 setback by creating a larger court indentation into this addition
25 to attempt to address the concerns that was raised by the owners

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1 at 747 10th Street SE.

2 But I do believe that the Applicant has attempted to
3 mitigate those concerns as much as possible, especially the first
4 window further to the east, closer to 10th Street. They completely
5 satisfied the reduction of light and air there. I think they have
6 sufficiently addressed the issues or attempted the issues of
7 light and air to the court further to the west, towards the rear
8 of the properties.

9 So I do believe that the Applicant has met the burden of
10 proof for us to be able to grant the special exception, and I
11 agree with the analysis on this case. I was for it.

12 CHAIR HILL: Thank you, Mr. Smith. Commissioner Miller?

13 ZC MEMBER MILLER: Thank you, Mr. Chairman. I concur with
14 your comments and those of Board Member Smith.

15 CHAIR HILL: Mr. Blake?

16 MEMBER BLAKE: I absolutely agree with your comments,
17 Chairman Hill. I do think that in this scenario, it's unfortunate
18 that they cannot work together to come up with a mutually
19 satisfactory conclusion, but the Applicant has made attempts to
20 mitigate the impact, not to the satisfaction of the opposition
21 party, but to the satisfaction of the Office of Planning and to
22 the ANC, and to me as well.

23 And I think that the case has met the City standards as
24 well as general standards, and I think I'd be prepared to support.

25 CHAIR HILL: Vice Chair John?

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1 VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm in support
2 of the application. I just had a couple of things, a couple
3 thoughts, that the property at the apartment building occupies the
4 lot at 75 percent. It's built lot line to lot line, with at-risk
5 windows on the side next to the Applicant's property.

6 I think that any potential adverse impact regarding light
7 and air was mitigated by the additional, the two courts and the
8 18 inch side yard towards 10th Street. So I don't believe that the
9 Applicant has not met the criteria for relief, and I'm going to
10 give great weight to OP's analysis in the recommendations of the
11 issues and concerns expressed by the office of the ANC.

12 So I, again, as I said, would support the application and
13 I agree with everything that's been said so far.

14 CHAIR HILL: Okay. And you just actually mentioned
15 something, like, you know, I understand why the party in
16 opposition would try to do the best in this particular situation.
17 However, you just mentioned, that apartment building is build lot
18 line to lot line. It's already a massive apartment building on
19 that lot that you wouldn't be able to do now.

20 And so I just think that it is something that, it's
21 unfortunate, but I totally get why that they're here talking about
22 the window well. But even if, and I'll make one final statement,
23 even if they got their three foot side yard, they're still not
24 going to get light there. That light's still going to be gone.

25 So I don't think that there's much difference whether or

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1 not they get the matter of right or whether they're being
2 accommodating, which they are being accommodating now to try to
3 do their best for that one particular light well.

4 Again, what is so disappointing is, or what's good about
5 it is, we're supposed to rely on the regulations in order to make
6 our decisions, which we are doing. It's not something that we just
7 wish that it could be different, but I do wish that it could be
8 different. I wish everybody could get what they want. That's what
9 I'm just sorry that we have to make a decision in this particular
10 way, but that's what we have been charged to do per the
11 regulations that we're supposed to look at.

12 So I'll go ahead and make a motion to approve the
13 application number 20615, as captioned and read by the secretary,
14 and ask for a second. Ms. John?

15 VICE CHAIR JOHN: Second.

16 CHAIR HILL: Motion made and second. Mr. Moy, can you take
17 a roll call?

18 MR. MOY: Thank you, Mr. Chairman. When I call each of your
19 names, will you please respond with a yes, no, or abstain to the
20 motion made by Chairman Hill to approve the application for the
21 relief being requested. The motion to approve was second by Vice
22 Chair John. Zoning Commissioner Rob Miller?

23 ZC MEMBER MILLER: Yes.

24 MR. MOY: Mr. Smith?

25 MEMBER SMITH: Yes.

1 MR. MOY: Mr. Blake?

2 MEMBER BLAKE: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIR HILL: Yes.

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

13 CHAIR HILL: Thank you, Mr. Moy. You guys want to do one
14 more and take a break, or take a break? One more and take a break?

15 MEMBER SMITH: I think I'm stepping out after that one.

16 CHAIR HILL: Okay. So you're gone. We're right here at 3:30.

17 CHAIR HILL: All right, Mr. Smith. Thank you very much for
18 your time.

19 MEMBER SMITH: See y'all next week. Bye bye.

20 CHAIR HILL: One more, take a break? Take a break.

21 MS. FOWLER: One more, take a break.

22 CHAIR HILL: All right, Mr. Moy. You can call our next case.

23 MR. MOY: Okay. The next case application is Case No. 20616
24 of Charles H. Brinkley. This application was captioned advertised
25 for a special exception from the lot occupancy requirements

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1 Subtitle E, Section 304.1, pursuant to Subtitle E, Section 5201,
2 and Subtitle X, Section 90.2.

3 This would construct a rear deck addition to an existing,
4 attached, three-story with basement flat in the RF-1 Zone. The
5 property is located at 60 V Street, NW, Square 3117, Lot 819.

6 CHAIR HILL: Mr. Saltani, can you hear me? You're on mute,
7 Mr. Saltani. Can you hear me now?

8 MR. SALTANI: Yes.

9 CHAIR HILL: Would you introduce yourself for the record?

10 MR. SALTANI: Good afternoon, everybody. Thank you so much
11 for taking us next. My name is Adit Saltani with RE Design. I'm
12 here today to represent Mr. Charles Brinkley, the owner of 60 V
13 Street, NW.

14 CHAIR HILL: Okay, Mr. Saltani. Before you get too far, what
15 happened at the ANC meeting? I don't see any ANC report.

16 MR. SALTANI: We were approved.

17 CHAIR HILL: Did they put it in the record?

18 MR. SALTANI: I think so.

19 CHAIR HILL: All right. I'll let you do this. R. Saltani,
20 go ahead and walk us through your presentation. Tell us what your
21 client's trying to do. I got 15 minutes here for you. Tell us why
22 you believe they're meeting the standard, and you can begin when
23 you like.

24 MR. SALTANI: Yes, sir. Thank you so much for making time
25 for this hearing today. We are proposing to extend the existing

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1 rear deck.

2 CHAIR HILL: Mr. Saltani, I don't know why people always say
3 thank you for making the time. I don't really have a choice, Mr.
4 Saltani, but I appreciate you asking and being so considerate,
5 thanking me. Go ahead, Mr. Saltani.

6 MR. SALTANI: Thank you. We are proposing to extend the
7 existing rear deck by plus or minus four feet. I say plus or minus
8 because the existing deck has a bumpout, so basically we're
9 removing the bumpout and adding an eight for including that four
10 feet for the existing or the current bumpout.

11 We're extending the deck into the current back yard set,
12 and then making that setback 23 feet, which is still within the
13 minimal required setback.

14 Also, the footprint of the proposed addition, the deck
15 addition, will increase the lot occupancy to 67.7 percent, which
16 is also within the maximum lot occupancy granted by special
17 exception of the occupancy if RF-1.

18 If I may share a floor plan, existing and before, along
19 with some pictures?

20 CHAIR HILL: I don't know, Mr. Saltani, if you actually even
21 share. I don't think you can, but we see everything here. I don't
22 have a lot of questions for you, Mr. Saltani. Let me see if the
23 board has any questions. Does the Board have any questions for Mr.
24 Saltani? Can I turn to the Office of Planning?

25 MR. KIRSCHENBAUM: Good afternoon, members of the Board of

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1 Zoning Adjustment. I'm Jonathan Kirshcenbaum with the Office of
2 Planning, and we recommend approval of this special exception to
3 increase the occupancy. We rest on our staff report. Please let
4 me know if you have any further questions. Thank you.

5 CHAIR HILL: Okay. Does the Board have any questions of the
6 Office of Planning's report? Okay. Mr. Saltani, I still don't see
7 anything in the record about the ANC. You're saying you went to
8 the ANC, and they voted in favor?

9 MR. SALTANI: Yes, sir.

10 CHAIR HILL: Okay. I see Mr. Brinkley. Mr. Brinkley, are you
11 the property owner?

12 MR. BRINKLEY: Yes, sir.

13 CHAIR HILL: Would you introduce yourself for the record,
14 please?

15 MR. BRINKLEY: Yes. I'm Charles Brinkley, property owner at
16 60 V Street, NW. I know your time is important.

17 CHAIR HILL: Thanks. Mr. Brinkley, you went to the ANC
18 meeting, and your testimony is that they voted in favor?

19 MR. BRINKLEY: Yes. Before we went to the ANC's meeting we
20 went to the Bloomingdale Civic Association and presented there.
21 They approved it, the ANC Commissioner Brown was at that meeting.
22 He then presented that subsequent, the following month, the ANC
23 meeting. That was approved unanimously as well.

24 CHAIR HILL: Okay. Mr. Brinkley, I'm going to leave the
25 record open for something from the ANC. So if you or Mr. Saltani

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1 can make sure that we get something from the ANC stating that they
2 voted in favor. All right? He's nodding his head.

3 Mr. Young, is there anyone here who can testify in this
4 case?

5 MR. YOUNG: No, we do not.

6 CHAIR HILL: All right. Mr. Saltani, do you have anything
7 you would like to add at the end?

8 MR. SALTANI: No, thank you.

9 CHAIR HILL: Vice Chair John?

10 VICE CHAIR JOHN: Just a quick question for Mr. Brinkley.
11 Mr. Brinkley, do you remember when the ANC meeting was held,
12 approximately?

13 MR. BRINKLEY: Yes. I think it was the November ANC
14 Committee meeting.

15 VICE CHAIR JOHN: Okay. Thank you.

16 MR. BRINKLEY: I could actually look it up kind of quickly.

17 CHAIR HILL: Commissioner Miller, you have a question? Okay.
18 Mr. Saltani, thank you very much. Mr. Brinkley, thank you very
19 much. You are all excused. I'll leave the record open for the ANC
20 to submit something. So you guys get that to us.

21 All right, Mr. Brinkley was about to say something. I don't
22 know if you lost Mr. Brinkley. You want to bring him back?

23 MR. BRINKLEY: Yes. Quick question. When you say that you're
24 leaving the record open, does that mean that you're waiting to
25 hear from the ANC so you can make a final determination?

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1 CHAIR HILL: I think we're probably going to vote on this,
2 Mr. Brinkley. We're just going to leave it open for something from
3 the ANC that says that they voted in favor.

4 MR. BRINKLEY: Thank you.

5 CHAIR HILL: So you follow up with your SMD.

6 MR. BRINKLEY: Will do.

7 CHAIR HILL: All right. Closing the hearing. Please excuse
8 everyone, Mr. Young. I didn't have an issue with this after
9 reviewing the record, and comparing it with the standard against
10 which we're supposed to review. I also would agree with the
11 analysis the Office of Planning has provided, and the testimony
12 from the Applicant that the ANC as well as the Bloomingdale Civic
13 Association had voted in favor, and I'm going to be voting in
14 favor of this application.

15 Commissioner Miller, do you have anything you'd like to
16 add?

17 ZC MEMBER MILLER: No. Thank you, Mr. Chairman. I agree with
18 everything you said.

19 CHAIR HILL: Mr. Blake?

20 MEMBER BLAKE: I also agree with what you said. Because of
21 the post deck is enclosed and open to the sky and will be same
22 size as the existing deck, there shouldn't be any greater
23 shadowing, nor the division of air should not be impaired. There's
24 no direct facing windows, and the rear is buffered by a remaining
25 20 foot yard and a 15 foot alley.

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1 As a result, the neighbor property should not be unduly
2 compromised. I also note that the record contains word from both
3 adjacent neighbors. Because the deck will not be seen from V
4 Street and is designed similar to other decks found along the
5 alley, it should not be visibly intrusive. Considering these
6 factors, I don't believe that granting the relief requested will
7 affect the use of neighboring properties.

8 The request for relief is anticipated by zoning regulations
9 and does not result in a non-performing, I believe granting relief
10 will be in harmony with the general purpose and intent of the
11 zoning regulations. I give great weight to the Office of Planning
12 report in their recommendation for approval, and note that DDOT
13 had no objections.

14 There's no report from the ANC, as you said, to carry great
15 weight, but we've noted that BZA referrals have been on the
16 Applicant's statement regarding community outreach, and notes that
17 the record will remain open for the ANC report or statement. Also,
18 again, we recognize the letters of support from the adjacent
19 neighbors.

20 I believe the Applicant has met the burden of proof
21 pursuant to E 5201 and the general standards of Subtitle X 901.2,
22 and should be granted the requested relief. I will be in support.

23 CHAIR HILL: Thank you. Mr. Blake, thank you for the
24 additional analysis. That was very helpful, and it's done so well.
25 I'm going to start with you again, Mr. Blake. You can start more

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1 often now. My daddy used to say in the army that like they used
2 to say, if you do a job well, guess what? You get to do the job
3 again. Vice Chair John?

4 VICE CHAIR JOHN: I thought I spoke already.

5 CHAIR HILL: Nope.

6 VICE CHAIR JOHN: Oh. I'm in support of the application, and
7 I agree with everything that's been said. I thought Board Member
8 Blake did a good job with his analysis and made it so much easier
9 for me. So I'm in support.

10 CHAIR HILL: Thank you. With that, I make a motion to
11 approve application number 20616 as captioned and read by the
12 Secretary, and ask for a second, Ms. John?

13 VICE CHAIR JOHN: Second.

14 CHAIR HILL: The motion made and second. Mr. Moy, can you
15 take a roll call, please?

16 MR. MOY: When I call each of your names, IF you please
17 respond with a yes, no, or abstain to the motion made by Chairman
18 Hill to approve the application for the relief being requested.
19 The motion to approve was second by Vice Chair John. Zoning
20 Commissioner Rob Miller?

21 ZC MEMBER MILLER: Yes.

22 MR. MOY: Mr. Blake?

23 MEMBER BLAKE: Yes.

24 MR. MOY: Vice Chair John?

25 VICE CHAIR JOHN: Yes.

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1 MR. MOY: Chairman Hill?

2 CHAIR HILL: Yes.

3 MR. MOY: We have a Board member not present. Staff would
4 record the vote as 4 to 0 to 1. This is on the motion of Chairman
5 Hill to approve. The motion to approve was second by Vice Chair
6 John. Also in support of the motion to approve, Zoning
7 Commissioner Rob Miller, Mr. Blake, and of course Vice Chair John
8 and Chairman Hill. The motion carries on a vote of 4 to 0 to 1.

9 CHAIR HILL: Okay. Thank you. Do you guys want to try one
10 more and then take a break, or take a break? Try one more and take
11 a break?

12 VICE CHAIR JOHN: Okay.

13 CHAIR HILL: Okay. Let's try one more and take a break. All
14 right, Mr. Moy. You can go ahead and give us our next one.

15 MR. MOY: Okay. This would be Case No. 20618 of Christine
16 and Michael Galano, G-A-L-A-N-O. Caption is for a Special
17 Exception from the rear addition requirements of Subtitle D,
18 Section 306.3, pursuant to Subtitle D, Sections 306.4 and 5201,
19 and Subtitle X, Section 901.2.

20 It's to construct a rear, two-story with basement and deck
21 addition, to an existing, semi-detached, two-story with basement,
22 principal dwelling unit, in the R-2 Zone. Property located at 2916
23 Upton Street, NW, Square 2235, Lot 87.

24 CHAIR HILL: Okay. Mr. Fernandez, can you hear me?

25 MS. FERNANDEZ: Hello?

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1 CHAIR HILL: Can you hear me?

2 MS. FERNANDEZ: Yes, I can hear you.

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

5 MS. FERNANDEZ: I am Vivian Fernandez, I am architect for
6 Michael and Christine Galano at 2916 Upton Street, NW.

7 CHAIR HILL: Okay. Ms. Fernandez, are you going to be
8 testifying for us?

9 MS. FERNANDEZ: Yes.

10 CHAIR HILL: You don't have to use your camera. I just want
11 to make sure you're deciding not to.

12 MS. FERNANDEZ: To tell you the truth, I can't figure out
13 how to get the camera going.

14 CHAIR HILL: That's all right. I can hear you. If you want
15 to walk us through your client's application and why you believe
16 they're meeting the criteria for us to grant the relief requested?
17 I have 15 minutes on the clock there, and you can begin whenever
18 you like.

19 MS. FERNANDEZ: We're requesting a variance from Section
20 306.3, which limits the rear addition -

21 CHAIR HILL: You're asking for a special exception.

22 MS. FERNANDEZ: Right. Special exception from 306.3. It's
23 a large lot, 4,218 square feet, in an zone where you only need
24 3,000 square feet. The lot occupancy is currently only 22 percent.
25 It would go up to 26 percent.

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1 Prior to the 2016 zoning change, they would have been
2 allowed to do this addition by right. Of that 15 feet that we're
3 requesting, 11 feet is already occupied by a deck, which is coming
4 down. So in that sense, we're asking for an additional four feet
5 of extension. It would be a 15 foot addition and a four foot deck,
6 just to be able to get down to the back yard.

7 I think they meet all the other criteria for the area, for
8 additions. The side yard, the height, the rear yard setback,
9 everything else is in conformance with zoning recs.

10 CHAIR HILL: I'm going to turn to the Office of Planning.

11 MR. COCHRAN: Thank you, Mr. Chair. I'm Steve Cochran,
12 handling this case for the Office of Planning. Office of Planning
13 is happy to stand on the record. Beyond that, we're here to answer
14 questions.

15 CHAIR HILL: Hi, Mr. Cochran. How are you doing?

16 MR. COCHRAN: Doing well.

17 CHAIR HILL: Haven't seen you in a while.

18 MR. COCHRAN: I feel that way about most people.

19 CHAIR HILL: Just so the Board knows, a long time ago I had
20 a case with Mr. Cochran, and Mr. Cochran was my Office of Planning
21 person. So I see you sometimes, I'm like, oh, this is great.

22 MR. COCHRAN: And as I recall, that building never got
23 built.

24 CHAIR HILL: Somewhat, somewhat.

25 MR. COCHRAN: It was in conformance with whatever the Board

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1 passed.

2 CHAIR HILL: We can talk about it another time, Mr. Cochran.
3 All right. Does the Board have any questions of the Office of
4 Planning? All right. Mr. Young, is there anyone here who wishes
5 to speak?

6 MR. YOUNG: We do not.

7 CHAIR HILL: Okay. Ms. Fernandez, is there anything you'd
8 like to add at the end?

9 MS. FERNANDEZ: No, sir.

10 CHAIR HILL: Mr. Blake, you have a question?

11 MEMBER BLAKE: Yes. Do we have the ANC report? I didn't see
12 it.

13 MS. FERNANDEZ: No, I don't have an ANC report. I tried
14 contacting them on October 26. I contacted Caroline Kugler
15 (Phonetic) of 3F02, I contacted Commissioner at ANC

16 3F on October 28, chatted with her on October 28, again.
17 I contacted the Commissioner at ANC 3F, January 28, David Kristoff
18 or 3F01, and February 1, Commissioner ANC 3F.com.

19 In other words, I only recently was able to reach someone
20 returning my call, but I understand the ANC 3F07, which is the one
21 we have, currently the Chair is vacant.

22 MR. TANDARIC: That's me, and I'm also here to testify, if
23 I can.

24 CHAIR HILL: Hello, Commissioner. Could you introduce
25 yourself, Commissioner?

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1 MR. TANDARIC: Yes, of course. My name is James Tandaric.
2 I'm the ANC Commissioner for 3F07

3 CHAIR HILL: Welcome, Commissioner.

4 MR. TANDARIC: Thank you.

5 CHAIR HILL: Go ahead, Commissioner, and give your
6 testimony.

7 MR. TANDARIC: My name is James Tandaric, and I'm the ANC
8 Commissioner for ANC3F07. I am here myself to show my support in
9 a special exception for my small number district. I spent the past
10 few reading over all documents that Ms. Fernandez sent me. Along
11 with documents were on the Interactive Zoning Information System.

12 It's very clear that Ms. Fernandez, Joanna, has spent the
13 time going over everything and making sure all parties are on
14 board. I read reports from several next door neighbors who
15 approved it, as well as DDOT and the Office of Planning.

16 I spoke to my commissioners just the other night, and upon
17 reviewing it, we find no concern with this exemption. We haven't
18 actually formally voted on it. I speak of the timing of this
19 Board. This happens before our February public meeting. That will
20 be next week, but we don't want to miss that timeline of the
21 special exemption, which is why I'm here to testify on my own
22 behalf for this special exemption.

23 I just hope that the Galanos are happy in their endeavor,
24 and look forward to seeing it in the AMD. Thank you.

25 CHAIR HILL: Okay, great. Mr. Galano, are you there?

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1 MR. GALANO: Yes, I'm here.

2 CHAIR HILL: Could you introduce yourself for the record,
3 please?

4 MR. GALANO: Yes. Michael Galano, owner of 2916 Upton
5 Street, NW.

6 CHAIR HILL: Commissioner Tandaric, is Mr. Galano in your
7 SMD?

8 MR. TANDARIC: He is, yes.

9 CHAIR HILL: Okay, great. Mr. Galano, the commissioner has
10 taken time to come out, and he's been very helpful, just to let
11 you know.

12 MR. GALANO: Yes, we very much appreciate it, Commissioner.
13 Thank you.

14 CHAIR HILL: Commissioner, if you could, we're going to
15 leave the record open for something from your ANC. So if you could
16 take a vote and then put something into the record for us, that
17 would be great.

18 MR. COCHRAN: Yeah. Our meeting would be next Tuesday, so
19 we can just go on it from there. And I can respond to the Gelanos
20 about how we normally do that, and then I'll let you know about
21 the report afterwards.

22 CHAIR HILL: Okay. I'm going to leave the record open for
23 the report. We're probably going to go ahead and take a vote, but
24 I'm going to leave the record open for the report. Okay? Okay,
25 great. Thank you.

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1 And Mr. Blake, thank you so much for bringing that up,
2 because I had noted it. But when Mr. Cochran showed up, I got
3 distracted. Vice Chair John, did you have something to say?

4 VICE CHAIR JOHN: I was just wondering if the Applicant had
5 to present before the ANC. This has actually not gone to the ANC.
6 In order for us to give great weight to the ANC's report, it would
7 have to be duly noticed and voted on. But in the alternative, we
8 could just accept the testimony from Mr. Tandaric, as the SMC
9 commissioner, without seeing the formal commission vote. It's a
10 difference in how we treat the testimony.

11 CHAIR HILL: Thanks, Commissioner John. I was going to go
12 ahead and deliberate and vote, and then leave the record open for
13 anything the ANC submitted. We wouldn't be giving great weight to
14 the ANC because we didn't have anything from the ANC, but the
15 record would then be more complete once we get something from the
16 ANC. We could base our deliberations on the testimony from the
17 SMD.

18 VICE CHAIR JOHN: Thank you.

19 CHAIR HILL: Okay. Ms. Fernandez, do you have anything you
20 would like to add at the end?

21 MS. FERNANDEZ: No. I would just like to thank Mr. James
22 Tanderic for testifying. That was very helpful. Thank you. I was
23 really worried.

24 CHAIR HILL: Thank you. Thank you, commissioner. I'm going
25 to close the hearing and leave the record open for submission from

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1 the ANC. Mr. Young, you can excuse everyone.

2 Mr. Blake, while I was gone, did you start? It was just
3 kind of random, how it happened?

4 MEMBER BLAKE: I'm not saying a thing.

5 CHAIR HILL: Well, Mr. Blake, would you mind starting?

6 MEMBER BLAKE: Sure. The Applicant proposes to demolish and
7 existing 11 foot deep, first floor rear deck, and to construct a
8 two story, 15x18 rear addition and four foot deck on existing two
9 story semi-attached principle dwelling.

10 Because the addition will extend 15 feet beyond the rear
11 wall of the adjoining property to the west, the Applicant is
12 seeking a special exemption from the ten foot rule, D 306.3,
13 pursuant to D 306.4 and D 5201 and Subtitle X 901.2.

14 In reviewing the standards of 5201, light and air shouldn't
15 be unduly affected. The Applicant's sun studies, Exhibits 14
16 through 19, 37 through 50, indicate that any shadowing on the
17 windows of the adjacent properties would not be excessive, and
18 there would be little or no additional shadowing on the adjacent
19 rear yards.

20 The privacy and use of enjoyment of neighboring properties
21 should not be unduly compromised, as there will be no windows on
22 the east side of the house, but they will extend no further than
23 the existing house, and there will be an 18 foot separation
24 between these windows on the east, adjacent deck. No windows on
25 the west side, a 69.5 foot radial on a 16 foot alley to the rear.

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1 There should be no visual intrusion upon the character and
2 scale and pattern of houses along the street frontage or alley
3 frontage. The addition will be clearly visible from the front,
4 will be barely visible from Upton Street, and their rear would be
5 buffered by the 16 foot rear yard and plantings, and 16 foot
6 alley.

7 As a result, the addition should not substantially visually
8 intrude on the character and scale of the houses along the street
9 or alley. Considering these factors, I don't believe the granting
10 of the relief requested will affect the use of neighboring
11 properties, and as the requested relief is anticipated to follow
12 zoning regulations, the Applicant met the specific conditions of
13 B5201.

14 Relief does not result in non-conforming, and there is no
15 change in use. I believe the granting of relief will be in party
16 with the general purpose and intent of the zoning regulations.
17 Therefore, based on the record before the Board and giving great
18 weight to the Office of Planning report, and knowing no objection
19 from DDOT, obviously there is no ANC report but we acknowledge the
20 testimony of the SMD, and note that the record remains open for
21 the report.

22 I would also note the support of the adjacent neighbors,
23 as well as the other neighbors along the 2900 block of Upton
24 Street. I believe the Applicant has met the burden of proof
25 pursuant to the specific and general criteria, and should be

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1 granted the requested relief.

2 That's all I have to say.

3 CHAIR HILL: Thank you, Mr. Blake. Thank you very much for
4 that analysis. Commissioner Miller?

5 ZC MEMBER MILLER: Thank you, Mr. Chairman. I agree with
6 Board Member Blake. Thank you.

7 CHAIR HILL: Vice Chair John?

8 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree with
9 Board Member Blake, and I thank him for that full analysis.

10 CHAIR HILL: Yes, Vice Chair John, Board Member Blake's
11 analysis is getting so good, I think we should promote him.

12 VICE CHAIR JOHN: I think we should promote him to starting
13 first from now on.

14 CHAIR HILL: That wasn't even it. I think if something
15 happened to you while I was gone -

16 VICE CHAIR JOHN: God forbid. We came pretty close. Don't
17 even say that.

18 CHAIR HILL: Mr. Blake would have had to run the show.

19 VICE CHAIR JOHN: I have no doubt. It would have been fine.

20 CHAIR HILL: Mr. Blake's ready to go. I'm talking about
21 promotion to my job.

22 VICE CHAIR JOHN: Absolutely.

23 CHAIR HILL: All right. Mr. Blake, you have any comments
24 you'd like to add for our little roasting of you?

25 MEMBER BLAKE: No. Thank you very much.

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1 CHAIR HILL: I make a motion to approve application no.
2 20618 as captioned and read by the secretary, and ask for a
3 second. Ms. John?

4 VICE CHAIR JOHN: Second.

5 CHAIR HILL: Motion has been made and second. Mr. Moy, if
6 you could please take a roll call?

7 MR. MOY: When I call each of your names, if you please
8 respond with a yes, no, or abstain to the motion made by Chairman
9 Hill to approve the application for the relief being requested.
10 The motion to approve was second by Vice Chair John. Zoning
11 Commissioner Rob Miller?

12 ZC MEMBER MILLER: Yes.

13 MR. MOY: Mr. Blake?

14 MEMBER BLAKE: Yes.

15 MR. MOY: Vice Chair John?

16 VICE CHAIR JOHN: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIR HILL: Yes.

19 MR. MOY: We have no other Board members participating.
20 Staff would record the vote as 4 to 0 to 1. This is on the motion
21 made by Chairman Hill to approve. The motion to approve was second
22 by Vice Chair John. Also in support of the motion is Zoning
23 Commissioner Rob Miller, Mr. Blake, and of course Vice Chair John
24 and Chairman Hill. The motion carries on a vote of 4 to 0 to 1.

25 CHAIR HILL: Okay. Thank you. All right, guys. We'll take

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1 like ten minutes and come back. Thank you.

2 (Whereupon the above-entitled matter went off the record
3 at 3:53 p.m. and resumed at 4:12 p.m.)

4 CHAIR HILL: All right. Mr. Moy, you can call the next
5 case.

6 You're on mute, Mr. Moy.

7 MR. MOY: The Board is back in its hearing session, and the
8 time is at or about 4:13 p.m.

9 The next case before the Board is a self-certified
10 application for Application No. 20619 of Usman Arshad, A-R-S-H-A-
11 D. This application was amended for Use Variance from the
12 matter-of-right use requirements of Subtitle U, Section 401.1
13 Pursuant to Subtitle X, Section 1002. This would convert an
14 existing pick-up dry-cleaning service use, to a retail convenience
15 store use, in an existing, semi-detached, three-story with
16 basement, mixed-use building in the RA-2 Zone. The property is
17 located at 1301 Florida Avenue, N.W., Square 2868, Lot 100.

18 The only other item I have today, Mr. Chairman, is there
19 was a filing by the applicant within the 24-hour block. So,
20 that's before the Board.

21 CHAIR HILL: Got it.

22 Mr. Finn, are you there?

23 MR. FINN: I'm here.

24 CHAIR HILL: Are you presenting --

25 MR. FINN: Can everybody hear me?

1 CHAIR HILL: Yeah.

2 Are you presenting, Mr. Finn, or is your client?

3 MR. FINN: I'm presenting.

4 CHAIR HILL: Okay. Could you introduce yourself for the
5 record, please?

6 MR. FINN: Yes. My name is Michael Finn. I'm an architect
7 in D.C., and I'm representing the client in this BZA case, Mr.
8 Usman Arshad.

9 CHAIR HILL: Great.

10 Mr. Finn, are you using a camera? It's okay, I just want
11 to know.

12 MR. FINN: I don't know if I'm using it or not. Let me see
13 if I push my square here and see what happens.

14 Can you see me?

15 CHAIR HILL: No, not yet. But you can try to play around
16 with it, if you want to. I think you just click it and then
17 you're in. It says, "start video/stop video" at the bottom.

18 MR. FINN: Oh, start video. Oh, good, good, good. Okay.

19 How's that? Oh, good. Here I am.

20 CHAIR HILL: Very good. Perfect.

21 All right, Mr. Finn, great. Well, now I can't hear you.

22 MR. FINN: Oh. Can you hear me and see me now?

23 CHAIR HILL: I can't see you. But that's okay, as long as
24 I can hear you.

25 MR. FINN: How about that now? My picture on my computer

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1 is jammed. It's still. I'm not moving.

2 CHAIR HILL: That's all right. Let's go ahead and proceed
3 with your sound.

4 MR. FINN: Okay. Can you hear me?

5 CHAIR HILL: Yep. I can hear you.

6 MR. FINN: Okay, good.

7 CHAIR HILL: Mr. Finn, you know that you're going to have
8 to talk us through the use variance; correct?

9 MR. FINN: Yes. Which I understand are rather tricky
10 waters. But let me, let me start and see what I can do. And,
11 please, help me out on occasion.

12 CHAIR HILL: Yep. Mr. Finn, go ahead and walk us through
13 your app, your client's application, and why you believe they're
14 meeting the criteria for the grant relief requested. I'm going
15 to put 15 minutes on the clock so I know where we are.

16 And then, also, there was a couple of filings that came in
17 late that I think helps clarify some of your case. And if the
18 Board has any issues with it, please let me know, but I'm going
19 to allow them into the record, unless someone on the Board has any
20 issues. And, if so, raise your hand.

21 No one's raising their hand. So, we're going to put that
22 into the record. And if any Board wants to take a look at it,
23 there's a, I think it's 48 and 49 are the new exhibits. And, Mr.
24 Finn, you can begin whenever you like.

25 MR. FINN: Okay. Well, as a, as an architect I'd like to

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1 first bring up the building itself, if I may. I assume everyone
2 is familiar with the exterior of this particular building.

3 Basically, it's a, you know, rather charming, Greek
4 revival, federalist building. And it's, it lends itself, it
5 almost demands that the uses of the building are mixed.

6 To emphasize, on 13th Street there is an entrance to two
7 apartments and the base -- and the lower level. On Florida Avenue
8 there is a lower level that it basically calls for a commercial
9 use. And it has been a commercial use.

10 So, all we're asking is that that use be extended for
11 another, for another lease, another tenant.

12 If you take a look at the Florida Avenue side, it's hard
13 for me to determine if this was the original construction of the
14 building or not because it's a little unusual. And you'll notice
15 that the building is separated from the row of houses directly to
16 its west by a retaining wall.

17 I tend to think that this is the original configuration of
18 the building. Otherwise, if this were going to be an apart --
19 another apartment, you would most likely enter it around the
20 corner where the apartment house entrance and use is.

21 By the way, a full disclosure here. I also helped in
22 renovating the two apartments on the second and third floors of
23 the building. So, I'm kind of familiar with it. I've been
24 through it many times. And I've, you know, been around the
25 neighborhood many times also through the work I've done on this

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1 building.

2 So, I think from a design point of view, I think we're on
3 fairly strong ground in wanting to keep what appears to be the
4 historic use of the building. So, I think we're not going to be
5 disrupting any of the neighborhood harmony because, physically,
6 the building calls for commercial use, along with the two separate
7 apartments. And, historically, I think it does, too.

8 We cannot be sure that this was the original construction
9 of the building, but it sure looks like it because it has the two
10 completely separate physical entrances.

11 So, that, from a strictly design point of view, I think
12 we're entitled to have our application approved.

13 From a neighborhood harmony point of view -- and I think
14 harmony is a word that's used with zoning cases quite a bit --
15 we're just going to be extending what's already there. And it's
16 a, it's going to be a rather, quiet, discrete use of this space.
17 You can call it a mom and pop business. Well, in this case it
18 will probably just be a pop business because, you know, it's very
19 modest and very small. And the proposed tenant, Mr. Arshad, you
20 know, wants to be a good neighbor.

21 And in this type of situation where you are operating your
22 business right in front of all your neighbors, you kind of have
23 to be a good neighbor, otherwise you won't succeed in business.

24 So, I think the harmony of the neighborhood will be
25 maintained because the physical aspect of the building will be

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1 maintained. And I think anything else would be rather disruptive,
2 and would also be a hardship on the owner of the building who, of
3 course, wants a good tenant.

4 And so, I think we, we are entitled to our variance on
5 those two requests.

6 Also, this will be a very quiet use of the space. And I
7 think that goes without saying. And in one of my letters, I think
8 it was to the Office of Planning, I used the French word for a
9 convenience store, which is what we're trying to get here, and
10 it's *depanneur*, which means sort of, literally translates "to the
11 rescue." I mean, if someone in the neighborhood says, "Oh, my
12 gosh, we ran out of milk. Let's run down to the convenience
13 store." Well, there it is.

14 So, I think it will be an asset. And I think it's the type
15 of, type of facility that will actually add to the neighborhood
16 because it is so quiet. Everybody's going to use it.

17 And I think we are, we fall into that category of being a
18 plus to the neighborhood.

19 And, basically, I think that's my main, main presentation
20 here.

21 CHAIR HILL: Okay. Mr. Finn, I'm going to allow the Board
22 to ask some questions in a second. But, first, I'm going to turn
23 to the Office of Planning.

24 Thank you.

25 Mr. Mordfin?

1 (No audible response.)

2 CHAIR HILL: Mr. Mordfin, are you there?

3 (No audible response.)

4 CHAIR HILL: All right. While somebody tries to get Mr.
5 Mordfin, Mr. Finn, did you go to the ANC?

6 Mr. Blake, I'll get to you in one second.

7 MR. FINN: I attended, yes, the first meeting that --
8 actually, in the beginning of the first, the first ANC meeting
9 that I went to, the proposed use of the space was different from
10 what our use is now.

11 CHAIR HILL: So, you're aware that the ANC has a condition
12 that you guys don't sell cigars or cigarettes?

13 MR. FINN: Absolutely. That was very much in evidence at
14 the first ANC meeting. And, of course, Mr. Arshad wants to be a
15 good neighbor and to be accommodating, so he's more than happy to
16 switch his use to a plain old convenience store.

17 CHAIR HILL: Right. Okay. And I know that you probably
18 argued the variance there at the ANC meeting. And so, they voted
19 to approve. Correct?

20 MR. FINN: Yes.

21 CHAIR HILL: Okay. Mr. Mordfin, are you there?

22 (No audible response.)

23 CHAIR HILL: Mr. Blake, you had a question?

24 MEMBER BLAKE: Sure. I'd like to ask Mr. Finn a question.

25 CHAIR HILL: Oh, here's Mr. Mordfin.

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1 Mr. Blake, do you want me to hear Office of Planning first?
2 Is that okay, or do you want to go?

3 MEMBER BLAKE: That's fine. That's fine. That's fine.

4 CHAIR HILL: Okay. Mr. Mordfin.

5 MR. MORDFIN: Yes. Okay. Sorry.

6 I'm Stephen Mordfin with the Office of Planning for this
7 application. And the Office of Planning is in support of this
8 application, which is a use variance. We understand that it's a
9 use variance.

10 And our rationale for recommending approval is, you know,
11 we do find that there's an exceptional practical difficulty in
12 that this is a building that, as far as we can tell, is built to
13 have this commercial space. The space is different from the other
14 spaces in the neighborhood. If you go to the east along Florida
15 Avenue, and farther to the west along Florida Avenue there is a
16 row of row houses there. And they're all set back from the street
17 with a lawn-like area, and up approximately one flight of stairs.

18 If you go around the corner onto Florida to the main
19 entrance to where you have the two apartment units that are within
20 the building that the subject property is in, it's also one flight
21 up.

22 This is a different kind of space that appears designed to
23 attract people to it. It is concrete-paved, with a sidewalk all
24 the way up to the building, you know, without something to
25 separate it, without something to keep the public away but,

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1 rather, they brought the public to it with a large bay window
2 there.

3 So, therefore, we find that that's a unique situation that
4 is not the same as the residential properties that are surrounding
5 it which do have that level of separation from the busyness of a
6 street or a sidewalk, but, rather, to take advantage of what
7 occurs on the sidewalk.

8 We don't see that converting this use now into a
9 convenience store, which would continue the commercial use of the
10 space use for the last 100 years, the intersection would continue
11 to be more or less at the intersection of two streets, designated
12 as arterial streets by the, by DDOT. It's also located directly
13 across the street from a high school. And, so, because of that,
14 OP agreed with the ANC's recommendation that they not sell tobacco
15 products because that could become a nuisance for both the
16 students and for the surrounding neighborhood.

17 So, we don't see that it would be a detriment to the public
18 good because this would continue to have its own separate entrance
19 away from the existing residences that surround it.

20 And, thirdly, no substantial impairment to the intent,
21 purpose, and integrity of the zoning regulations. It would
22 continue to be utilized in a manner to which we believe that it
23 was originally designed and intended, or at least the way it is
24 designed today, and was most recently utilized. As far as we
25 know, it's never been used residentially.

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1 They're not going to increase the size of the space, which
2 will limit the extent of the nonconformity to the existing
3 situation only.

4 And, so, for those reasons the Office of Planning
5 recommends approval of this use variance request.

6 Thank you. And I'm available for any questions.

7 CHAIR HILL: Okay. Does anybody have any questions for the
8 Office of Planning?

9 Commissioner?

10 ZC MEMBER MILLER: Thank you, Mr. Chairman.

11 Thank you, Mr. Mordfin, for your report.

12 My question is, this is a use variance to have a
13 convenience store in this location in an RA-2 zone that used to
14 be a pick-up/drop-off dry cleaner. Retail convenience store is
15 the category that they are seeking.

16 Could they have sought to be a corner grocery store by
17 special exception for matter-of-right if they met the criteria in
18 the zoning regulations for a corner grocery store?

19 MR. MORDFIN: Corner stores are not permitted in the RA zone
20 districts. It's -- we don't have. That's in the RF districts.
21 So, they couldn't apply under the corner store provisions.

22 Also, they're applying to become a convenience store. The
23 last use was a pick-up/drop-off dry cleaner, which has closed.

24 ZC MEMBER MILLER: Right. Right.

25 MR. MORDFIN: So, they can't, it's not available to them to

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1 apply under the corner store provisions, because it's not in the
2 RA zones.

3 ZC MEMBER MILLER: Yeah. I didn't realize. I thought, I
4 realized that it's designed primarily for the RF row house zoned
5 neighborhoods. I didn't realize that it didn't also apply to the
6 greater density zones. Like, most uses are allowed in the greater
7 zones. But I didn't realize you had limited the grocery store
8 use.

9 Why did we limit it to -- why did we limit it? I realize
10 row house neighborhoods you want to encourage the corner grocery
11 store to make it less burdensome. I think it's a matter-of-right
12 option and a special exception option; right?

13 MR. MORDFIN: I know there's a special exception option.
14 I'd have to look to see if there's a matter-of-right.

15 ZC MEMBER MILLER: Maybe we can, yeah, maybe originally it
16 was proposed as matter-of-right and we went to special exception.

17 I guess I'm curious as to why it would not make sense to
18 make it the same kind of incentive for the RA zones. It's
19 something that maybe we can talk about with the Office of Planning
20 and the Zoning Commission going forward. Maybe not to just limit
21 it to the row house zones, the corner grocery store regulations.
22 But I'm not sure I see that off the top of my head right now.

23 So, this is not related necessarily to this case. But it
24 prompted those questions in my mind. So, thank you for that
25 information.

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1 MR. MORDFIN: You're welcome.

2 CHAIR HILL: Mr. Blake.

3 MEMBER BLAKE: Yeah. Mr. Chairman, I'd like to ask the
4 applicant a quick question then come back to Mr. Mordfin, because
5 they kind of go in order.

6 The question to Mr. Finn, or Mr. Bruno, or what exactly is
7 the size of the unit, the unit in the basement, the lower level?

8 MR. FINN: Well, I -- may I? I think it's about 750 square
9 feet. It's pretty small, obviously.

10 MEMBER BLAKE: Okay. And --

11 MR. FINN: I'm sorry. It's not as big as the square footage
12 of the apartment because there's a utility room.

13 MEMBER BLAKE: Okay. Okay. I saw the schematics in the
14 document, but it didn't have any numbers on it, so I wasn't clear
15 exactly what the sizing was.

16 Does it have a restroom and all that kind of stuff in it?

17 MR. FINN: Yes. Yes.

18 MEMBER BLAKE: Okay. And --

19 MR. FINN: It's very modest. It really is.

20 MEMBER BLAKE: I get it.

21 And the prior use, this question for just a second, is for
22 Mr. Mordfin. Mr. Mordfin, the prior use for this was a dry
23 cleaner, pick-up and drop-off. What use category is that in, for
24 that first beginning, in that particular application? Because I
25 think the prior use was a barber shop, and then the barber shop

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1 went to a -- this. What was that, the dry cleaner, what use is
2 that? Let me ask, what is that, what use?

3 MR. MORDFIN: Use category. I'll have to get back to you
4 on that. I don't know what use category that falls under.
5 Applied to change the use, the use categories.

6 MEMBER BLAKE: I'm sorry, say that again?

7 MR. MORDFIN: They applied for a new use variance for a new
8 use.

9 MEMBER BLAKE: I'm just trying to clarify whether, how this
10 use fit in relative to the prior use, and relative from an
11 intensity standpoint. And I believe the, I believe it was the dry
12 cleaners was first permitted in MU-3. I think the barbershop,
13 too, would have been probably MU-3. But I think the convenience
14 store may be MU-4, which would be Group B. And whereas MU-3 step
15 would be Group D.

16 So, I'm just trying to make sure, I just want to make sure
17 I get a sense of that. I wanted to see how you saw that? I mean,
18 I think if we're doing this right, if you're going to a group 4,
19 you would be essentially changing these outside parameters as
20 well. So, I just wanted to make sure of that.

21 MR. MORDFIN: Right. And that's why the application was
22 applied for the way it is.

23 MEMBER BLAKE: Yeah, exactly.

24 MR. MORDFIN: So that they could be able to take advantage
25 of being able to request this use.

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1 MEMBER BLAKE: Okay. My next question is for Mr. Finn.

2 Mr. Finn, you guys -- and also for Mr. Bruno -- you guys
3 have had this space. It's a commercial space, it's had the
4 opportunity to be used as a commercial space for a while. It's
5 had a variety of uses. Could you explain to me, given what I just
6 discussed with Mr. Mordfin about the potential uses for this
7 property, there's the matter-of-right uses, special exception
8 uses, and now it was a non-conforming use in Group D, I'd be
9 curious to know if you looked at other potential applications that
10 would fit within that parameter?

11 MR. BRUNO: I can speak to that.

12 I'm Anthony Bruno. I'm the owner of 1301 Florida Avenue.

13 And, naturally, you know, the easiest transition would have
14 been to another dry cleaners, to lease to another dry cleaners.
15 And reality is, you know, due to COVID and, you know, the mayor's
16 public health emergency, the workforce, you know, has changed,
17 obviously, and the majority of the workforce is working remotely.
18 So, the need for dry cleaning has diminished. The demand is down.

19 So, you know, business attire, obviously, is not being dry
20 cleaned. And the existing dry cleaner seemed to be in survival
21 mode and not in grow mode. So, you know, I'd get a couple calls
22 and they would just say, you know, we probably just can't grow at
23 this time. And, you know, and I think everybody's just trying to
24 keep their head above water for that use.

25 The other uses have been, really, markets. Get a lot of

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1 calls from markets. And that's really about it.

2 MEMBER BLAKE: Okay. But you have the ability in that group
3 to look, I believe you can do something, like, in the same group
4 via special exception. I believe you went from a barber shop to
5 a dry cleaner via special exception, because it was in the same
6 use group. So, that's a lesson of a standard to transition to,
7 so.

8 It's just it's more opportunity to look at other businesses
9 that were not as onerous a requirement.

10 So, to a large extent, have you been out looking a lot, or
11 has it been soft marketing? Is this the first person?

12 MR. BRUNO: It's a soft market, naturally. I mean, you
13 know, with COVID. You know, three or four years ago the market
14 was, you know, it was a little bit stronger.

15 But there's, there's a lot of vacancies around town now.
16 And, you know, this, this use for, we figured this use for that
17 particular spot would be a great use to service the neighborhood
18 and keep with the character of the building and the neighborhood.

19 MEMBER BLAKE: Okay. All right. I have a question for --
20 and don't have to take too much time, Mr. Chair -- two questions
21 for Mr. Arshad.

22 When you -- Are you there?

23 MR. ARSHAD: Yes, I am.

24 MEMBER BLAKE: Yeah. Would you, would you please explain
25 to me exactly what the products you are offering in this business?

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1 I know that initially it started out as a smoke shop. And then
2 it kind of morphed into more of a convenience store based on some
3 of the feedback you got from the ANC and the community.

4 Could you tell me exactly what product list you're kind of
5 targeting at this point?

6 MR. ARSHAD: Thank you for your time.

7 Yes, in the beginning it was a retail tobacco store. But
8 I went to the ANC and listened to their concern. And they were
9 in support of a retail convenience store.

10 So, we're not going to be selling cigarettes and cigars.
11 It's going to be prepackaged food, soft drinks, especially non-
12 alcoholic drinks, packed food, snacks, over-the-counter medicine,
13 and small stuff that is everyday use like napkins, milk, water,
14 soda, anything that you might need in the house, so you don't have
15 to go to a big market.

16 MEMBER BLAKE: Okay. So, the original concept for the smoke
17 shop, which is still in your name, where you were going to have
18 hookah, hookah accessories, CBD oil, things like that, that's not
19 going to be part of your product?

20 MR. ARSHAD: Not going to be selling those. That's why we
21 changed it. I went to the ANC, again, with this proposal and
22 that's what they suggested as well, that instead of doing the
23 tobacco shop we will support a convenience store.

24 So, I went back and discussed it. This is a better option
25 for me if I want to stay in this neighborhood. And they were

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1 pretty supportive of it. I even went to the neighbors and I spoke
2 with them. And they're pretty supportive of the convenience
3 store.

4 MEMBER BLAKE: Okay. Mr. Mordfin -- I'm sorry, last
5 question. Mr. Mordfin, when --

6 CHAIR HILL: Take your time. Take your time.

7 MEMBER BLAKE: When you look at this description of the
8 services and the product he wants to offer, given the fact that
9 he is, clearly, fairly flexible in what he's offering, he starts
10 from a smoke shop to a convenience store. Now, obviously it's a
11 retail business.

12 Now, within the context of the existing variance which is
13 in place today and the use that we have, are there any business
14 that could, retail businesses that would fit in with that
15 description without being in the next use category?

16 MR. MORDFIN: I mean, we don't review it for what other
17 things the applicant could do. We review it for the applicant-
18 proposed retail convenience store, and that's what we evaluate.
19 We don't evaluate it against other potential uses that the
20 applicant could have done instead, because that's not before us,
21 we don't have any specifics for that.

22 So, the retail convenience store, you know, I realize it's
23 a different use category, which is why they had to apply the way
24 they did. It has the support of the ANC.

25 We also felt that it was suitable for the space. It's a

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1 small space, and we thought, you know, that it would, because of
2 the way the space is designed, it's away from the residential
3 uses, that this would be an accept -- that it met the criteria for
4 a use variance, which is why we recommended approval of it as I
5 went through the report.

6 You know, I'm sure there are other uses that the applicant
7 could have put it towards, but the applicant didn't propose those.
8 So, I don't have any specifics as to what the applicant would be
9 proposing if they were to select a different use to put into the
10 space.

11 MEMBER BLAKE: So, as far as -- I understand the first prong
12 of the test that you talked about. I cannot understand the second
13 prong. Well, not the second prong, the prong where you talk about
14 the hard, undue hardship.

15 I cannot see that because there are other alternatives that
16 are available to this entity that would not require that. So, I'm
17 trying to understand where you have the undue hardship, the use,
18 that it can't be put to use. I think without evaluating that, how
19 could you come to that conclusion?

20 MR. MORDFIN: Well, it's practical difficulty or exceptional
21 or undue hardship. So, I think in this case I think it is a
22 practical difficulty to use this as a residential unit the way we
23 evaluate: the way it fronts on the street, the way it's right at
24 street level, the way it doesn't have any of the separation that
25 other residential uses in the neighborhood have, either the row

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1 houses which are set back and set up approximately a flight up
2 off, a flight up off of the sidewalk. The same with the apartment
3 units in the building; they are obviously up and away from the
4 street, and away from the sidewalks. And this is not, it opens
5 directly onto it.

6 So, that is what was looked at as what is the practical
7 difficulty to living in the space. Also that, you know, it's
8 right on the sidewalk. Because usually, you know, even when you
9 design an apartment building, that's even different from an office
10 building because you have usually you set it back a little bit,
11 you have maybe little hedges across the front of a residential
12 building.

13 Whereas an office building or a retail building will be
14 smack right up against the sidewalk. You have no level of
15 separation. And this space has no level of separation which makes
16 it -- I mean, granted, you could make anything into anything, if
17 you really wanted to. But does it make a good residential space,
18 or does it really -- you know, what kind of residential space
19 would we be creating?

20 If this was a, obviously, a residential space that had been
21 converted at one time, that would change the evaluation that we
22 would have on the space.

23 MEMBER BLAKE: Okay. I think, Mr. Mordfin, I think I agree
24 with you that it's probably not a great residential space. But
25 taking it as a commercial space, my question was just more about

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1 the intensity of use and the selection of the type of business
2 that's in that space.

3 That's all I have for now. Thank you, Mr. Chair. Thank
4 you.

5 CHAIR HILL: All right, Mr. Blake. Thank you.

6 Mr. Young, is there anyone here wishing to testify?

7 MR. YOUNG: We do not.

8 CHAIR HILL: Okay. Let's see. Mr. Finn and Mr. Mordfin,
9 you can help me with this.

10 So, in terms of a condition, I'm trying to understand how
11 we would word it. Or maybe somebody else can help me. Like, you
12 know, the condition would be there would be no sale of tobacco
13 products or -- hold on, hold on -- tobacco product, no, no sale
14 of tobacco or tobacco-related items including, I guess, like,
15 vaping and rolling papers.

16 I mean, I'm trying to understand how to -- I mean, Mr.
17 Blake just brought up hookahs. I mean, how we -- and I guess, you
18 know, Mr. Finn, or and I'm first turning to Office of Planning to
19 help me with the possible wording, but, you know, Mr. Finn, Mr.
20 Arshad, like whoever. Like, I mean, again, you were going from
21 a smoke shop and now you're going to a convenience store.

22 So, and everyone seems to be onboard that, you know, you're
23 not going to sell any tobacco, tobacco--related products, vaping,
24 rolling papers, what have you. I don't know how to quantify or
25 clarify that condition, being that, you know, the ANC was

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1 concerned about the school being nearby and everything like that.

2 So, does anyone have a condition for me? I got to tell you
3 all to explain it first, as to whether or not you've heard of
4 something along those lines?

5 MR. MORDFIN: I haven't heard of something. I mean,
6 alternatively, you could limit what could be sold there. A
7 convenience store and it could sell: and list the items that the
8 applicant had said he was going to sell, and limit it to those
9 items only. That's kind of backing in --

10 CHAIR HILL: That's too hard. That sounds more difficult.

11 MR. MORDFIN: Okay.

12 CHAIR HILL: But I appreciate the, I appreciate the
13 suggestion. But, no.

14 Let's see. Well, I'll let my board members chew on it.

15 I don't know if Mr. Finn or Mr. Ashad if you have --
16 Arshad, if you have a suggestion?

17 MR. FINN: Can you hear me?

18 CHAIR HILL: Yes.

19 MR. FINN: I don't even know what rolling papers is. I
20 mean, basically I think no tobacco products. It's simple and
21 straightforward and, to me, understandable.

22 CHAIR HILL: Okay. Okay. I agree with tobacco products and
23 vaping, I guess. I can go with that.

24 All right. Ms. John?

25 MR. ARSHAD: Can I say something?

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1 CHAIR HILL: Mr. Arshad, go ahead.

2 MR. ARSHAD: Their main concern was having no cigarettes and
3 cigars. That was the main concern. And I agreed to it.

4 I don't know how to word it, but that was one of their main
5 concerns. And I agreed that I won't be selling those products.

6 CHAIR HILL: No, I got it. I'm sure, Mr. Arshad, they also
7 meant vaping. So, that's why I'm just trying to, like, figure out
8 how to -- We can figure it out.

9 Ms. John?

10 VICE CHAIR JOHN: I don't have any magic suggestion. But
11 I think tobacco-related products would cover things like the
12 rolling paper, and the pipes, and, you know, the paraphernalias.
13 But, related paraphernalia.

14 CHAIR HILL: Okay. We'll go related parapher -- I mean --

15 VICE CHAIR JOHN: You know, I would have to defer to the,
16 to the legal, to the lawyers on this. But I think you would want
17 to cover that, otherwise it might be a nuisance that would attract
18 people not wanting the tobacco but wanting the products for
19 tobacco-related things that have a very pungent smell, if you get
20 what I mean.

21 CHAIR HILL: I got it. We can go with, we can -- I agree
22 with Vice Chair John, we've got to ask the Office of Planning to
23 help -- I'm sorry, Legal to help write the condition in a way that
24 covers what we're trying to say, which would include the products
25 and the vaping paraphernalia.

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1 VICE CHAIR JOHN: That's the word. Vaping, yes. That's the
2 word.

3 CHAIR HILL: And, Mr. Arshad, you're good with all that;
4 correct?

5 MR. ARSHAD: According to my information, I think vaping is
6 about to be, like, finished in D.C. I heard that. Because some
7 of the V-cigarettes there, I think they're about to ban them
8 anyways.

9 CHAIR HILL: Okay. Well, that's above my pay grade.

10 So, but you're comfortable with what I'm talking about.
11 Correct, Mr. Arshad?

12 MR. ARSHAD: Yes. I'm very comfortable with that.

13 CHAIR HILL: Okay. All right.

14 Yes, Vice Chair John?

15 VICE CHAIR JOHN: And one more question. So, we would need
16 a new burden of proof? I was looking at an exhibit that mentioned
17 the smoking shop. I don't remember which exhibit it was. So,
18 that would have to be changed?

19 There's an exhibit that mentions that it's going to be a
20 smoke shop, so.

21 CHAIR HILL: I think we can go with just what we, what we're
22 talking about maybe in the Office of Planning. Unless you want
23 something different, Vice Chair John?

24 VICE CHAIR JOHN: That's a suggestion. It's not critical.

25 CHAIR HILL: Okay. All right, does anybody have anything

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1 else?

2 (No audible response.)

3 CHAIR HILL: All right. I forgot if I asked. Mr. Young,
4 is anyone here wanting to testify?

5 MR. YOUNG: We do not.

6 CHAIR HILL: Okay. All right, Mr. Finn, do you have
7 anything you'd like to add at the end?

8 MR. FINN: Well, I'd just like to say that Mr. Arshad wants
9 to be a good neighbor. And it seems like a very modest, tasteful
10 use of the space.

11 CHAIR HILL: I got you, Mr. Finn. We're looking at the
12 variance question. And so, but I appreciate your comments. I'm
13 sure Mr. Arshad wants to be a good neighbor and make some money.

14 So, okay. All right, I'm going to go ahead and close the
15 hearing and the record.

16 Mr. Young, if you could please excuse everyone.

17 (Pause.)

18 CHAIR HILL: Okay. I can start if we're all ready to talk
19 about it.

20 I mean, I struggled a little bit with it because, I mean,
21 it is a use variance. And so, as Mr. Blake was kind of going
22 through, you know, other alternatives, I guess, that kind of go
23 through the 3-prong test that we're kind of looking at, which is
24 the exceptional practical difficulty, or exceptional undue
25 hardship; as well as the no substantial detriment to the public

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1 good; as well as no impairment to the intent, purpose, and
2 integrity of the zoning regulations, as it applies to the property
3 owner, not the tenant, the tenant. Because this hearing is with
4 the property.

5 So, I would really kind of weigh my opinion, I suppose,
6 also on the exhibits that the property owner has submitted
7 concerning financial hardship or economic hardship for this
8 particular use variance.

9 So, I will agree with the Office of Planning's
10 recommendation.

11 I will also agree with the analysis that the ANC has
12 provided.

13 And I would be in favor of a condition, as we've kind of
14 talked through, concerning tobacco products and ancillary tobacco
15 products, including vaping, not being sold at the store. And then
16 I would be able to vote in favor of the application.

17 I'm going to go around the horn a little bit, and start
18 with Commissioner Miller, if that's all right?

19 ZC MEMBER MILLER: Sure. Thank you, Mr. Chairman.

20 Yeah, I agree with you. And I agree with the analysis by
21 the Office of Planning that the applicant has met the burden of
22 proof for standard of relief for the use variance in this
23 particular case with the way that the historical use of that space
24 and the configuration of it physically, with the bay window and
25 way out to the sidewalk, and a separate entrance for the

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1 residential.

2 So, I, too, am supportive of this application, with the
3 condition of not, of not, not permitting tobacco or tobacco-
4 related products or paraphernalia, as requested by the ANC.

5 Thank you.

6 CHAIR HILL: Okay, thank you.

7 Let's see. Mr. Blake.

8 MEMBER BLAKE: I'd like to hear Ms. John, please.

9 CHAIR HILL: Sure. Vice Chair John, do you support the
10 vote?

11 VICE CHAIR JOHN: Actually, no, I'm in support but I don't
12 know how Mr. Blake is going to vote. But I'm in support of the
13 application with the condition. And I agree with the Office of
14 Planning's report.

15 And I am persuaded by Exhibit 49, that describes the
16 economic hardship that the owner has suffered in trying to rent
17 the space in the, you know, because of COVID and the downturn in
18 the commercial market, and the inability to find a suitable
19 tenant.

20 So, I'm in support. I don't have much to add to that. And
21 I agree with OP's analysis that the location of the store, the
22 configuration of the store, as Commissioner Miller notes, the fact
23 that the pavement comes right up to the store, the residential
24 units on the 13th Street side, and this little place is clearly a
25 commercial space.

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1 So, I would be in support of the application met the
2 criteria for the first prong, which is a unique condition. And
3 the second is economic hardship and undue hardship. And then the
4 third is no harm. And I believe that in this case the applicant
5 has made, you know, made a good showing there would be no harm to
6 the zoning regulations.

7 CHAIR HILL: Okay. Mr. Blake?

8 MEMBER BLAKE: Well, it looks like it's a wrap.

9 But what I'll say is this: I do believe that the building
10 has met the first condition and prong because it do think it is
11 commercial space and it should remain and used as a commercial
12 space for hardship. To convert it to a residential space would
13 be onerous and too much.

14 I have not, I am not truly convinced that the second, the
15 prong where by the difficulty to rent this to some other person,
16 or body or entity with a lesser requirement, a lesser degree of
17 relief isn't possible.

18 I agree that there's very little opportunity in the RA
19 zone, the corner store is not there. But essentially creating a
20 corner store by doing this. But the fact of the matter is there's
21 a very, you know, there are a lot retail uses that could
22 potentially go in here that I think could be consistent without
23 the need for such substantial relief.

24 So, for that reason, I have some issues.

25 The last one, with regard to public good, I do have some

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1 concerns there because without a very clear definition of what is
2 going in business, and issues expressed by the community which is
3 basically, let's face it, it's near a school, and you want to put
4 something in there that's not going to be problematic.

5 What I see, initially he talked about cigars and
6 cigarettes. I don't know a lot of people running around smoking
7 cigars at that age. But they love cigarettes, and they do have
8 play cigars, and hookah is off the chain attractive. So, there's
9 a lot of reasons why I think that you have to be careful how we
10 define the products if the issue and concern identified is not
11 putting our youth at risk by the types of things you put there.

12 And a lot of convenience stores, by definition, also sell,
13 sell beer, they sell rye, these are some of the other things, you
14 got the rolling papers. These are some of the product lines that
15 are in convenience stores. So, I'm reluctant to use the
16 definition of convenience store because I don't -- easily these
17 things kind of morph from one definition to another over time.
18 And they say, well, it's a convenience store. Well, if that's a
19 convenience store and that's what's permitted, now into MU-4 uses,
20 and this is the type of thing that can go here, so it can expand.
21 That's my concern. That's my concern.

22 So, for that reason, I will vote against this. But I
23 understand where we are.

24 Thank you.

25 CHAIR HILL: Okay. All right. I hear what you're saying,

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1 Mr. Blake. And to be quite honest, I don't know how to get into
2 the minutia of defining what is or isn't -- what is or isn't
3 acceptable next to a school. And, you know, I mean, I mean, I
4 understand. Like, you know, maybe we shouldn't sell sodas there.
5 You know, I mean, diabetes, you know. And so, like, but again,
6 that, again, is beyond me.

7 So, I'm going to go ahead and make the motion to approve
8 Application No. 20619, as captioned and read by the secretary,
9 including a condition that no tobacco or tobacco-related products
10 will be sold, including those that are for vaping products, and
11 ask the legal counsel when they're drafting the order to put
12 something in the condition that kind of speaks to what the Board
13 is, you know, leaning towards.

14 And ask for a second, Ms. John.

15 VICE CHAIR JOHN: Second.

16 CHAIR HILL: The motion has been made and seconded.

17 Mr. Moy, can you take a roll call?

18 MR. MOY: When I call each of your names, will you please
19 respond with a yes, no, or abstain to the motion made by Chairman
20 Hill to approve the application for the relief requested, along
21 with the condition as he has cited in his motion.

22 The motion to approve was seconded by Vice Chair John.

23 Zoning Commissioner Rob Miller.

24 ZC MEMBER MILLER: Yes.

25 MR. MOY: Vice Chair John.

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1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Chairman Hill.

3 CHAIR HILL: Yes.

4 MR. MOY: Mr. Blake.

5 MEMBER BLAKE: No.

6 MR. MOY: We have a board member not participating, Mr.
7 Chairman. Staff would record the vote as 3 to 1 to 1. And this
8 is on the motion made by Chairman Hill to approve with one
9 condition. The motion was seconded and in support by Vice Chair
10 John, as well as support from Zoning Commissioner Rob Miller.
11 And, of course, Vice Chair John and Chairman Hill.

12 Mr. Blake is opposed to the motion.

13 Again, the motion carries with a vote of 3 to 1 to 1.

14 CHAIR HILL: All right, great. Thank you, Mr. Moy.

15 Okay. Let's see. You can call the next one when you get
16 a chance, Mr. Moy.

17 MR. MOY: All right. This would be case Application No.
18 20622 of Jamestown Premier Georgetown Park Corporation. This was
19 captioned and advertised for a special exceptions from the matter-
20 of-right uses, Subtitle U, Section 507.1, pursuant to Subtitle U,
21 Section 508.1(j) and Subtitle X, Section 901.2. This would
22 construct a below-grade, self-storage establishment, in an
23 existing commercial use building in the MU-12 and MU-13 Zones.
24 The property is located at 3222 M Street, N.W., Square 1200, Lots
25 866 through 868.

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1 CHAIR HILL: All right, great. Thank you.

2 Mr. Cohen, can you hear me?

3 MR. COHEN: Yes, Mr. Chair, I can hear you.

4 CHAIR HILL: You want to introduce yourself for the record,
5 please?

6 MR. COHEN: Sure. Yeah.

7 Christopher Cohen of Holland and Knight. We're here as
8 counsel for the applicant. Joined by, also, my colleague Christie
9 Shiker and representatives of the applicant Jed Wasilewsky. And
10 I believe Renee Finnerty (phonetic) is also on the phone. She was
11 having issues getting on Webex.

12 CHAIR HILL: Got it. Are you or Ms. Shiker going to be
13 presenting?

14 MR. COHEN: I'll take this one for that.

15 CHAIR HILL: Okay. If you want to go ahead and give your
16 presentation, and please explain to us why you believe your client
17 is meeting the criteria for us to grant the relief requested.
18 I've got 15 minutes on the clock. And you can begin whenever you
19 want.

20 MR. COHEN: Sure. Thank you very much.

21 Mr. Young, if you could just pull up our PowerPoint
22 presentation so the Board could follow, follow along, we'd
23 appreciate it.

24 MR. COHEN: Good afternoon, or perhaps good evening. Again,
25 my name is Christopher Cohen with Holland and Knight. We're here

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1 on behalf of Jamestown for a special exception request for a self-
2 storage establishment at the Georgetown Park Mall property.

3 We'll roll through these slides.

4 Next slide, please.

5 So, just to orient the Board with the location of the
6 property. It's located at Lots 866, 867, and 868, Square 1200.
7 I imagine the Board's familiar with the Georgetown Park Mall with
8 premises along M Street, N.W., Wisconsin Avenue to the east, and
9 the C&O Canal to the south.

10 Next slide, please.

11 The property is split-zoned actually. You can see from
12 this figure here that along M Street it's zoned MU-13. And
13 further to the south, the property is zoned MU-12.

14 The MU zones are designed to allow for a broad range of
15 uses and, hopefully, also a self-storage establishment.

16 Next slide, please.

17 So, as I said before at the onset, we are here seeking the
18 Board's approval of a self-storage establishment pursuant to
19 Subtitle X, Section 901.2. And the vehicle for this relief also
20 falls under Subtitle U, Section 508.1(j).

21 In the MU-12 and MU-13 zones, a self-storage establishment
22 is permitted by special exception, and it's also under Subtitle
23 B, self-storage constitutes a form of PDR use. And it's actually,
24 let me rephrase, that PDR uses are permitted by special exception
25 in these zones.

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1 Just an overview of the support that we've received for the
2 application.

3 I'm pleased to report that OP has submitted a report in
4 support, with no conditions.

5 DDOT has expressed no objection to the approval.

6 And we're also pleased to share that we have the support
7 of the ANC, with whom we met on January 6th. And we received a
8 vote in unanimous support. And that resolution is in the record
9 of Exhibit 25.

10 Next slide, please.

11 So, here you can see the tenant space where the proposed
12 use will go. Just under 8,000 square feet in total. It will go
13 into the canal level of the mall property, which is below grade.
14 Importantly to this application especially, there are two
15 alternative points of access for storage tenants to use. One
16 would be through the parking garage.

17 And as you can see here, there's two sets of elevators with
18 red shading.

19 If we can go to the next slide, which will show how
20 accesses also will be made available off of the M Street loading
21 dock. This is actually the preferred point of access. And you
22 can see that the sets of elevators are shaded in red.

23 They, the storage tenants, will be able to pull into that
24 loading dock, and the elevators will provide direct access to the
25 below grade self-storage space.

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1 And the operating hours for this loading dock are between
2 7:00 a.m. and 7:00 p.m., and will be under very controlled
3 circumstances. So, specifically, for example, when storage
4 tenants come to use the space, they would have to contact
5 security, who would let them in through some sort of call box
6 feature.

7 A little bit more, quickly, about the self-storage
8 establishment.

9 The applicant is proposing units that will range between
10 size of 20 and 50 square feet. And a small portion of those units
11 would actually range on the larger end, that's 40 to 50 square
12 feet. So, it's really geared for as an urban amenity. It's
13 designed for tenants to use it for seasonal storage or, you know,
14 sporting equipment that might not be in use, such as golf clubs
15 in December, things like that. So, it's not what we may commonly
16 think of as a massive self-storage establishment found in suburban
17 areas.

18 Next slide, please.

19 And I guess that kind of segues into the criteria for
20 relief. I'm not going to roll through all these in detail right
21 now, but these are the five conditions associated with obtaining
22 special exception approval in MU-12 and MU-13 zones.

23 The facility is not near the waterfront, so it doesn't
24 detract from any objectives there. The activities are contained
25 within the enclosed space below grade. And as I just explained,

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1 the access points are highly controlled and off of M Street and
2 Wisconsin Avenue, so there's no standing of vehicles that would
3 create any conflicts.

4 And the M Street loading dock is also very accessible. It
5 can accommodate, you know, a typical car, or if someone needs to,
6 for whatever reason, bring a larger vehicle, it can accommodate
7 that vehicle as well.

8 Next slide.

9 I just want to wrap up with the general special exception
10 criteria.

11 Again, we believe that this use is in harmony with the MU-
12 12 and MU-13 Zones, mainly because it supports all the moving
13 objectives. And also the location, I should point out, has been
14 strategically and carefully selected by the applicant. This is
15 a space that's difficult to have leased in the past. So, given
16 that it's below grade, removed from other uses and neighboring
17 residential uses, we feel that this will not pose any adverse
18 impacts on neighboring property owners.

19 And then, again, the special conditions we just rolled
20 through under Subtitle U, Section 508.1(j).

21 That concludes my presentation. Again, I also have Mr.
22 Wasilewsky and Ms. Finnerty on the line for questions. And I
23 thank you very much for your time.

24 CHAIR HILL: All right, great.

25 Does the Board have any questions of the applicant?

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1 (No audible response.)

2 CHAIR HILL: All right. Then turn to the Office of
3 Planning.

4 MS. BROWN-ROBERTS: Good evening, Mr. Chairman, and members
5 of the BCA. Maxine Brown-Roberts from the Office of Planning on
6 Case No. 20622 for a self-storage establishment in vacant retail
7 space in the Georgetown Park Mall, which is allowed by special
8 exception under Subtitle U, 508.1(j), and also Subtitle X, 901.2.

9 I'm going to stand with the record because I think the
10 applicant sort of covered all the requirements of Subtitle U, 508.
11 And it's detailed in our report.

12 Also, we believe that the proposal is also meeting the
13 requirements of Subtitle X, 901.2, in that it is not inconsistent
14 with the intentions of the MU zones, and would not, would not --
15 and would be in harmony with the zoning regulations.

16 The Office of Planning, therefore, recommends approval of
17 the requested special exception. And I'm available for questions.

18 Thank you, Mr. Chairman.

19 CHAIR HILL: Thank you, Ms. Brown-Roberts.

20 Does anyone have any questions of the Office of Planning?

21 (No audible response.)

22 CHAIR HILL: Does the applicant have any questions for the
23 Office of Planning?

24 MR. COHEN: No, Mr. Chair. Thank you.

25 CHAIR HILL: Mr. Young, is there anyone here who wishes to

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1 speak?

2 MR. YOUNG: We do not.

3 CHAIR HILL: Is Mr. Wasilewsky -- how do you say you last
4 name?

5 MR. WASILEWSKY: Yes, Wasilewsky.

6 CHAIR HILL: Wasilewsky.

7 Mr. Wasilewsky, are you here with the mall?

8 MR. WASILEWSKY: Yes. I'm here with the owners of
9 Jamestown.

10 CHAIR HILL: Okay. Could you introduce yourself for the
11 record?

12 MR. WASILEWSKY: Yes. I'm Jed Wasilewsky. I'm on the asset
13 management team at Jamestown Properties.

14 CHAIR HILL: Got it. Just curious. That mall's been there
15 forever. Like, how has it been lately?

16 MR. WASILEWSKY: You know, as everybody's kind of felt the
17 impact of COVID, of course, we are starting to see the light at
18 the end of the tunnel finally. So, there's been some good
19 activity over the past few months. And we're expecting it to
20 continue throughout 2022.

21 CHAIR HILL: Okay. Good luck.

22 MR. WASILEWSKY: Thank you.

23 CHAIR HILL: All right. Does anybody have any questions for
24 anyone before I close the hearing?

25 (No audible response.)

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1 CHAIR HILL: Great. Thank you. Going to close the hearing
2 on the record.

3 If you'll excuse everyone, Mr. Young.

4 Okay. I thought this was really pretty straightforward.
5 I mean, I think they're meeting the criteria for 508.1 as well as
6 the general standards.

7 I also think that, I mean, it's a pretty unique spot that
8 they are filling. And I don't see any issues with the self-
9 storage there.

10 I also would agree with the analysis that the Office of
11 Planning has provided, as well as that of the ANC, and that they
12 are in support.

13 And Chair Murphy I know comes before us a lot. So, that
14 ANC is pretty active.

15 I don't have anything else to add. I'm going to go around
16 the table.

17 Commissioner Miller?

18 ZC MEMBER MILLER: I agree.

19 CHAIR HILL: Okay. Let's see, Mr. Blake?

20 MEMBER BLAKE: Sure. I would like to applaud the
21 applicant's success at repurposing this space. It's a tough
22 market and a tough space, and a great choice.

23 Based on the record before the Board, and giving great
24 weight to the Office of Planning report and the ANC reports, I
25 feel very comfortable that the applicant has met the specific and

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1 general conditions, and would be comfortable supporting this
2 request.

3 CHAIR HILL: Okay. Vice Chair John?

4 VICE CHAIR JOHN: Good evening, Mr. Chairman.

5 I'm in support of the application. And I don't have
6 anything to add to what's been said so far.

7 CHAIR HILL: Okay, thank you.

8 All right. Then I'm going to go ahead and make a motion
9 to approve Application No. 20622, as captioned and read by the
10 secretary, and ask for a second.

11 Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIR HILL: The motion has been made and seconded.

14 Mr. Moy, could you take a roll call, please.

15 MR. MOY: When I call each of your names, if you would
16 please respond with a yes, no, or abstain to the motion made by
17 Chairman Hill to approve the application for the relief requested.

18 The motion to approve was seconded by Vice Chair John.

19 Zoning Commissioner Rob Miller.

20 ZC MEMBER MILLER: Yes.

21 MR. MOY: Mr. Blake.

22 MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John.

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill.

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1 CHAIR HILL: Yes. I'm sorry. Yes.

2 MR. MOY: We have no other board member participating.
3 Staff will record the vote as 4 to 0 to 1. And this is on the
4 motion made by Chairman Hill to approve. Seconded by Vice Chair
5 John. Also in support of the motion to approve, Zoning
6 Commissioner Rob Miller, and Mr. Blake, and of course, Vice Chair
7 John and Chairman Hill.

8 Staff will record the vote as 4 to 0 to 1. The motion
9 carries.

10 CHAIR HILL: All right, great. Thanks, Mr. Moy.

11 I guess you can call our last case when you get a chance.

12 MR. MOY: All right. This is case Application No. 20623 of
13 Kimberly Shells, captioned and advertised for special exception
14 from the rear yard requirements of Subtitle D, Section 206.2,
15 pursuant to Subtitle D, Section 5201 and Subtitle X, Section
16 901.2. This would construct a two-story side addition, to an
17 existing, detached, two-story with basement, principal dwelling
18 unit, in the R-1-B Zone.

19 The property is located at 1605 Buchanan Street, N.E.,
20 Square 4171, Lot 8.

21 Other than that, Mr. Chairman, I believe the applicant has
22 a PowerPoint slide that was blocked because of the 24-hour period.

23 CHAIR HILL: Okay. Ms. Shells, give me one second.

24 All right, Ms. Shells, can you hear me? You are on mute,
25 Ms. Shells. You are on mute.

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1 Am I on mute? Can you all hear me?

2 Ms. Shells, you're on mute.

3 MS. XU: Hello. This is Jennifer Xu. The owner we think
4 she is not really aware that the item's going to be called
5 tonight. She is going to jump in as she finish her current phone
6 call. Can I on her behalf at least start the presentation and
7 start to explain the case?

8 CHAIR HILL: Sure. Ms. Xu, is it -- I mean, I see Ms.
9 Shells.

10 MS. XU: Oh, okay. Sorry.

11 CHAIR HILL: She's trying to talk. But she can't,
12 apparently, because it's muted.

13 MS. SHELLS: Now?

14 CHAIR HILL: Now we can hear.

15 MS. SHELLS: Can you hear me now?

16 CHAIR HILL: Yes.

17 MS. SHELLS: Yay. Hi. Hi, everyone. Can you hear me okay?

18 CHAIR HILL: Yeah. Could you just introduce yourself for
19 the record, Ms. Shells?

20 MS. SHELLS: Yes. My name is Kimberly Shells. I am the
21 homeowner at 1605 Buchanan Street, N.E. And this is Case 20623.
22 And I -- it is for a special exception application.

23 CHAIR HILL: Okay. Ms. Shells, you're going to be
24 presenting to us?

25 MS. SHELLS: Yes. I just have a quick PowerPoint.

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1 CHAIR HILL: Okay. Yes.

2 MS. SHELLS: So, if I could --

3 CHAIR HILL: Mr. Moy, if you could, if the Board doesn't
4 mind, I'm going to go ahead and accept the PowerPoint into the
5 record. If the Board has any objections, please let me know by
6 raising your hand.

7 I don't see anyone raising their hand.

8 So, Mr. Moy, if you could just add that into the record.

9 And, Mr. Young, if you could pull that up, if you have it.
10 And then Ms. Shells can go ahead and give her presentation.

11 MS. SHELLS: All right. Thank you, Paul.

12 So, as I mentioned, this is for a special exception
13 request. And so, I just wanted to highlight several items that
14 were already sent into the IZIS system.

15 If we could go to the next slide.

16 So, what we're -- I'm sorry, the graphics have somehow
17 switched around. But essentially, what we are asking for is a
18 special exception for the rear side yard setback from the required
19 7 feet, according to DCRA, to 6 feet at a overhang. So,
20 essentially, what we are trying to do is extend for two floors our
21 addition, which has been approved through DCRA. We're trying to
22 extend it one, 1 foot.

23 Yes, so and it's an overhang. So, the basement level
24 remains within the footprint, as required by DCRA and the BZA as
25 well. So, it's an overhang.

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1 So, there are three real reasons that support the special
2 exception, which we've outlined in our burden of proof memo to the
3 Board. It is, you know, we have an irregularly-shaped lot. So,
4 we don't have a lot of room on the back, so we had to go to the
5 side for the addition.

6 Also, a small lot size. So, our lot size, as you see on
7 the back elevation is only a little bit over 4,000 square feet.
8 And most of the neighboring lots in the area are 5,000 square
9 feet.

10 And another big reason, as you see there, is a negligible
11 impact to adjacent property. So, the west side where the addition
12 would sit is adjacent to a lot where there is no structure, there
13 is no neighbor. You know, it's -- the only thing that's there are
14 woods, fields, and trees. And so it would have no, no impact, or
15 I would say negligible impact to adjacent property. So, no issues
16 with noise or use and enjoyment, no trees would be impacted. And,
17 you know, the general scale and pattern of the homes on this
18 street and the neighborhood, it would be consistent with the
19 development standards in this area.

20 If we can go to the next slide.

21 So, these are just some, some pictures to give you a
22 perspective of what sits on the west side of our home. So, you
23 can see those trees that I mentioned. And on the second one it's
24 just another angle to see what sits on the west side. And on the
25 bottom picture, again, you can see there is no structure, too, on

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1 the west side of our property.

2 Next slide.

3 So, the plat we submitted through the IZIS system. And I
4 didn't know the exhibit number. But just to reference that, if
5 there are any questions you should have that in your packet.

6 And on the next slide we have, also, in the packet
7 architectural elevations. So, you can see, really, evidence of
8 the three reasons that I mentioned that we identified in the
9 burden of proof.

10 And that's, that's it in terms of the presentation.

11 Are there any questions?

12 I will tell you that back of our house, it also faces
13 trees. There is a monastery that sits in the distance. We have
14 received a letter from the monastery supporting the project. We
15 reached out to all of our adjacent neighbors. We talked to the
16 owner of the lot next to us, and they wished us well.

17 So, we, we have not encountered any resistance to the
18 additional foot. And we've also received support from the Office
19 of Planning.

20 CHAIR HILL: Okay, great. Thank you, Ms. Shells.

21 MS. SHELLS: Thank you.

22 CHAIR HILL: Ms. Shells, are you an attorney?

23 MS. SHELLS: I'm not.

24 CHAIR HILL: No? You're doing a better job with this --

25 MS. SHELLS: Perhaps you are.

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1 CHAIR HILL: You're doing a better job than a lot of the
2 attorneys.

3 MS. SHELLS: Well, I'll take that as a compliment, I guess.

4 CHAIR HILL: It is. It is a compliment.

5 Okay. Does anybody have any questions for Ms. Shells?

6 (No audible response.)

7 CHAIR HILL: All right. Going to turn to the Office of
8 Planning.

9 MR. JESICK: Thank you, Mr. Chairman and members of the
10 Board.

11 My name is Matt Jesick. And the Office of Planning is
12 happy to rest on the record in support of this application. We
13 reviewed the application as to criteria of Section 5201, and found
14 that it met this criteria. So, we are, therefore, recommending
15 approval.

16 Thank you. I'd be happy to take any questions.

17 CHAIR HILL: All right. Thank you, Mr. Jesick.

18 Does the Board have any questions for the Office of
19 Planning?

20 (No audible response.)

21 CHAIR HILL: Does the applicant have any questions for the
22 Office of Planning?

23 MS. SHELLS: No.

24 CHAIR HILL: All right. Mr. Young, is there anyone here
25 wishing to testify?

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1 MR. YOUNG: We do not.

2 CHAIR HILL: All right. Okay. Ms. Shells, if you have
3 anything you'd like to add at the end?

4 MS. SHELLS: No. Just I just want to thank you all for your
5 time. I know it's been a very long day. And I know that I'm
6 probably the only thing standing between you and dinner. So, I
7 do appreciate your time today.

8 CHAIR HILL: Okay, great. Thank you.

9 All right. I'm going to go ahead and close the hearing.

10 Oh, wait. Ms. Shells, so, and I almost forgot again. So,
11 what happened at the ANC? I know that you -- I see a lot of
12 correspondence. It looks as though the ANC -- what's been going
13 on with your ANC?

14 MS. SHELLS: I just haven't been able to pin them down.
15 Although I've reached out to them to, you know, to try to connect
16 and share with them.

17 I sent them very detailed information about the product --
18 I mean about the project, including pictures. And I just have not
19 been able to get a reply.

20 CHAIR HILL: Okay. All right. Okay, that's fine.

21 All right. Okay, I'm still going to go ahead and close.
22 Does any -- I'm going to close the hearing on the record.

23 Thank you, Ms. Styles -- or Shells. Shells. I'm sorry.
24 Thank you, Ms. Shells, it has been long.

25 Okay. It's our last hearing, so let's have somebody else

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1 start.

2 Commissioner Miller, do you want to start?

3 ZC MEMBER MILLER: Not really, but I will do so.

4 Thank you, Chairman Hill. This is a very straightforward
5 case. I agree with the applicant's analysis and OP's analysis
6 that the criteria, the specific and general criteria for the
7 special exception, really almost de minimis special exception
8 being requested in this case, that the standard for relief have
9 been met. And I support the application going, going forward.

10 CHAIR HILL: Thank you.

11 Mr. Blake?

12 MEMBER BLAKE: Thank you, Mr. Chair. I agree that based on
13 the record before the Board, and given the great weight to the
14 Office of Planning analysis, I do -- and noting no DDOT objection,
15 I do believe the applicant has met the burden of proof to be
16 granted relief.

17 With regard to the ANC report, I would note that they have
18 the BCA referral, as well as the notice of posting. And we do
19 acknowledge her efforts to communicate with the ANC.

20 So, for those reason I will be comfortable supporting this.

21 CHAIR HILL: Great. Thank you, Mr. Blake.

22 Vice Chair John?

23 VICE CHAIR JOHN: I'm in support of the application. I
24 believe it meets the requirement, as everyone else has noted.
25 And, in particular, the side for the addition of the home is not

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1 close to any homes. It's near to park or institution use, or
2 there is no potential adverse impact on any neighbor.

3 I'm ready to vote.

4 CHAIR HILL: Okay, great. Thank you, vice Chair John.

5 All right. I'm going to go ahead. I agree with everything
6 that my colleagues have said. I thought it was also very
7 straightforward. And I would agree with the analysis of the
8 Office of Planning.

9 And I'm going to make a motion to approve the Application
10 No. 20623, as captioned and read by the secretary, and ask for a
11 second.

12 Ms. John?

13 VICE CHAIR JOHN: Second.

14 CHAIR HILL: Motion made and seconded.

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

16 MR. MOY: When I call each of your names, if you would
17 please respond with a yes, no, or abstain to the motion made by
18 Chairman Hill to approve the application for the relief requested.

19 The motion to approve was seconded by Vice Chair John.

20 Zoning Commissioner Rob Miller.

21 ZC MEMBER MILLER: Yes.

22 MR. MOY: Mr. Blake?

23 MEMBER BLAKE: Yes.

24 MR. MOY: Vice Chair John.

25 VICE CHAIR JOHN: Yes.

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1 MR. MOY: Chairman Hill.

2 CHAIR HILL: Yes.

3 MR. MOY: We have no other board member present in this
4 case. Staff would record the vote as 4 to 0 to 1. And this is
5 on the motion made by Chairman Hill to approve.

6 The motion to approve was seconded by Vice Chair John.
7 Also in support of the motion to approve, Zoning Commissioner Rob
8 Miller, Mr. Blake, and, of course, Vice Chair John and Chairman
9 Hill.

10 The motion carries on a vote of 4 to 0 to 1.

11 CHAIR HILL: All right. Thank you, Mr. Moy.

12 Commissioner Miller, when's the next time you're with us?

13 Oh, never mind, you're not supposed to tell. Don't tell.

14 Don't tell.

15 I don't know, we're not supposed to tell. All right, never
16 mind.

17 Okay. Hopefully we'll see you next time, whenever we see
18 you, Commissioner Miller.

19 And it was a pleasure being back with everyone. Thank you
20 very much. And everybody have a nice evening.

21 So, we are adjourned.

22 (Whereupon, the above-entitled matter went off the record
23 at 5:26 p.m.)

24

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: 02-09-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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