

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 23, 2022

+ + + + +

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, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK HILL, Chairperson
CARL BLAKE, Board Member
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MATTHEW LeGRANT, Zoning Administrator
ANNE FOTHERGILL
CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SARAH BAJAJ, ESQ.
MARY NAGELHOUT, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on March 23, 2022.

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

CALL TO ORDER BY CHAIRMAN HILL 4

PRELIMINARY MATTERS 7

APPLICATION NO. 20653 OF BRADLEY R. AND
MARGARET S. GENTILE 9

APPLICATION NO. 20599 OF STEPHANIE ANN
GLIER AND BRANDON WOODWARD GLIER, TRUSTEES 23

APPLICATION NO. 20584 OF KING'S CREEK, LLC 61

APPEAL NO. 20654 OF 4721 SHERIFF ROAD NE, LLC 111

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

(9:35 a.m.)

1
2
3 CHAIRPERSON HILL: Good morning, ladies and
4 gentlemen. Board of Zoning Adjustment. Today's date is
5 3/23/2022. Public Hearing meeting, please come to order.
6 My name is Fred Hill. I am the Chairperson of the District
7 of Columbia Board of Zoning Adjustment. Joining me today is
8 Board members Carl Blake, Chrishaun Smith, and Zoning
9 Commissioner Rob Miller. Today's meeting and hearing agenda
10 are available on the Office of Zoning's website.

11 Please be advised that this proceeding is being
12 recorded by a court reporter and is also webcast live via
13 Webex and YouTube Live. The video of the webcast will be
14 available on the Office of Zoning's website after today's
15 hearing. Accordingly, everyone who is listening on Webex or
16 by telephone will be muted during the hearing. Also, please
17 be advised that we do not take any public testimony at our
18 decision meeting sessions. If you're experiencing difficulty
19 accessing Webex or with your telephone caller, then please
20 call our OZ hotline there at 202-727-5471 to receive Webex
21 login or call-in instructions.

22 At the conclusion of the decision meeting session,
23 I shall, in consultation with the Office of Zoning, determine
24 whether a full or a summary order may be issued. A full
25 order is required when the decision it contains is adverse

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

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

16 All persons planning to testify, either in favor
17 or opposition, should have signed up in advance. They'll be
18 called by name to testify. If it an appeal, only parties are
19 allowed to testify. By signing up to testify, all
20 participants completed the oath or affirmation as required
21 by Subtitle Y 40817.

22 Requests to enter evidence at the time of an
23 online virtual hearing, such written testimony or additional
24 supporting documents, other than live video, which may not
25 be presented prior to the testimony, may be allowed, pursuant

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1 to Y 103.13, provided that the person making the request to
2 enter exhibit explains how the first exhibit is relevant, the
3 good cause that justifies allowing the exhibit into the
4 record, including an explanation why the requester did not
5 file the exhibit prior to the hearing, pursuant to Y 206, and
6 how the proposed exhibit should not unreasonably prejudice
7 any parties. The order and procedures for Special Exceptions
8 and Variances are pursuant to Y 409. The order of appeals
9 are pursuant to Y 507.

10 At the conclusion of each case, an individual who
11 was unable to testify because of technical issues may file
12 a request for a leave to file a written version of the
13 planned testimony to record within 24 hours following the
14 conclusion of public testimony in the hearing. In addition,
15 written testimony is accepted, then parties will be allowed
16 reasonable time to respond as determined by the Board.

17 The Board will then make its decision at its next
18 meeting session but no earlier than 48 hours after the
19 hearing. Moreover, the Board may request additional,
20 specific information to complete the record. The Board and
21 staff will specify at the end of the hearing exactly what is
22 expected and the date when persons must submit the evidence
23 to the Office of Zoning. No other information shall be
24 extended by the Board.

25 Finally, the District of Columbia Administration

1 Procedures Act requires that the public hearing on each case
2 be held in the open before the public. However, pursuant
3 that Court Section 405B and 406 of that act, the Board may,
4 consistent with its rules and procedure in the act, enter
5 into closed meetings on a case for purposes of seeking legal
6 counsel on a case, pursuant to D.C. Official Code Section 2-
7 575(b)(4), and/or deliberating on a case, pursuant to D.C.
8 Official Code Section 2-757(b)(13), but only after providing
9 the necessary public notice, and in the case of an emergency,
10 closed meeting after obtaining a roll call note.

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

12 MR. MOY: Good morning, Mr. Chairman, members of
13 the Board. Just a quick announcement related to today's
14 docket. We have a number of case applications that have been
15 rescheduled to a future hearing date. They are as follows.
16 Case Application No. 20651. This is the application of Arie
17 Albright and Shannon Blair. Rescheduled to hearing on March
18 30, 2022.

19 The next two applications are rescheduled to April
20 13, 2022. These are 20647, of 1345 Madison Street NW, LLC,
21 and 20652 of Chelsea O. Blake and Kevin K. Blake on these two
22 applications to April 13th. Finally, we have two
23 applications scheduled to May 25, 2022. Case no. 17429A, of
24 St. Patrick's Episcopal Church and Day School and 18465A,
25 of St. Patrick's Episcopal Church and Day School. Both of

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1 these two applications to May 25, 2022.

2 And, as always, Mr. Chairman, there are some minor
3 preliminary matters, but I think it's more efficient that I
4 call that to your attention when I call the case.

5 CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Moy.
6 Good morning, everybody. Mr. Moy, if you could please call
7 our first case.

8 MR. MOY: Before you is Case Application No.
9 20653, of Bradley R. and Margaret S. Gentile. This is the
10 Applicant's request for Special Exceptions from the lot
11 occupancy requirements, Subtitle G Section 404.1, pursuant
12 to Subtitle G Section 409.1, Subtitle G Section 1201, and
13 Subtitle X Section 901.2, rear yard requirements, Subtitle
14 G Section 405.2. This is pursuant to Subtitle G Section
15 409.1, Subtitle G Section 1201, and Subtitle X Section 901.2.

16 This will construct a second-story rear addition
17 to an existing, semi-detached, two-story principle dwelling
18 unit in the MU-4 zone. Property located at 1500 D Street SE,
19 Square 1074, Lot 40. I believe there is an Applicant's
20 PowerPoint, which was submitted late, probably within that
21 24 hour plot. That's it for me, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. Now, unless the Board
23 has any issues, I'd like to go ahead and submit the
24 PowerPoint, so we can take a look at that. And, if you have
25 any issues, please speak up. No. All right. If the staff

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1 could please go ahead and load that into that exhibit so we
2 can all take a look at it together. Is it Mr. Ward? Are you
3 there?

4 MR. WARD: I'm here, but the owner, Mr. Gentile,
5 is going to present.

6 CHAIRPERSON HILL: Okay.

7 MR. GENTILE: Good morning. This is Brad.

8 CHAIRPERSON HILL: Okay. Is it Gentile?

9 MR. GENTILE: Gentile. Yes, that's correct.

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

12 MR. GENTILE: Sure. My name is Brad Gentile. I
13 live at 1500 D Street, SE.

14 CHAIRPERSON HILL: All right. Mr. Gentile, if you
15 could go ahead and walk us through your presentation and why
16 you believe that you're meeting the standard for us to grant
17 the relief requested. Tell us a little bit about your
18 project. I am going to put 15 minutes on the clock there, so
19 I know where we are. And you can begin whenever you like.

20 MR. GENTILE: Okay. Great. Would it be possible
21 to pull that PowerPoint up?

22 CHAIRPERSON HILL: Sure.

23 MR. GENTILE: Or I might be able to do I,
24 actually.

25 CHAIRPERSON HILL: No, I don't think you're able

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1 to, sorry.

2 MR. GENTILE: Perfect. Okay. I see it. Great.
3 Well, thank you so much for your time. I really appreciate
4 it. As I said, my name's Brad. I live at 1500 D Street, SE,
5 with my wife, Maggie, and our three daughters. We've lived
6 in the neighborhood for seven years, purchased this home,
7 this particular property, in 2019. We were blessed and
8 welcomed our third daughter a couple months ago. And so
9 we're before you guys this morning to talk about the ability
10 to potentially add an additional bedroom.

11 My oldest daughter goes to Payne, right across the
12 street and having an excellent experience there. Our hope
13 is to make this property kind of our permanent home for our
14 family. Our in-laws, who are elderly, just moved in two
15 blocks away. And this has been, like I said, home for seven
16 years now. And this property really has the ability to be
17 a permanent home for my family. And so that's why we're
18 there.

19 The property is somewhat unique. We're zoned NUO-
20 4, but it's our desire to keep this just a two-story, family-
21 row house. And, as I said, what we're asking for help today
22 is consideration to add an additional bedroom. And so, from
23 a zoning perspective, we're seeking a Special Exception for
24 two items. One is a Special Exception from the rear setback.
25 And the second is on occupancy. Now, we're not seeking to

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1 increase the total occupancy. But, rather, because we're
2 building on the second floor and it's nonconforming, we
3 require a Special Exception on occupancy. If you can go down
4 to the second slide, I can quickly just show you guys an
5 image of it.

6 So this is the house on the corner. The previous
7 owner had started the process of kind of transitioning this
8 building from a commercial property to his family's home.
9 And I'm just showing you a picture to show that we've kind
10 of continued that transition to make this a two-story row
11 house for family. If you can go to the next slide, please.

12 Okay. So this is the part of the property in
13 question. So, if you see, there's a deck above this part of
14 the property. And where that deck is is where we're seeking
15 to build an additional bedroom. And, if you go to the next
16 slide.

17 So this is the architectural rendering of what the
18 deck looks like. So this is from the perspective of 15th
19 Street, SE. And, again, above that deck on the left-hand
20 side is where we're trying to build. If you go to the next
21 slide.

22 This is a rendering of what the project would look
23 like if completed. It'll match all the same building
24 materials, same roof materials, and just be conforming on the
25 second floor. And so that's what the completed project would

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1 look like. So we're not going up. We're just seeking to
2 build a second story where that current deck is. I'll pause
3 there and see if anyone has any initial questions. I'm happy
4 to talk about this more if I can. And our architect, Myron,
5 is on the line as well, too, if there's any technical
6 questions.

7 CHAIRPERSON HILL: Sure, Mr. Gentile. Go ahead
8 and just walk us through your whole thing, and then we'll
9 take questions at the end.

10 MR. GENTILE: Sure. This is the gist of it. I've
11 kind of completed this. So go ahead.

12 CHAIRPERSON HILL: Okay. All right. Well, then,
13 let me drop your slide deck, Mr. Young, if that's okay. All
14 right. Do my fellow Board members have questions at this
15 point? Otherwise, I'm going to turn to the Office of
16 Planning and see how we go. All right. I'm going to turn
17 to the Office of Planning.

18 MS. MYERS: Crystal Myers, for the Office of
19 Planning. The Office of Planning is recommending approval
20 of his case. And we can start on the record of a staff
21 report. We're here for questions.

22 CHAIRPERSON HILL: All right. Great. Does the
23 Board have any questions for the Office of Planning? Go
24 ahead, Mr. Blake.

25 MEMBER BLAKE: Yeah. Ms. Meyers, could you please

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1 just go through the how the criteria is met for this Special
2 Exception, the 1201 and the general standards, please?

3 MS. MYERS: Certainly. So this is the NUO-4 zone.
4 So it was the 901, general Special Exception, which says,
5 will be in harmony with the general purpose and intent of the
6 zoning regulation zoning maps. The addition would be in
7 harmony with this section. It allows for the type of
8 density, low to moderate type of residential density, which
9 is allowed in this zone. So that is how it is in harmony
10 with this section. And the use would not change. This is
11 just allowing for the continued use for the owner.

12 And then, will not tend to adversely affect the
13 neighboring properties. The proposed second-story addition
14 should not adversely impact the neighbors when it comes to
15 light and air and privacy concerns. The adjacent neighbor
16 to the north should not be impacted because the addition
17 would abut this neighbor's side wall, which is a brick wall.
18 It has no windows. On the eastern side, the addition would
19 have no windows, so it should not impact the privacy of this
20 neighbor as well.

21 Also, the light and air of this neighbor should
22 not be substantially impacted because this neighbor's yard
23 is under significant tree coverage, as shown. I provided,
24 in the report, a picture of this. The tree coverage keeps
25 1502 D Street's rear yard shaded throughout most of the day.

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1 The Applicant actually provided a shadow study that also
2 shows this as well. And the proposed addition should not be
3 visible from D Street, SE. It should not be visible from the
4 D Street side, and it should not be a detriment to the visual
5 character on the 15th Street side. The addition would be
6 designed to be compatible with other houses in the area.

7 As for the 1201 section, A says that, no apartment
8 window shall be located within 40 feet directly in front of
9 another building. That's not applicable here. This is not
10 an apartment, and the proposed addition is to a single-
11 building house. And the windows would face 15th Street, SE,
12 and across the street is a playground. So for B, no office
13 or window shall be located within 30 feet directly in front
14 of another office window. Again, this is not applicable
15 because this is not an office building. And the new windows
16 would face the playground.

17 C says, in buildings that are not parallel to the
18 adjacent buildings, the angle of sight lines and the distance
19 penetration of sight lines into habitable rooms shall be
20 considered in determining distances between the windows and
21 appropriate yards. The proposed addition does not include
22 windows facing a habitable room or neighboring rear yard.
23 The plans do not indicate any new windows on the eastern
24 elevation side facing the rear yard of the adjacent
25 properties.

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1 And for D, provisions shall be included for
2 service functions, including parking and loading access and
3 adequate loading areas. The proposal is for a second story
4 on a portion of this house. So the existing building has no
5 rear yard. It has no loading or parking on this property.
6 So it's not really applicable.

7 So that's why we were able to come to conclusion
8 and recommend support.

9 MEMBER BLAKE: Thank you very much.

10 CHAIRPERSON HILL: Okay. Mr. Gentile, I'm
11 curious. So what happened in the ANC meeting. And also it
12 looks like there's some opposition. Have you spoken to the
13 person who is in opposition? Can you tell us a little bit
14 about your outreach efforts with the neighborhood?

15 MR. GENTILE: Absolutely. Yeah. So the ANC
16 unanimously supported the project in their vote about a week
17 and a half ago. We attempted to contact everyone in the
18 neighborhood. We did have a neighbor that we were unable to
19 get in touch with. Absolutely great guy. He came forward
20 at the original ANC meeting and had concerns about light
21 exposure. So we enthusiastically agreed to establish a
22 shadow study, look at the light, address the issue. And then
23 we delayed the original ANC vote to allow that study to go
24 forward. And, Kent, he still has outstanding concerns. But
25 the light, for a number of reasons, is just not impacted in

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1 his yard.

2 So I feel like that was very well-addressed and
3 thoroughly reviewed by the ANC during that process. We have,
4 I think, over eight letters of support, including the true
5 neighbors whose houses we touch. We have the Restoration
6 Society, the ANC, as I mentioned. So very strong support
7 from the neighbors. And also -- sorry. Go ahead.

8 CHAIRPERSON HILL: That's all right. All right.
9 Do my fellow Board members have any more questions for the
10 Applicant? Mr. Young, is there anyone here wishing to speak?

11 MR. YOUNG: One signed up.

12 CHAIRPERSON HILL: Okay. If you could bring that
13 person forward, please. Mr. Rice, can you hear me?

14 MR. RICE: Yes. Hey. Yes, I can hear you.

15 CHAIRPERSON HILL: All right. Could you introduce
16 yourself, for the record, Mr. Rice.

17 MR. RICE: Hi. Yes. My name is Kent Rice. I am
18 the neighbor at 1504 D Street. And I was one of the
19 neighbors who had issues with the, actually, with the pitched
20 roof and the obstruction of light from the western side and
21 lighting would affect all of the southern-facing houses on
22 D Street and 1500th block of D Street.

23 My issue is, the shade light report that Mr. Myron
24 had submitted, it didn't really detail what the impact would
25 be. There were some pictures. And one of the pictures, I

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1 didn't have time to present my PowerPoint, but it shows the
2 sunlight, actually, during the summer months, when there's,
3 mostly, a lot of sunshine. And I was mostly concerning in
4 the fall, the amount of sunlight that would be obstructed
5 with the additional roof and the other addition underneath
6 that pitched room.

7 So I haven't seen any kind of, to me, any proof
8 that is a small impact. All I see is just where a shade
9 sunlight report doesn't really show anything, except it does
10 impact my backyard.

11 CHAIRPERSON HILL: Did you see the Exhibit No. 27?
12 The sun shadow studies that they submitted?

13 MR. RICE: I saw one with -- I saw all of them,
14 actually. But I'm not familiar with the one that you're
15 referring to.

16 CHAIRPERSON HILL: Okay. If you look at the
17 lighting exhibit 27, that seems to have the most detailed
18 amount and how it relates to your property. Is there a big
19 tree in your property?

20 MR. RICE: Yes. There is a large tree in my
21 property and also at 1506. The trees were planted for
22 privacy issues with some of the other buildings that were
23 constructed on 15th Street. And the windows reflect into our
24 backyards and also into our bedrooms on 1506 and 1504. So
25 that's why the trees are there. The trees are not, also,

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1 there's not foliage 12 months out of the year. Right now,
2 there's not any leaves on either tree, at this point. And
3 the issue was, with Myron's sunlight shade exhibit, is it has
4 the tree in foliage for the entire year. And that's, to me,
5 it just gives an impression that the tree is blocking all the
6 sunlight, which is not true.

7 CHAIRPERSON HILL: Okay. All right. Did you get
8 a chance to go to the ANC meeting, Mr. Rice?

9 MR. RICE: Yes. I went to both meetings.

10 CHAIRPERSON HILL: And did you testify at those
11 meetings?

12 MR. RICE: Yes, I did.

13 CHAIRPERSON HILL: Okay. And you testified in
14 opposition?

15 MR. RICE: Yes, I did.

16 CHAIRPERSON HILL: Okay. All right. Does the
17 Board have any questions for Mr. Rice? Okay. Mr. Gentile,
18 do you have any questions for Mr. Rice?

19 MR. GENTILE: Not for Mr. Rice. But if there are
20 concerns about the light, I'm happy to kind of go through the
21 study really quickly. Or I have a couple of images which
22 kind of explain why the construction is not going to have a
23 substantial impact.

24 CHAIRPERSON HILL: Okay. Mr. Gentile, I will see
25 them if the Board has any further questions of you. All

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1 right, Mr. Rice. Thank you so much for your testimony.

2 MR. RICE: Thank you.

3 CHAIRPERSON HILL: All right. Mr. Young, if you
4 could excuse Mr. Rice. Thank you. All right. Does the
5 Board have any questions for Mr. Gentile or anybody? If so,
6 raise your hand. All right, Mr. Gentile, I am going to close
7 the hearing and the record. Mr. Gentile, I thank you for
8 your time.

9 MR. GENTILE: Thank you, guys. Thanks for your
10 time.

11 CHAIRPERSON HILL: Okay. I assume that Mr.
12 Gentile had some concerns about his property. I mean, I'm
13 looking at the shadow studies. And I actually don't see any
14 impact, or negative impact, I should say, about this
15 particular project. With regard to the other standards that
16 have been put forward that we're supposed to review, I would
17 agree with those that are in the report of the Office of
18 Planning, as well as the great weight that we're to provide
19 the ANC's report.

20 So the ANC did have an opportunity to look at
21 this, as well as take public testimony, as well as all that
22 from Mr. Rice. The two adjacent neighbors are comfortable
23 with the shadow studies, I assume, in order for them to get
24 behind this project. And so I also see that Capitol Hill
25 Restoration Society is in agreement with this as they don't

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1 believe in this causing adverse impact. And I would agree
2 with them as well. I am going to be voting in favor of this
3 application. I'm going to go around the table and see what
4 else people have to say. I'll start with you, Mr. Smith, if
5 that's okay.

6 MEMBER SMITH: Chairman Hill, I largely agree with
7 your assessment of this particular case. I do believe the
8 Applicant has met the burden of proof for us to be able to
9 write Special Exception. Like you stated, I think it is
10 upsetting that the adjacent property on it has some special
11 concerns. But when I looked at the sun study, it looks like
12 the impacts, I feel, are negligible. This is a two-story
13 addition, in keeping with, what is largely already out in
14 that particular area of the city, in that square.

15 So I do believe that the proposed addition is
16 largely in character with what's already there. I will make
17 note that the Capitol Hill Restoration Society is in support
18 of the application. It was contingent upon release of the
19 light study. And, considering that there are very limited
20 impacts, I assume that they are in support. And the ANC was
21 in support of the application. So, with that, I support this
22 application.

23 CHAIRPERSON HILL: Thank you, Mr. Smith. Mr.
24 Blake?

25 MEMBER BLAKE: I also believe that the Applicant's

1 shadow study demonstrated that the impact on light would be
2 minimal. And I agree with the Office of Planning's analysis
3 of the conditions of the surrounding area, with the yards and
4 the trees and so forth, would support that conclusion. I
5 also believe that the Office of Planning's report about how
6 the Applicant has met the special and specific conditions of
7 G 1201 was well on spot.

8 I also believe the general standards here were
9 also met. And I do not believe that granting this will
10 affect adversely the use of neighboring property as it
11 relates to light, air, privacy, or visual intrusion. I give
12 great weight to the report of the Office of Planning, the
13 Director's approval, ANC 6B which stated no issues of
14 concerns, and acknowledge the support of the adjacent
15 neighbors.

16 I would also note the Capitol Hill Restoration's
17 conditional support and DDOT has no objections. So
18 considering these factors, I would be there to support the
19 application.

20 CHAIRPERSON HILL: Thank you, Mr. Blake.
21 Commissioner Miller?

22 COMMISSIONER MILLER: Thank you, Mr. Chairman.
23 I concur with all the comments of you, Mr. Chairman, and my
24 colleagues, that the Applicant has met the Special Exception,
25 both general and specific, criteria for the relief that's

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1 being requested in this case and with support of the Office
2 of Planning, ANC, 6B, and the adjacent neighbors with whom
3 this addition really is compatible, in terms of height and
4 well within the matter of right. And, although they are
5 expanding their family, congratulations on their third
6 daughter to the Gentiles, but although they are expanding
7 their family, they're not really expanding the footprint on
8 the property. Although they're getting that extra space
9 above the deck, the footprint is what it's been. So I am
10 supportive of this application moving forward, Mr. Chairman.

11 CHAIRPERSON HILL: Thank you. Thank you,
12 Commissioner. Yeah, it is disappointing, again, that
13 everyone couldn't be comfortable. But I do believe that,
14 given all of the different applications that we've seen many,
15 many times, that the shadow study, I think, is something that
16 Mr. Rice will be able to realize is not really much of an
17 impact, if any, to his property. Although I know that it is
18 a little anxiety-provoking at times, I believe that's it's
19 something that will work out in the end. So I'll go ahead
20 and make a motion to approve Application No. 20653 as
21 captioned and read by the secretary and ask for a second, Mr.
22 Blake.

23 MEMBER BLAKE: Second.

24 CHAIRPERSON HILL: Motion made and seconded. Mr.
25 Moy, if you would take a roll call.

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1 MR. MOY: Thank you, Mr. Chairman. Before I do
2 the roll call, I, for the record, want to apologize for
3 mispronouncing Mr. Gentile's surname. So, let me think. So
4 when I call your names, if you would please respond with a
5 yes, no, or abstain to the motion made by Chairman Hill to
6 approve the application for the relief requested. The motion
7 was second by Mr. Blake. Zone Commissioner Rob Miller.

8 COMMISSIONER MILLER: Yes.

9 MR. MOY: Mr. Smith.

10 MEMBER SMITH: Yes.

11 MR. MOY: Mr. Blake.

12 MEMBER BLAKE: Yes.

13 MR. MOY: Chairman Hill.

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: And we have a Board member not present.
16 Staff would record the vote as four to zero to one, and this
17 is on the motion made by Chairman Hill to approve, second by
18 Mr. Blake to approve. Also in support of the approval is
19 Zoning Commissioner Rob Miller and Mr. Smith. Again, the
20 motion passes on a vote of four to zero to one.

21 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
22 Moy. Mr. Moy, you can call our next one when you get a
23 chance.

24 MR. MOY: The application before the Board now is
25 Case No. 20599 of Stephanie Ann Glier and Brandon Woodward

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1 Glier, Trustees. This is their request for Special Exception
2 relief from the rear yard requirements of Subtitle D Section
3 306.1, pursuant to Subtitle D Section 5201 and Subtitle X
4 Section 901.2. This would construct a two-story rear
5 addition, over the cellar, to an existing, detached, two-
6 story over cellar, principal dwelling unit in the R-1-A zone.
7 Property is located at 3200 Ellicott Street, NW, Square 2035,
8 Lot 812.

9 And, as a reminder, Mr. Chairman, I believe the
10 Board had granted, on January 12th, advanced party status to
11 a Michael and Katherine Hein, H-E-I-N. I believe they're
12 work is represented by Counselor Cynthia Giordano.

13 CHAIRPERSON HILL: Okay. Great. Mr. Sullivan,
14 can you hear me?

15 MR. SULLIVAN: Mr. Chair, I'm Marty Sullivan, with
16 Sullivan and Sullivan & Barros, on behalf of the Applicant.

17 CHAIRPERSON HILL: Great. I don't need you to
18 introduce yourselves now. I'm just trying to see. Who's
19 with you, Mr. Sullivan?

20 MR. SULLIVAN: So we have the Applicant Stephanie
21 Glier is with us. And also Paul Dupnick the architect, and
22 Tony Serafino is with us as well. But we don't think that
23 he needs to testify. And I think that's it.

24 CHAIRPERSON HILL: Okay. Great. Ms. Giordano,
25 can you hear me?

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1 MS. GIORDANO: Cynthia Giordano, Saul Ewing Law
2 Firm.

3 CHAIRPERSON HILL: Great. Thank you, Ms.
4 Giordano. Okay. So you guys both are experienced with us.
5 And so you both know the process, in terms of how we're going
6 to work our way through this hearing, and also the process
7 for party status and, or I should say, parties in opposition.
8 So, Mr. Sullivan, if you can go ahead and walk us through
9 your presentation and why you believe that your client is
10 meeting the criteria for us to grant the relief requested.
11 And then we'll have questions from Ms. Giordano, as well as
12 your presentation. And we'll go ahead and work through this
13 case as we can so that the Board can get all the information
14 it needs in order to make a decision. And, Mr. Sullivan, I'm
15 going to put 15 minutes on the clock just so I know where we
16 are. And you can begin whenever you like.

17 MR. SULLIVAN: Thank you, Mr. Chair, members of
18 the Board. If we could have the PowerPoint loaded, please.
19 And I'd like to start with the Applicant speaking briefly
20 before we get into the PowerPoint. Thank you. Stephanie,
21 you can go ahead.

22 MS. GLIER: Thanks, Marty. Good morning. I'm
23 Stephanie Glier. I live at 3200 Ellicott Street, NW. My
24 husband and I are the Applicant for this case. I just wanted
25 to give you a very brief background about what we are aiming

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1 for here. We had originally proposed to construct an
2 accessory dwelling unit to accommodate our aging parents.
3 We began outreach to our community, our neighbors, in
4 September of last year and proceeded to an ANC meeting in
5 November. At the ANC meeting, and in response to the
6 feedback, both from the ANC and from our neighbors, we made
7 very significant changes and have revised the proposal to be
8 an addition.

9 The addition accomplished three major goals. One
10 was to move back away from our shared property line with the
11 Heins, who are here in opposition party status. We've moved
12 away, which has accomplished, effectively making us, treating
13 our rear yard, because we're on a corner lot, our rear yard
14 against the Hein's side yard. By changing to an addition,
15 we have accomplished, effectively, what looks like an eight-
16 foot side yard, just like it being in our lot's rear yard.

17 We've also moved the addition, the new
18 construction, back away from the property line at 32nd
19 Street, the side of our lot. And we are still well behind
20 the building restriction line. But this sort of has moved
21 it back a little bit more in line with the edge of our home.

22 And the third benefit of the addition, the
23 revision to the addition, is that by doing this structure,
24 we actually have created a second frontage. So our true
25 frontage is on Ellicott Street, but by making this addition

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1 the way that we have proposed it here, we've created,
2 effectively, a second frontage on 32nd Street, which makes
3 our house look more in character, scale, and pattern with the
4 rest of the neighborhood. So just a little bit of background
5 for you about where we have come in this process. And I will
6 turn it over to Marty to walk through the presentation.

7 MR. SULLIVAN: Thank you. If I could go to the
8 next slide, please, and give a quick overview. So 3200
9 Ellicott is a corner lot, which you saw from the front page.
10 And, as Mr. Dupnick, the architect, will take you through
11 that. So, it's effectively has frontage on both Ellicott and
12 32nd Streets. It's a two-story, single family detached
13 dwelling. And the proposal is for a two-story rear addition,
14 which, effectively, presents as a side addition because of
15 its frontage on 32nd Street.

16 So the proposed rear yard is eight feet.
17 Originally, in the original application, it was three feet,
18 and we were asking for different relief because we were
19 asking for relief to place an accessory building within a
20 required rear yard. There was actually no rear yard setback
21 requirement for an accessory building. But there was a
22 requirement that there be a distance of 25 feet between an
23 accessory building and the principle dwelling, which was not
24 achievable at all, particularly because there's two BRLs.
25 There's a BRL on 32nd Street and on Ellicott.

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1 So the lot occupancy goes from 29 percent to 36
2 percent. The height of the addition is 23.2 feet. The
3 addition setback, 20.1 feet from the 32nd Street property
4 line. There's a 15-foot BRL, and it's moved 5 feet further
5 back. The amended application was what moved it five feet
6 further back. The original application was on the BRL. Next
7 slide, please.

8 Due, principally, to the substantial change in the
9 plans from the original, we've enjoyed the support of ANC3
10 and the Office of Planning. And now I'll turn it over to Mr.
11 Dupnick to go through the photos on the slides. Paul.

12 MR. DUPNICK: Good morning. Can everyone hear me?

13 CHAIRPERSON HILL: Yes.

14 MR. DUPNICK: Okay. Hi. My name's Paul Dupnick.
15 I'm the architect on the project, and I can just walk you
16 through the next couple slides that show renderings. We've
17 looked at this from various angles, as far as mass. Again,
18 just, we'll walk you through what we have. If I could have
19 the next slide, please.

20 Oh yeah. Well, these are photos of the existing
21 conditions, of course, the top left being the frontage on
22 Ellicott and then the frontage on 32nd Street, which is
23 really kind of looking into the side of the building, despite
24 the other houses on the block being that front facade for
25 them. So, again, we see this kind of as bringing the same

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1 respect the house has to Ellicott onto 32nd as well. Turn
2 to the next slide, please.

3 Yeah. Again, the view from 32nd Street, which is
4 just their single-story garage, a side addition to their two-
5 story dwelling. Next slide, please. Yeah, that overhead
6 view of the -- okay. Yeah. Make sure they're on the right
7 -- next slide, please. This is the site plans showing the
8 scope of the addition. Can you see? We have an eight-foot
9 setback from the rear, which is, essentially, a side yard for
10 this corner lot. And then the 20-foot setback from the
11 property line at 32nd Street. Next slide, please.

12 This is a kind of bird's eye rendering of the
13 corner of 32nd and Ellicott. And you start to get a sense
14 of the scale and massing of it. Again, it's a two-story with
15 a mansard roof. The second story is within the mansard roof
16 of the property. The house next door has a much higher gable
17 roof. Next slide, please. This is the view of the addition
18 from Ellicott, which is the second, you see the second-floor
19 addition over the existing first-floor garage. Next slide,
20 please.

21 Again, a corner view of Ellicott and 32nd Street,
22 looking down the street of 32nd. Next slide, please. This
23 is, again, 32nd Street. You can move to the next slide.
24 This is coming from 32nd Street. Next slide. I think,
25 again, the corner. Next slide, please. This is the front

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1 view on 32nd. Next slide. All right. Again, the site plan
2 you've seen before. Next slide. This is hard. Elevations,
3 both from 32nd Street and looking south, is the lower slide.
4 So south elevation. Next slide.

5 CHAIRPERSON HILL: Mr. Sullivan?

6 MR. SULLIVAN: Yes?

7 CHAIRPERSON HILL: Can you jump down to -- I have
8 an appeal today.

9 MR. SULLIVAN: Okay.

10 CHAIRPERSON HILL: And so I think the slide deck
11 is absolutely fantastic, and I know that we're going to go
12 back to things. And I appreciate the ease at which we're able
13 to see what's actually going on. But can you jump down to
14 slide 20 to walk us through what you believe are the
15 regulations?

16 MR. SULLIVAN: Sure.

17 CHAIRPERSON HILL: And then I'm going to have my
18 Board members have some questions if they do. And, also,
19 then hear from the party in opposition. The one that I know
20 we're going to get back to, that I'm most curious of, at some
21 point, is going to be slide 14 of your deck. But why don't
22 you go ahead and walk us through what you've got in front of
23 us right there?

24 MR. SULLIVAN: Okay. Thank you. So the
25 application meets the general Special Exception criteria.

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1 It will be in harmony with the general purpose and intent of
2 the zoning regulations and zoning maps. The Applicant had
3 originally proposed an accessory building with and ADU inside
4 it. And there were concerns about both the separate
5 building, the massing and proximity of that building to the
6 property to the south, as well as the use, itself, within
7 there. And, in response to those concerns, the Applicant
8 made the changes, moved the building to eight-foot distance.

9 CHAIRPERSON HILL: It was eight-foot as opposed
10 to what when it was an ADU, Mr. Sullivan?

11 MR. SULLIVAN: It was three feet.

12 CHAIRPERSON HILL: Okay.

13 MR. SULLIVAN: And there was a separation. And
14 so it became just an addition. The ADU was removed. The ADU
15 function was removed, so there's no kitchen in there now.
16 And, so as it relates to the Hein's property, facing 32nd
17 Street, it provides an eight-foot, what is, effectively, to
18 them, a side yard but, technically, a rear yard because we'd
19 have the two frontages. The lot occupancy's four percent
20 under the max, and it's just the two-story building, too.
21 So we think that mitigates any impact of the addition, as
22 well. Next slide, please.

23 For the specific requirements, light and air
24 available to neighboring properties should not be unduly
25 affected. This property is due north of 4812, so there's no

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1 impact on sunlight. And then I would highlight the OP
2 report's comments on light and air as well being, or distance
3 to an eight-foot side yard between the two buildings.

4 Privacy of use and enjoyment. The proposed
5 addition does have windows facing south, but there will be
6 a fence at the first level. And from the location and
7 configuration of the windows, there's no impact on privacy
8 but, primary, because of the distance because -- and we're
9 talking about undue privacy. Well, we have two eight-foot
10 side yards. Even if the windows were facing directly, this
11 would be a common situation in the R-1 zone, to have eight-
12 foot side yards with windows facing each other. But, in this
13 case, the window is actually at a 90 degree angle. It was
14 set back an additional five feet, the building was, in
15 response to concerns of the neighbor and the Office of
16 Planning, frankly.

17 And that's what, because the Office of Planning's
18 initial concerns were focused on character, scale, and
19 pattern. And we think that was aggressively addressed in the
20 revision. So onto that, the proposed addition is now a
21 continuation of the scale and architectural style of the
22 existing residence, fronting on Ellicott Street. We think
23 it's a tremendous improvement on the frontage, to something
24 that looks like a rear entrance to a garage, now it looks
25 more like a frontage. And so we think it greatly improved

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1 its status in the character, scale, and pattern of this
2 block. And that's all we have, so.

3 CHAIRPERSON HILL: Okay.

4 MR. SULLIVAN: I'm available for any questions.
5 Thank you.

6 CHAIRPERSON HILL: If you would drop that slide
7 deck, Mr. Young. If it's okay with my fellow Board members,
8 I'd like to go ahead and hear from the party status in
9 opposition, and then we'll take questions of both, if that's
10 okay. Ms. Giordano, can you hear me?

11 MS. GIORDANO: Camera is not working this morning,
12 but can you hear me all right?

13 CHAIRPERSON HILL: Yeah, yeah, yeah. I can hear
14 you. And that's all right. Do you have any questions for
15 the Applicant, at this point?

16 MS. GIORDANO: I do not.

17 CHAIRPERSON HILL: Okay. Ms. Giordano, we're
18 going to go ahead and let you give your presentation. Is
19 there anything you'd like us to pull up, or are you going to
20 just speak to the issues?

21 MS. GIORDANO: Yes. The Heins, we submitted, the
22 day before yesterday, a couple of photographs and attachments
23 to his statement that would be helpful to pull up at this
24 time.

25 CHAIRPERSON HILL: Which one would you like to

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1 pull up?

2 MS. GIORDANO: We'll start with the first one.

3 CHAIRPERSON HILL: Is that the statement? The
4 cover letter?

5 MS. GIORDANO: The statement and then, I think,
6 it's Exhibit B. It's the second attachment to the statement.

7 CHAIRPERSON HILL: Do you want the statement
8 first?

9 MS. GIORDANO: Sure. We can put that up while he
10 speaks.

11 CHAIRPERSON HILL: All right. Mr. Hein, can you
12 hear me? Or Ms. Hein?

13 MR. HEIN: Hi. Yes, sir, I can hear you. Can you
14 hear me?

15 CHAIRPERSON HILL: Yes. Could you introduce
16 yourself for the record, please.

17 MR. HEIN: Sure. My name is Michael Hein. I'm
18 here with my wife, Katherine. Thank you for the opportunity
19 to speak today. We're here to request a few modest
20 modifications to the project. My wife and I live with our
21 two young children at 32nd Street, next to the Gliers, on the
22 south side. We're the only neighbors who are directly
23 impacted.

24 Both homes are part of the 1983 development,
25 consisting of 20 detached, single-family homes with similar

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1 floor plans, most on 7500 square foot lots. Ours is a four-
2 bedroom, approximately 3,000 square foot home. The Gliers'
3 is a five-bedroom, approximately 4,000 square foot home.
4 They're both on a 7500 square foot lot. The Gliers' proposed
5 addition is over 2,000 square feet, including the basement,
6 and would increase the square footage by over 50 percent.

7 We do not object to the addition. In particular,
8 we do not object to the large size. We're here today because
9 we asked the Gliers to consider some modest modifications at
10 three points in the process. And at each stage, the Gliers
11 refused to make any changes in response to our request. The
12 only modifications that they made were in response to a
13 specific recommendation from a commissioner at the ANC, Mr.
14 Stan Wall, and the ANC's clear unwillingness to support the
15 initial plan. The minutes are attached. Our records to
16 address our concerns through the Good Neighbor Policy were
17 rebuffed. And our only opportunity for relief is here at the
18 BZA process.

19 Just to summarize, briefly, our discussion with
20 the Gliers. They first presented their plans for the ADU in
21 September. We were concerned with the 1500 square foot ADU
22 in a 33 foot space between the houses, 3 foot from the
23 property line, which you discussed --

24 CHAIRPERSON HILL: Mr. Hein.

25 MR. HEIN: Yes, sir.

1 CHAIRPERSON HILL: Mr. Hein, can I just interrupt
2 you one second? Ms. Giordano, I think you're looking at
3 Exhibit 41, like, and I'm just trying to get to the chase,
4 Mr. Hein, a little bit --

5 MR. HEIN: Sure.

6 CHAIRPERSON HILL: -- which, I think, is that last
7 slide that you have in Exhibit 41.

8 MR. HEIN: Sure. We can put that up.

9 CHAIRPERSON HILL: Mr. Young, if you could pull
10 up Exhibit 41, please, and skip down to that last slide. So
11 this, can you walk through, this is your ask. Is this what
12 you're saying?

13 MR. HEIN: Yes.

14 CHAIRPERSON HILL: Can you walk us through what
15 you believe the ask to be?

16 MR. HEIN: So, yes. Yes, sir. So --

17 CHAIRPERSON HILL: And why?

18 MR. HEIN: Yes. So we have three requests.
19 First, that the window, which is in a solid yellow box, be
20 moved to the left three to four feet. That's the only
21 structural change we request. The other two are landscaping.
22 The reason that we request this is that this picture is taken
23 from our son's bedroom. It is a 90 degree angle, but it does
24 permit view from one room directly to the other. And moving
25 it to the left a few feet would address that. There's only

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1 one window on the north side of our home. It's on the first
2 floor. We routinely keep the curtain closed. So that was
3 the window that was addressed in the OP report. I don't
4 believe this window was directly addressed in the OP report.
5 I can move on to the other two requests.

6 The Gliers indicated that they intended to build
7 a fence along the mutual property line. We simply request
8 that that be constructed prior to construction of the
9 addition. And then the third request, another landscaping
10 request, is that trees be planted along our mutual property
11 line, which would obscure the view or preserve the privacy
12 of the windows on the first floor. We're not asking for any
13 movement of the windows on their first floor. And we'd be
14 happy to have those trees constructed on our property so they
15 have full use of the eight-foot setback. Those are the three
16 requests. I'd be happy to elaborate.

17 CHAIRPERSON HILL: No. I understand. And your
18 concerns is, you have a privacy concern, is what you're
19 saying, with that window.

20 MR. HEIN: Yes, sir.

21 CHAIRPERSON HILL: Okay. All right. Ms.
22 Giordano, can you hear me?

23 MS. GIORDANO: Yes.

24 CHAIRPERSON HILL: Is that, roughly, the concerns,
25 at this point, that your client has?

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1 MS. GIORDANO: Yes. I think that's correct. And,
2 clearly, there is an impact. There will be structure there
3 where there was none before. And this is a rear yard. I
4 understand that they comply with a eight-foot side yard. But
5 it's a rear yard.

6 CHAIRPERSON HILL: Okay. Okay. Great. Thank
7 you. Mr. Young, if you could pull that slide deck down.
8 Let's see. Mr. Sullivan, can you hear me?

9 MR. HEIN: Sir, just one request.

10 CHAIRPERSON HILL: Sure, go ahead, Mr. Hein. I'm
11 sorry.

12 MR. HEIN: I just wanted to touch, quickly, the
13 photograph right before the last slide that shows the view
14 of the existing structure from our front yard which, I think,
15 would help visualize the position of the structure.

16 CHAIRPERSON HILL: Sure. Mr. Young, if you could
17 pull up the exhibit again. Exhibit 41. I mean, they're
18 clear photographs, Mr. Hein. That's why I was just kind of
19 --

20 MR. HEIN: Okay.

21 CHAIRPERSON HILL: -- getting -- but that's okay.
22 We can pull them up. I mean, I see that, it, again, is very
23 similar to the slide that I had asked the previous Applicant
24 about.

25 MR. HEIN: One down. Sure.

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1 CHAIRPERSON HILL: One before. Or two before it.

2 MR. HEIN: One more up. Right there. Yeah. And
3 the addition would be reach halfway between the two houses.
4 So if you were to just visualized a two-story structure
5 halfway between those two houses, that would be another
6 helpful angle. That's all I wanted to show.

7 CHAIRPERSON HILL: I got you. Okay. Ms.
8 Giordano, is that basically it?

9 MS. GIORDANO: Yes. And, just so, it's pretty
10 obvious, but the Hein residence is set back further from the
11 street than this residence. And that's why the impact is
12 what it is.

13 CHAIRPERSON HILL: Okay. Okay. You can drop that
14 slide deck, Mr. Young. Okay. I love it. My fellow Board
15 members, I'm going to go through the whole thing. I'm going
16 to go to Office of Planning, and then we can take questions.
17 Mr. Sullivan, this is, basically, where you think you guys
18 are, correct?

19 MR. SULLIVAN: Yes.

20 CHAIRPERSON HILL: Okay. Can I open the Office
21 of Planning, please?

22 MS. FOTHERGILL: Good morning, Chairman Hill and
23 members of the Board. I and Anne Fothergill with the Office
24 of Planning for BZA Case 20599. The Office of Planning has
25 recommended approval of the Special Exception for the rear

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1 yard relief. I want to note one typo on the OP report where
2 we inadvertently identified the existing rear yard
3 incorrectly. It's 25.8 feet. We had written 17 feet for the
4 existing rear yard. So I just want to put that into the
5 record.

6 As was noted here today, the initial request was
7 for three-foot rear yard. The application has been revised
8 to request eight feet, which has also been noted as the
9 required side yard in this zone, in the R-1-A zone. The
10 application is subject to the criteria of Subtitle D 5201,
11 as well as the general Special Exception criteria. And I can
12 go through our analysis of the 5201 criteria that we found
13 it did, in fact, meet.

14 The first criteria was about light and air to
15 neighboring property should not be unduly affected. This
16 proposed addition is to the north of the property that we are
17 discussing on 32nd Street. So that property is the closest
18 proximity to the addition. But because this addition's to
19 the north, there shouldn't be significant shadowing. The
20 proposed addition is 25 feet in height, whereas the zone
21 allows 40 feet. So it's significantly lower, allowing for
22 light and air flow between properties.

23 And then there would be that eight feet of rear
24 yard, provided this section of the rear yard where the
25 addition is. The rest of the rear yard would be intact. And

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1 that eight feet would be adjacent to the eight feet side yard
2 of the house on 32nd Street. So that, effectively, would
3 provide light and air between those two houses. And so we
4 found that the light and air to neighboring property should
5 not be unduly affected by the proposed addition and the
6 requested relief.

7 The privacy of use and enjoyment of neighboring
8 properties should not be unduly compromised. This is
9 criteria 5201.4B](b). As you've heard, the adjacent neighbor
10 to the south on 32nd Street has raised privacy issues and has
11 provided suggestions for mitigating those issues. With the
12 eight-foot rear yard setback and the eight-foot provided rear
13 yard on the neighboring property, that is a significant
14 distance, effectively, the side yards of those properties,
15 which should provide adequate distance for privacy.

16 There is one window on the north elevation of the
17 house to the south. And, as you heard the neighbors state,
18 we're not particularly concerned about the privacy concerns
19 with that window, which would be the window directly across
20 from the addition. They are discussing a window on the east
21 elevation on the front of their house that would have an
22 oblique 90 degree angle to the addition. The addition is set
23 slightly forward of the front plane of the neighboring house.

24 With the side yard and with the angles of the
25 windows, I don't know that we would find that the privacy

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1 would be unduly compromised, but it is an issue that's
2 raised. And, hopefully, the Applicant and the neighbor can
3 respond to those proposed suggestions for mitigation and
4 resolve that.

5 In terms of 5201.4C, which talks about the
6 addition and the character, scale, and pattern of houses
7 along the street, as has been mentioned, because this house
8 has two fronts, the pattern along 32nd Street is actually a
9 pattern of side yards. And so this would actually reinforce
10 the side yard spacing along 32nd Street and, effectively,
11 serve as sort of a front on 32nd Street. The massing and
12 design shouldn't be visually intrusive on the character,
13 scale, and pattern. Again, it's 25 feet. It's well below
14 the maximum height. It would read more like a front with a
15 side yard.

16 And in terms of the general Special Exception
17 standards, we found that the application was consistent with
18 the general purpose and intent of zoning regulations and maps
19 and would not tend to affect adversely the use of the
20 neighboring property. And I am happy to take any questions.

21 CHAIRPERSON HILL: Just real quick, I forget.
22 What's the required rear yard?

23 MS. FOTHERGILL: Twenty-five feet.

24 CHAIRPERSON HILL: Okay.

25 MS. FOTHERGILL: Which they have, currently, and

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1 would be for a significant part of their rear yard, except
2 where this addition is. They're not taking up the entire
3 rear yard. But they would be, where the addition is, would
4 only have eight feet.

5 CHAIRPERSON HILL: I understand. Okay. Do my
6 fellow Board members have any questions for the Office of
7 Planning? All right. Ms. Giordano, do you have any
8 questions for the Office of Planning?

9 MS. GIORDANO: No. I have no questions.

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

12 MR. SULLIVAN: No. Thank you.

13 CHAIRPERSON HILL: All right. I'm gonna come back
14 to my board members now, then. Or actually first Mr. Young
15 is there anyone here wishing to testify? Okay. Returning
16 to fellow board members, who has questions for whom? And
17 please raise your hand. Commissioner Miller.

18 COMMISSIONER MILLER: Thank you, Mr. Chairman.
19 Did Mr. Sullivan want to provide the board with a response
20 to your response to the three requests that the Heins party
21 in opposition has presented here today and apparently has
22 discussed previously with your client?

23 MR. SULLIVAN: Sure. So I would just point out
24 some of the testimony that was given. One said that the
25 windows, they thought the windows were not addressed by the

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1 Office of Planning. And of course they were in the report
2 and in testimony of course, but in the report as well based
3 primarily on proximity.

4 CHAIRPERSON HILL: And Ms. Giordano herself
5 mentioned that the Hein's residents being uniquely set back
6 from the front property line was the reason why there is an
7 alleged impact as well. Comments made from Mr. Hein included
8 the fact that their requests for modifications were rebuffed
9 and that the Gliers refused to make any changes. And I think
10 that's obvious from the record, but that's not accurate.

11 I think they're trying to play semantics and say,
12 "Well, we didn't make the changes until somebody else
13 requested them." But these changes were made specifically to
14 address concerns to the Hines, including moving the building
15 five feet further back.

16 MR. SULLIVAN: So it's 20 feet back from the
17 property line in line with other houses on the block,
18 including the house right on the other side of the Hines'
19 house, so. But regarding the window itself, well, let's go
20 talk about landscaping and fencing. As included in an email
21 that was submitted by Ms. Giordano between the applicant and
22 the Heins, the applicant is looking forward to working with
23 the Hines on landscaping and fencing. And they can answer
24 questions on that when the time comes for that.

25 CHAIRPERSON HILL: But they've said all along that

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1 they're going to be addressing that and will continue to work
2 with the Heins on that. I don't think it has any impact on
3 the privacy or light and air issue before the board today.
4 Regarding the windows, I don't think there's been any shown
5 that there's a privacy issue primarily because of proximity.
6 The window's almost 20 feet away.

7 But the 90 foot, the 90 degree angle is
8 significant as well. And I don't think anybody's shown that
9 there is a sight line. They say it directly looks into it.
10 The fact that it's 90 degrees disputes that, and to show that
11 window from their angle, they had to open their window and
12 put the camera outside the window to show that so.

13 And even their diagram and their submission shows
14 a red line going from the window and it clips the corner of
15 the building. It doesn't even reach the window. So I don't
16 think, if we're talking about undue impacts on privacy, I
17 don't think the windows as they exist. And the significant
18 revisions have been made.

19 So, it's the Hines make it sound like as if the
20 applicant is being stubborn about making changes. This is
21 a really aggressive revision to the original application
22 meant to address all these concerns. Finally, just one thing
23 that Ms. Giordano said, yes, it's rear yard relief. We are
24 asking for rear yard relief and that's 25 feet. But in the
25 context of undue impact on a neighboring property, it's a

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1 side yard essentially to the Hines as you face 32nd Street.

2 And so, I think that's important for any
3 discussion of what is undo and what's not undo. What you
4 expect from a house that's to the side of your house, and
5 there's an eight foot side yard here in this case. And this
6 situation as currently proposed and as revised, I think this
7 as proposed it meets the special exception criteria safely.
8 I believe. Thank you.

9 MS. GIORDANO: Mr. Chairman. This is --

10 CHAIRPERSON HILL: Yeah. Ms. Giordano, what's
11 gonna happen is I'm gonna let everybody ask their questions.
12 Then since all kinds of things are being said, I'm gonna let
13 you, Ms. Giordano respond. I'll let Mr. Sullivan then do a
14 rebuttal, and then there can be also a closing. Let's see.
15 Who else has questions, Mr. Blake?

16 MEMBER BLAKE: I was just hoping to go back to
17 that slide where we saw the front of the Heins house. I
18 wanted to make sure I understand which window they were
19 referencing when they took that picture. And yeah, that's
20 the one. Which window was that picture taken from?

21 CHAIRPERSON HILL: Is it the, Mr. Hein, the window
22 that you're referencing that your son's bedroom, it's the one
23 in that top corner, correct? You're on mute Mr. Hines or
24 not.

25 MR. HEIN: The two buttons. Yes, it is the upper

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1 right corner window.

2 CHAIRPERSON HILL: That's the window you're
3 concerned about. Meaning people being able to look into.

4 MR. HEIN: Yeah. I guess that's the one the
5 picture was taken from. Both windows that you can see are
6 in the bedroom.

7 CHAIRPERSON HILL: Okay. So you're concerned
8 about both windows.

9 MR. HEIN: Both. But --

10 CHAIRPERSON HILL: And since I got you here, if
11 you scroll down to -- And I'm sorry, Mr. Blake, did that
12 answer your question?

13 MEMBER BLAKE: Yes, sir.

14 CHAIRPERSON HILL: Okay. Before, and you might
15 have more, but before we leave this slide deck, if you go
16 down to the last slide, Mr. Young, You're asking them to
17 reposition that window over to the left. Is that what you're
18 trying to accomplish?

19 MR. HEIN: Yes.

20 CHAIRPERSON HILL: Mr. Heins.

21 MR. HEIN: Yes.

22 CHAIRPERSON HILL: Okay. All right. Let's see.
23 Okay. You wanna drop that slide deck again, Mr. Young.
24 Okay. Does my fellow board members have any questions or
25 anybody?

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1 Okay. Let's see. Mr. Sullivan, just real quick,
2 moving that window over, right? It makes it kinda look a
3 little weird. So that's like that messes up the program
4 architecturally, do you know?

5 MR. DUPNICK: This is Paul Dupnick, the architect.
6 I can speak to the layout, that centering a window in that
7 expansive space would essentially limit that room to a one,
8 or that space to a one room. It would be near impossible to
9 split that space into two rooms without running a wall square
10 in the middle of that window.

11 CHAIRPERSON HILL: So it really limits what you
12 can do other than one large great space within that. If you
13 want both rooms to have a southern exposure. So it would be
14 limiting it. It makes it sound like you could just nudge the
15 window over to the center, but it really just limits what you
16 can do with that space.

17 I understand. And then if you made like, you
18 know, one big -- So, and I don't have the architectural
19 giants pulled up Sir, but that's one big room there in that
20 area. Is that correct?

21 MR. DUPNICK: No, currently it's two bedrooms.
22 And we have a south facing window in each of those bedrooms.

23 CHAIRPERSON HILL: Oh, I got you.

24 MR. DUPNICK: So to center that window really
25 would sabotage the use of that space.

1 CHAIRPERSON HILL: Right. Mr. Sullivan, you're
2 at a bit of an impasse with that concern, correct?

3 MR. SULLIVAN: Yeah. And it's in the context of,
4 I mean, what's being portrayed by the Hines seems to be that
5 my client is making no changes and making no compromises.
6 And now they're asking for a compromise. Well, it's been
7 made. And, but the important point here is, I just don't
8 think there's any impact. I mean I could --

9 CHAIRPERSON HILL: I got, Mr. Simon, I got you.
10 We're gonna be able to determine whether or not, obviously
11 we think there's an impact or not. That's, I'm just kind of
12 talking this through a little bit in terms of that you're
13 currently, as you know, you currently are at a full order
14 now, right? Okay? With party status and opposition.

15 It looks like your program's gonna get completely
16 messed up if you did you know, --You couldn't move the
17 window, right? It sounds as though in order to get the
18 opposition to withdraw. And that is generally the gist. Is
19 that correct Mr. Sullivan?

20 MR. SULLIVAN: -- Well, and maybe Stephanie Glier
21 might wanna weigh in on this too, but there was never any
22 indication that withdrawal of a party status was within
23 reach. And of course of the negotiations, if that makes
24 sense to how this has gone, so. I mean obviously if the
25 applicant would love to have an approval over hard and fast

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1 line on the window, I just don't think there's an impact.

2 And they would've loved to have had a summary
3 order as well, but that just never seemed like a realistic
4 possibility through the course of the --

5 CHAIRPERSON HILL: Right. But there's no way, and
6 I'm just I'm getting down in the weeds on this and I'm gonna
7 stop in a second, but there's no way to move that window and
8 still have the grammatical needs met. It appears.
9 Correct?

10 MR. SULLIVAN: -- Not as -- Well Stephanie, I
11 think you probably want to answer this.

12 MS. GLIER: I'm happy to jump in. Yeah, that's
13 correct. There's not a way for us to move the window and
14 have the programmatic feeds met.

15 CHAIRPERSON HILL: Okay. All right. Okay. All
16 right, Miss I'm gonna turn to Ms. Giordano for any kind of
17 -- There's been some discussion. It looks like people have
18 some questions. Perhaps Mr. Blake or Mr. Smith I saw your
19 hands.

20 MEMBER BLAKE: Two quick question for Ms. Glier
21 the, you know, the window, that bedroom has two windows in
22 it. I understand you need the south facing for the light.
23 And there is some symmetry between those two bedrooms having
24 southern facing light.

25 But that particular front bedroom does have two

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1 windows in it. So if you removed one, it would still have
2 light. It just would not be up, correct? All right. Thank
3 you.

4 CHAIRPERSON HILL: All right. Now I'm confused.
5 I thought there was one window in each bedroom up on that
6 floor. Is that not the case?

7 MEMBER SMITH: It's two.

8 MS. GLIER: There's one south in each bedroom,
9 which is the space that abuts against the Heins property.
10 There's also an east facing window in the bedroom that I
11 think sort of in the window in question.

12 CHAIRPERSON HILL: I gotta pull up the
13 architectural plans. Okay. Mr. Smith, did you have a
14 question?

15 MEMBER SMITH: Actually I believe Mr. Blake
16 answered my question. You know, just to further clarify the
17 point that I think was just made, how many feet, was in your
18 discussions with the party in opposition, how many feet did
19 they want that window moved over? And would that put that
20 along the wall between the two bedrooms?

21 MS. GLIER: The request was to move the window to
22 the west three to four feet. And Paul is on as well. I
23 think he can correct me if I'm wrong. But I believe that,
24 yes, I would've brought it the window to be where the wall
25 is, is between the two bedrooms.

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1 MEMBER SMITH: Okay. That's what it looks like.

2 MR. DUPNICK: That's correct. Yeah.

3 MEMBER SMITH: Yeah.

4 MR. DUPNICK: That space has roughly split between
5 two bedrooms. Each have a southern facing window and one
6 window facing east and one facing west. So yes, you would
7 be eliminating a south facing window, not all windows
8 altogether.

9 MEMBER SMITH: Right. Okay. That's what I
10 thought. Thank you. Thank you for the clarification.

11 CHAIRPERSON HILL: So Mr. Miller, you got your
12 hand up.

13 COMMISSIONER MILLER: Yeah. Just briefly to Mr.
14 Sullivan or Ms. Glier, which is a follow-up to my original
15 question to Mr. Sullivan in terms of response to the three
16 requests that were in that slide deck. I appreciate all the
17 revisions that have been made front and the original
18 application. And as a result of concerns expressed by the
19 neighbors and Office of Planning and including the setbacks
20 and --

21 But I just, and I think I understand the window
22 issue now. But the other two requests on the fence, I guess
23 the fence constructed before the addition construction began
24 and the Hollys to screen, are you not agreeing to any -- Do
25 the plans include, the plans that before us in the revised

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1 application include the fence and the tree screening behind
2 the fence on the applicants property?

3 MS. GLIER: I'm happy to talk about that. I think
4 if you can see in the email exchange, I'm sorry that you're
5 getting deeply into an email exchange between neighbors. But
6 as you can see in the email exchange, there were a number of
7 requests -- A number of issues that the Heins had raised,
8 including requesting moving the addition back to be in line
9 with their property. We had told them that we weren't
10 interested in doing that because it would ruin the sort of
11 frontage that we were getting at 32nd Street.

12 We're very happy to continue working with the
13 Heins on making sure that we have landscaping, which includes
14 a sense that works for both of our properties. That feels
15 a little bit like we're putting the cart before the horse
16 here, but what we're here to do is request release so that
17 we can proceed with permits to do a construction project.
18 Building a fence feels like it's a secondary piece to that.

19 We would be happy to continue having the
20 conversation about when the right time is to build a fence
21 and where it falls on the property line and what foliage to
22 include, so. But we're not trying to say no to that. We're
23 trying to say that that's not part of what we have in mind
24 at this moment in time or right now.

25 CHAIRPERSON HILL: Okay. Oh, sorry. Commissioner

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1 Miller.

2 COMMISSIONER MILLER: I understand regarding what
3 you're saying in terms of sequencing of construction of the
4 addition and construction of landscaping and the fence. So
5 I understand maybe not having specific plan for that as part
6 of this application. But would you be agreeable if there
7 were a condition to the approval trying to address the
8 privacy screening issue that just requires as a mitigation
9 to that. That there be a fence to be mutually agreed upon
10 it later and that there be tree plantings that are mutually
11 agreeable that screen between the properties.

12 MS. GLIER: Yes. Absolutely.

13 COMMISSIONER MILLER: Okay. Thank you very much,

14 CHAIRPERSON HILL: Mr. Blake.

15 MEMBER BLAKE: Yes. To Ms. Glier, a question.
16 With regard to the window, I mean, obviously the objective
17 is to make sure you get the southern facing light into the
18 window. But privacy is also an issue they're concerned
19 about. Is it possible to use some type of screening on that
20 window? You know, opaque.

21 Something to make the window so you can't see
22 through it or maybe shorten the visible part of the window.
23 So you get the light and compromise. I mean, our objective
24 would be to do the least intrusive method to, you know,
25 resolve, mitigate the issue. And it seems to me, if you

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1 weren't able to look out that window you could still get the
2 light, but you wouldn't be able to necessarily look directly
3 out.

4 CHAIRPERSON HILL: You have the design, you have
5 the two rooms that way. That might be a way that you could
6 accomplish that. I'd be curious. Would you consider
7 something like that?

8 MS. GLIER: We would be happy to consider
9 something like that. Like a frosting.

10 CHAIRPERSON HILL: Yeah. Okay. Gimme a second.
11 Gimme a second, Mr. Sullivan. Give a second. I know you're
12 about to say something. Mr. Blake, I mean, I'm sorry, Mr.
13 Smith, you got any questions? Okay. Mr. Sullivan.

14 MS. GIORDANO: I would like to say something at
15 some point.

16 CHAIRPERSON HILL: I got you Ms. Giordano. I'm
17 gonna give you a whole amount of time after this is over.

18 MS. GIORDANO: Thank you.

19 MR. SULLIVAN: Yeah. Just to affirm that that
20 agreement to that condition for frosting and that the board
21 has approved conditions similar to that in other cases like
22 this in the past as well. So that would be an enforceable
23 condition.

24 CHAIRPERSON HILL: Okay, Ms. Giordano, I'm gonna
25 let you go ahead and respond to everything. But I wanna let

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1 everybody know kind of where I am right now. Because we have
2 an appeal happening later in the day, and so there's a lot
3 of things that are going on.

4 I don't think that these windows are anything
5 necessarily that I haven't seen before. And so, and I've
6 been here now for a significant amount of time and I don't
7 think that they are, you know, creating any undue impact on
8 this particular property. If there's a way that these
9 parties can come together in a way that avoids having to --
10 And I'm just trying to be a little bit practical here in
11 terms of the full order versus a summary order.

12 And since we're not in person, I can't do this in
13 a more efficient manner, right? But I think that, you know,
14 even the symmetry, the way that the home looks and the way
15 that the symmetry the way that the home looks in relationship
16 to the character of the neighborhood, I think looks lovely.
17 And so, you know, I don't know what it is that might be able
18 to find some compromise with the neighbor.

19 It sounds as though there has been a lot of
20 discussions that are going on. But at this point right now
21 I'm just trying to see if there's any way to resolve any of
22 this so that the applicant might not -- And I don't know
23 where my fellow board members are. I'm just trying to cut
24 to the chase again for me.

25 Which is that whether or not the applicant would

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1 have to wait for a full order which I don't know whether Mr.
2 Sullivan you've explained to your client that that takes some
3 time. Versus a summary order which is much less but they
4 might have to move the window a few feet in order to still
5 get that. And then the neighbor would have to compromise and
6 say, "You know, they're moving it a couple of feet, but they
7 still are moving it to the point where it's a window in that
8 bedroom."

9 Because they can't move the wall of the bedroom.
10 Or I don't know, and this might not be worth the time. And
11 what I'm gonna end up proposing if this even seems like a
12 possibility with your client Mr. Sullivan or your client, Ms.
13 Giordano is have you guys kind of chit chat a little bit
14 throughout the day. And then, you know, there's an appeal,
15 and so that's gonna take me four hours.

16 And so, you know, you can come back or you all can
17 decide before the appeal, because I got one more case as to
18 whether or not you just wanna kind of roll the dice and see
19 where we go with this particular plan. Which is completely
20 understandable because you guys have already gone through the
21 ANC, you've gone through all the different hoops to get to
22 this point. And so, you know, you can chew on that Mr.
23 Sullivan as Ms. Giordano starts to speak.

24 Ms. Giardano, I'm sorry I just can't see your
25 camera. And I know it's not on there. But would you like

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1 to go ahead to respond to everything that's been said thus
2 far? And if you would like to give a conclusion at the same
3 time and then I'll let Mr. Sullivan have a rebuttal and a
4 conclusion.

5 MS. GIORDANO: Yes, Mr. Chairman. I just wanna
6 respond to the fact that basically there haven't been any
7 real negotiations here. We are very open to negotiations.
8 In every case the Heins have not, I'm sorry, the applicant
9 has not really indicated a willingness to negotiate.

10 The changes that were made were in response to the
11 ANC. And that's not a matter of semantics. I mean, the
12 Heins asked for those changes, the applicant said no. And
13 it wasn't until the ANC basically told them that they were
14 gonna risk a denial that they were forced to make those
15 changes.

16 So what we have here is sort of a lack of
17 confidence in the ability to really work these things out,
18 outside of a condition in an order.. And I'm speaking here
19 to the fence and the landscaping issue. I would be happy to
20 talk to Mr. Sullivan over the course of today and see if we
21 can work something out.

22 We're not trying to be obstructionist or stop or
23 delay this project. We just want some assurance that there
24 will be follow up on the landscaping and the fencing. And
25 some reason why they can't do the window to some lesser

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1 extent, if that's a possibility, and doesn't screw up their
2 layout. And I'm gonna pass over to my client to also make
3 a comment.

4 CHAIRPERSON HILL: Okay. All right. Okay. Gimme
5 a second. Right. Okay. Go ahead Mr. Glier. What's your
6 comment, Glier?

7 MS. GIORDANO: Mr. Heins.

8 CHAIRPERSON HILL: Oh, I'm sorry. Mr. Heins,
9 what's your comment?

10 MR. HEIN: That was well said. Thank you.

11 CHAIRPERSON HILL: Okay. Thanks. All right. I
12 love it. I always get kind of like, I get clarity sometimes
13 from legal to let me know that again within the regulations,
14 I'm gonna look at the regulations and I'm gonna look whether
15 or not I think that this meets the standard. I'm just trying
16 to help out, okay?

17 And try to provide, as a citizen of Washington,
18 DC, provide some kind of capacity for dialogue, because I
19 know where I am, okay? And I know where I am within these
20 regulations. So if my fellow board members have any issues
21 then, I'm gonna go ahead and, what am I gonna do? I'm gonna
22 go ahead and let the parties kind of talk with one another.

23 Again, if we were live, then they would go along
24 and find a little room and kind of talks amongst themselves
25 and come back, okay? I think it's a simple design, I think

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1 it's a simple case. I think the regulations are very clear.
2 I'm gonna let people talk, okay? So Ms. Giordano, can you
3 hear me?

4 MS. GIORDANO: Yes.

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

6 MR. SULLIVAN: Yes.

7 CHAIRPERSON HILL: You guys have each other's
8 contact information?

9 MR. SULLIVAN: We do. Okay. I have one more case
10 and then we're gonna take a break and then we have an appeal.
11 The appeal will take a while. If we can get this wherever
12 you guys are before the appeal that would be helpful.

13 CHAIRPERSON HILL: And I'll let Mr. Moy try to
14 figure out where you guys are after our next case and after
15 our break. And whether you need more time or whether you
16 just want us to continue the hearing. When I say continue
17 the hearing, we're gonna pause this hearing, we're gonna
18 continue it later in the day. And the only thing that's left
19 is a summary from Ms. Giordano and a summary from Mr.
20 Sullivan if you guys come back with me with this same
21 project, okay? Okay.

22 And unfortunately if you're gonna change
23 something, we're gonna have to see whatever the changes are
24 so we can actually determine whether or not we think that
25 still adheres to the regulations. Okay? So I'm gonna pause

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1 the hearing, I'm looking at my fellow board members, I'm
2 gonna pause the hearing and I'm going to come back after this
3 next hearing and after a break. So please excuse everyone,
4 Mr. Young.

5 Okay. I didn't see anybody raising their hands.
6 So I guess everyone's okay with the way I was going about
7 that. So do you want do one more case and then a break? Or
8 do you wanna do a break and then the case? Mr. Commissioner
9 Miller.

10 COMMISSIONER MILLER: Hear the next case.

11 CHAIRPERSON HILL: Okay. Let's do the next case,
12 Mr. Moy.

13 MR. MOY: In that case, before the board is case
14 application number 20584 of King's Creek LLC. This is the
15 applicant's request, excuse me, for special exception relief
16 from the floor area ratio, FAR requirements of Subtitle X.
17 However, rather Subtitle K section 701.1 pursuant to subtitle
18 K Section 716 and Subtitle X Section 901.2.

19 Minimum permitted building height and story
20 requirements, Subtitle K Section 702.1 pursuant to Subtitle
21 X. Oh, I keep saying X. Subtitle K Section 716 and Subtitle
22 X Section 901.2. Lot occupancy requirements, Subtitle K
23 Section 703.1 pursuant to Subtitle K Section 716 and Subtitle
24 X Section 901.2. And finally court requirements of Subtitle
25 K Section 706.1 pursuant to Subtitle K Section 716 and

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1 Subtitle X section 901.2.

2 This would expand an existing two-story building
3 into a four-story with penthouse and seller, 33-unit
4 apartment house in the RC-1 zone probably located at 2329
5 Champlain Street, Northwest (Square 2563, Lot 113). And, a
6 second Mr. Chairman, and in this case in terms of documents
7 that were submitted late into the record is the applicant's
8 cover letter because there are revised plans. The
9 applicant's PowerPoint deck and comment and opposition from
10 a Chris Otten, which was all these three documents, were
11 submitted late into the record. And that's it from me, Mr.
12 Chairman.

13 CHAIRPERSON HILL: Okay. All right. So unless
14 the board has any issues, I'd like to go ahead and see
15 whatever it is that was submitted late. I'd like to see that
16 into the record. And so Mr. Moy, you said there were three
17 items, is that correct?

18 MR. MOY: Yes, sir.

19 CHAIRPERSON HILL: Okay. All right. Mr. Freeman,
20 could you introduce yourself for the record please.

21 MR. FREEMAN: Good morning. My name is Kyrus
22 Freeman with the law firm of Holland & Knight on behalf of
23 the applicant.

24 CHAIRPERSON HILL: Okay. Give me a second, Mr.
25 Freeman. Because I wanna see this stuff that gets put in the

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1 record. While I'm doing that Mr. Freeman, can you tell me
2 who's with you today?

3 MR. FREEMAN: So I'll do two things. First what
4 we submitted, just so you you're aware, we submitted an
5 updated set of plans. The only change that those plans are
6 that we added a note in response to DDOT comment on a floor
7 plan indicating that we're not going to build within a
8 portion of the site adjacent to an alley. So that's the only
9 change there.

10 And secondly, in response to some communications
11 with the ANC, we converted two bedroom IZ units into three
12 bedroom IZ units. Those are the only changes on those plans,
13 so.

14 CHAIRPERSON HILL: But those two bedrooms got
15 turned into three bedrooms and they're changed on the plans.

16 MR. FREEMAN: Correct.

17 CHAIRPERSON HILL: Okay. All Right.

18 MR. FREEMAN: So that's the extent. That's why
19 we filed those updated plans. So with me today are Michael
20 Dyer on behalf of the owner, Shane Dettman with Holland &
21 Knight our Land Use Planner, and our Architect, John Edwards.
22 Who I'm sure you could figure out who's John, because of the
23 both side. But that's who are our line up is today.

24 CHAIRPERSON HILL: Well, thank goodness. The
25 names at the bottom of the screen are also helpful, Mr.

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1 Freeman. But --

2 MR. FREEMAN: And I don't wanna introduce Jake.
3 He's not part of the applicant team, but he's with the ANC

4 CHAIRPERSON HILL: I don't see him. Commissioner,
5 are you there?

6 MR. FALESCHINI: Can you see me?

7 CHAIRPERSON HILL: Oh, I can see you. Yes. I'm
8 sorry. Okay. All right. Well Mr. Freeman, while you can
9 go ahead, do this again.

10 Please go ahead and walk us through your
11 application. And why you believe your client is meeting the
12 standard for us to grant the relief requested. And, you
13 know, obviously speak to those issues.

14 I'm gonna put 15 minutes on the clock, so I know
15 where we are. And you can begin whenever you like, because
16 I'm waiting for these items to get brought up.

17 MR. FREEMAN: Okay. Well, as in if we could start
18 the 15 minutes once the docs are in the record, because we
19 do have a presentation. It's the applicant's PowerPoint
20 presentation.

21 CHAIRPERSON HILL: You can go ahead and pull up
22 the presentation. I think Mr. Young has that. Everything
23 did get popped into the record, however.

24 MR. FREEMAN: Got it. So I will be brief. Next
25 slide, Mr. Young. Mr. Dyers, the next slide, is the owner.

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1 To the extent that you have any questions about the long
2 extended history of this site, he can answer those questions.

3 But essentially what we're asking for is special
4 exception relief from the height requirements, from the FAR
5 requirements from the lot occupancy and closed court
6 requirements. Let me backtrack. So, this project is noted
7 was initially approved in 2006. So, we have essentially
8 filed for re-approval of a project that was approved in 2006,
9 so it's the same relief.

10 Since then due to environmental issues, permitting
11 issues, et cetera, that those prior approvals have expired.
12 So we are here today seeking board, essentially re-approval
13 of the same exact project that was previously approved. Why
14 don't I now turn it over to, unless Mr. Dyer wants to say
15 something, why don't I turn it over to our architect to
16 quickly walk you through the plans?

17 MR. EDWARDS: Okay. Can I get the next slide?
18 And you all hear me? Yeah, there you go. Thank you.

19 So this is the show the context of the building
20 itself, pictures on Champlain Street, Northwest. And photos
21 one and two are showing the view of the building from
22 Champlain Street. It's the big stone two-story building that
23 you see in those pictures. In these views show the existing
24 multifamily housing that are to the north and the south of
25 that building. Both of which are at that 50 foot height that

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1 they gained through zoning relief as well.

2 The view from number three and number four is
3 taken from the alley to the rear of the building. So again,
4 you can see that the stone, the original stone building that
5 we're adding to, and it's disposition on the alley. As well
6 as in picture number four where it's showing the building
7 immediately to the north of ours and the ramp off of the
8 alley that goes down into their lower level garage.

9 So next slide please. Okay. So this is the floor
10 plans for the building. That will briefly walk you through
11 this. The lower level cellar area has nine parking spaces,
12 including one car share space. And seven of those spaces
13 will also have electric car chargers in them.

14 And so, the parking count with that car share
15 space needs the requirements of the zoning code for the
16 number of units that we have in this building. On the first
17 floor plan that you see on the right-hand side of the screen,
18 that Champlain Street is on the right, the alley is to the
19 left showing the two buildings that are joined.

20 Our building on the south, we have a building
21 directly adjoins it. That's at the top of this picture.
22 It's sort of slipped around in terms of the cardinal
23 directions on the bottom of that drawing you see the Morgan,
24 which is a multifamily building directly to the north of us.
25 And to point out on here that that building is set back a

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1 minimum of 12 feet from our property line.

2 As you move back into the site towards the alley,
3 that separation distance increases to about 25 to 26 feet by
4 the time you get to the alley. The shaded area on the left
5 side of that plan in the ground floor plan is what Mr.
6 Freeman was referring to earlier. That's a triangle of land
7 in our property that reduces the size of the alley.

8 And we have shown that to be basically we turn to
9 the alley so that the alley as we score to a standard 15 foot
10 alley there. And there would be a covenant on that there
11 would be no structures built in that area so that the normal
12 sized alley would be retained in perpetuity. This ground
13 floor plan also shows access to our garage from the alley as
14 well as two IZ units, two one bedroom IZ units that would be
15 on that first floor level. So next slide please.

16 MR. FREEMAN: How are we doing on time, Mr.
17 Chairman?

18 CHAIRPERSON HILL: Say that again. I'm sorry.

19 MR. FREEMAN: How are we doing on time?

20 CHAIRPERSON HILL: Go ahead, Mr. Freeman. It's
21 all right. I'll keep tracking.

22 MR. EDWARDS: Okay. I'll try and be brief. The
23 second floor plan is again, showing the outline of the
24 existing building that's being retained. There are three
25 more IZ units on that level, two one bedrooms and one two

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1 bedroom. On the right-hand side you're looking at the third
2 floor plan. That's where the new addition would kick in.
3 And as you can see, that sets back considerably from
4 Champlain Street.

5 And there is one three bedroom IZ unit that would
6 be provided on this level facing Champlain Street. And next
7 slide. The fourth floor plan is identical to the third
8 floor. Again with another three bedroom IZ unit facing
9 Champlain Street. And the penthouse plan is the penthouse
10 is just providing access to communal recreation space on the
11 upper level and conformance with all of the required setbacks
12 for that.

13 Next slide, please. This should be a section that
14 again is just showing you, this is cut through the middle of
15 the building, showing you how those upper floor, the upper
16 floor addition sets back considerably from Champlain Street,
17 as well as from the alley behind. And how the penthouse is
18 meeting the setback requirements on that level.

19 Next slide, please. This is a color elevation of
20 what this would look like from Champlain Street. So you see
21 the two multifamily buildings to the north and south of us,
22 and also the 12 foot separation between the building to the
23 north of us on their property line. That red line is the
24 actual property line. So there is a gap between those two
25 buildings.

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1 We directly adjoined the building to the south,
2 which is on the right-hand side of this. Next slide, please.
3 This just is the rear elevation from the alley. So you're
4 seeing the one vestige of the original building that reached
5 back towards the alley. And as I was saying before, as
6 you've stepped back towards the alley, the separation
7 distance between our building and the building to the north
8 increases from 12 feet two by the time you reach the alley
9 about 26 feet.

10 So, next slide. And I think Kyrus and Shane
11 Dettman will take over at this point to go through the relief
12 that we are asking for.

13 CHAIRPERSON HILL: Hey Mr. Freeman, can you hear
14 me?

15 MR. FREEMAN: I can. And I actually have a
16 question, but.

17 CHAIRPERSON HILL: At some point, can you also
18 speak to the DDOT comments and what you've done with them
19 since then?

20 MR. FREEMAN: Absolutely. One thing that I don't
21 know that we actually did at the outset was to make sure that
22 Mr. Edwards and Mr. Dettman were qualified as experts. I
23 don't know if we need to go back to do that, But --

24 CHAIRPERSON HILL: Mr. Dettman is in our book
25 already. I know for sure. And --

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1 MR. EDWARDS: I should be in there as well, but
2 I can be wherever you need.

3 CHAIRPERSON HILL: -- Mr. Moy, I think Mr. Edwards
4 is also in that book already.

5 MR. MOY: According to our records, you're
6 correct. Mr. Dettman and Mr. Bonstra are in our witness
7 book, expert witness book. However, John Edward is not. So,
8 you may wanna review his CV, which is under exhibit 17.

9 CHAIRPERSON HILL: All right Mr. Freeman, you're
10 trying to get Mr. Edwards submitted as an expert, correct?

11 MR. FREEMAN: Yes, sir.

12 CHAIRPERSON HILL: Okay. I'm looking and see.
13 I don't have any issues with Mr. Edwards being admitted as
14 an architect and an expert in architecture based on what's
15 in the record. Do my fellow board members have any issues
16 with that? If so, please speak up. Okay. All Right Mr.
17 Freeman, go ahead.

18 MR. FREEMAN: Right. Before Mr. Dettman goes, I
19 wanna respond to your question, Mr. Young, if you could go
20 back a slide.

21 CHAIRPERSON HILL: If somebody's not on mute
22 that's not speaking, if you could go ahead and mute yourself,
23 that'd be helpful. Thank you.

24 MR. FREEMAN: If you could go back to the slide
25 that has the cellar plan and the first floor plan. So Mr.

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1 Hill I know it's hard to see the note, but it's actually
2 easier to see on the plans, on the first floor plan. DDOT
3 report as you know recommended approval subject to one
4 condition. And their condition was that we not build in
5 essentially that gray shaded area at the back of the site,
6 because it's essentially treated as an alley.

7 And we agreed to not build within that shaded area
8 of the site. So that's what that note says. It says, area
9 to remain paved and be permanently clear of structures,
10 fences, bollards, dumpsters, or anything else that would
11 inhibit alley operations. I know it's extremely hard to see
12 at this font, but on our --

13 CHAIRPERSON HILL: I can see it. I can see it in
14 different places also. And your client is in agreement to
15 the DDOT conditions or the TDM plan.

16 MR. FREEMAN: -- Yes, sir.

17 CHAIRPERSON HILL: Okay. And that's in DDOT's
18 report. Okay. All right. Please continue, Mr. Freeman.

19 MR. FREEMAN: All right. Thank you, Mr. Young.
20 If we could advance to the slide where we left off. And our
21 next witness will be, next slide, yep, thanks, our next
22 witness will be Shane Dettman, our expert in planning and
23 land use.

24 CHAIRPERSON HILL: Mr. Dettman, you might be on
25 mute, sorry, If you're trying to speak. Still can't hear

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1 you, Mr. Dettman. Yes.

2 MR. DETTMAN: Text message to Kyrus.

3 CHAIRPERSON HILL: I can hear you. We can hear
4 you.

5 MR. DETTMAN: Let them know I'm gonna call in

6 CHAIRPERSON HILL: Mr. Dettman we can hear you.
7 Well, can you all hear me?

8 SPEAKER 15: Hi, Shane.

9 CHAIRPERSON HILL: Mr. Dettman, we can hear you.

10 MR. FREEMAN: I think he's gonna call in, he's
11 having some technical issues. So he's gonna call in. Okay.
12 He's calling in right now.

13 CHAIRPERSON HILL: I'll tell you what, Mr.
14 Freeman, let me go to the Office of Planning while Mr.
15 Dettman tries to get online. Mr. Young, could you drop the
16 slide deck for a minute, please. Okay. Can I chair the
17 Office of Planning, please?

18 MS. FOTHERGILL: Good morning Chairman Hill and
19 members of the board, I'm Anne Fothergill for the Office of
20 Planning for BZA Case --

21 MR. DETTMAN: Can you hear me?

22 CHAIRPERSON HILL: Yeah, we can hear you, Mr.
23 Dettman. Can you hear me? No. All right Ms. Fothergill,
24 keep going.

25 MS. FOTHERGILL: Sure. BZA Case 20584. The

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1 Office of Planning has recommended approval of the four
2 special exception requests for this multifamily residential
3 building development proposed at 2329 Champlain Street,
4 Northwest. The requests are for relief for FAR building
5 height, lot occupancy, and closed court.

6 As the applicant mentioned, the BZA did review
7 this relief for this property in 2006 and approved that
8 relief at that time. And previously in 2002, the board
9 approved a different relief for this project. But the case
10 in 2006 was 17431, and that expired. And so, the project in
11 back before you.

12 The relief is subject to Subtitle K Section 716,
13 the specific criteria of that section of the regulations
14 which has a number of specific criteria. And the first is
15 that the use building or feature at this size intensity and
16 location proposed will substantially advance the stated
17 purposes of the RC-1 zone. This is the Reed Cook zone. And
18 the purpose of the zone is to protect current housing and
19 provide for the development of new housing.

20 The proposed residential use and renovation of
21 this vacant and formerly industrial and commercial building
22 into a multi-unit building would in fact advance the purposes
23 of this zone. The project would provide 33 new residential
24 units, including seven IZ units, where there are currently
25 and previously none in this location. Criteria B is

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1 vehicular ingress and egress shall be designed and located
2 so as to minimize conflict with pedestrian ways to function
3 efficiently and to create no dangerous or otherwise
4 objectional traffic condition.

5 The project does propose nine below grade parking
6 spaces accessed off the rear alley and should not conflict
7 with pedestrian ways. C is adequate off street parking shall
8 be provided for employees and service vehicles. The building
9 is residential use. There would not be employees.

10 There's no loading requirement for this building
11 and there is an area off the alley that could be used for a
12 service vehicle or moving truck if needed at that time.
13 Criteria D is noise associated with the operation of a
14 proposed use will not adversely affect adjacent or nearby
15 residences. The proposed residential use of this building
16 should not create noise that would adversely affect the
17 nearby residential uses. The proposed use is consistent with
18 the block, which is primarily residential.

19 E is no outdoor storage of materials et cetera.
20 The project isn't proposing anything applicable for this.
21 And 716.2 is the use building or feature at the size
22 intensity and location proposed will not adversely affect
23 adjacent and nearby property. Or be detrimental to the
24 health, safety, convenience, or general welfare of persons
25 living, working, or visiting in this area.

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1 The proposed residential use is permitted by the
2 zone where the former industrial and commercial use were not
3 permitted by right. The renovation and reuse, so the vacant
4 building would be beneficial to the streets scape. The
5 proposed FAR and height of the building were previously
6 approved by the BZA and would be in line with the other
7 buildings on the block.

8 Additionally, the new third and fourth stories
9 would be set back from the front of the existing building and
10 from the street, which would allow for additional light and
11 air on the block. And overall we found that it meets that
12 criteria, as well as the general special exception criteria
13 of Subtitle X Section 901. And I'm happy to take any
14 questions about the OP analysis.

15 CHAIRPERSON HILL: Okay. Thanks. Does the board
16 have any questions of the Office of Planning? Mr. Freeman,
17 do you have any questions to the office of planning?

18 MR. FREEMAN: We do not. Thank you.

19 CHAIRPERSON HILL: Mr. Dettman, can you hear me
20 now?

21 MR. DETTMAN: I can hear you. Can you hear me?

22 CHAIRPERSON HILL: Yes. Could you pull back up
23 the slide deck, please?

24 MR. DETTMAN: Thank you, Mr. Chairman. I wasn't
25 on mute. I don't know what happened there. I just went out

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1 and came back.

2 CHAIRPERSON HILL: If you go to slide 11, I think,
3 Mr. Young.

4 MR. DETTMAN: Great. Thank you, Mr. Young. So
5 again, good morning members of the board. So this next
6 series of slides will take you through the relevant standard
7 of review for the requested relief for special exception from
8 height FAR, lot occupancy, and closed court requirements.
9 Of course, the special exception is subject to the general
10 special exception criteria, as well as any special conditions
11 that are specific to the areas of relief.

12 And so starting with the general special exception
13 criteria under Subtitle X Section 901.2, and whether or not
14 the four areas of special exception relief would be in
15 harmony with the general purpose and intent of the zoning
16 regulations and map. The Reed Cook zones, The RC zones are
17 generally intended to permit flexibility for all types of
18 urban residential development, including the proposed
19 apartment building. And specifically the RC-1 zone is
20 intended to provide for new residential development at the
21 moderate to medium density levels. And the proposed density
22 of the project falls squarely within that range of typical
23 densities known for moderate to medium density.

24 The project promotes the efficient use of land
25 that in an area that is transit accessible and close to

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1 amenities for conforming use, as you know as set forth in our
2 pleadings. The subject property has a long history of a
3 non-conforming industrial type uses. This will bring the
4 project more into line with the general purposes and intent
5 of the RC zones.

6 It also will not resolve the overcrowding of land
7 or over concentration of population. This is relatively
8 small building, despite the relief only 31 to 33 dwelling
9 units. Again, in an area that's very walkable and transit
10 accessible. In terms of whether or not the relief will
11 adversely affect the use of neighboring property in
12 accordance with the regulations in the map, we don't
13 anticipate any adverse impact on neighboring properties.

14 The height and density of the proposed project is
15 consistent with neighboring properties which were also
16 subject to very similar relief that was approved by the BZA.
17 The proposed residential use is consisting with the use of
18 neighboring properties. It will not substantially impact
19 light and air due to the significant setbacks on the upper
20 floors of the building and the reduction of the
21 non-conforming lot occupancy that currently exist at the
22 first and second floors.

23 Next slide. We move out of the next slide,
24 please. Thank you. So moving to the specific criteria under
25 Subtitle K Section 716.1. The use of the building and

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1 features at the size intensity and location proposed will
2 substantially advance the stated purposes of the RC-1 zone.

3 Again, it's going to establish a conforming
4 residential use on the property. It provides new housing
5 including approximately seven IZ units. Two of which will
6 be as shown in our revised plans, three bedroom IZ units.
7 And that was in direct response to suggestions made by the
8 ANC.

9 The proposed height and density are compatible
10 with the adjacent buildings I've already mentioned. And in
11 terms of density, typical standard or a typical moderate to
12 medium density residential developments ranging somewhere in
13 between 1.8 FAR and four FAR. We are well within that range
14 as shown in our plans.

15 We also provide adequate parking. We have eight
16 spaces plus one car share space. And again, at the request
17 of the ANC, our revised plan showed a total of six EV
18 charging stations within the garage. With respect to
19 vehicular access, we provide, again, we provide adequate
20 parking. We do not anticipate a significant number of trips
21 given the small number of units, the adequate amount of
22 parking, as well as the car sharing space that I just
23 mentioned.

24 And we don't anticipate any impact on pedestrian
25 circulation along the public sidewalks. In fact, we're going

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1 to improve the condition of the adjacent public space along
2 Champlain Street, because we're gonna get rid of two existing
3 curb cuts. Reincorporating a couple spaces on off street
4 parking and improving the pedestrian circulation along that
5 stretch of Champlain Street.

6 The public alley also has multiple access points.
7 There's one to the north, there's one to the south. There's
8 another one heading almost right behind our building heading
9 up to the street to the east. I already mentioned that we
10 provide adequate off street parking. It satisfies the
11 minimum requirement. We have a car sharing space.

12 We anticipate low loading demand given the small
13 number of units. And there's an area now, given that we are
14 actually reducing the non-conforming lot occupancy at the
15 ground floor, there's an area at the rear of the property
16 that could accommodate service delivery vans and whatnot and
17 contractors, maintenance workers. Next slide. Next slide,
18 please.

19 Quickly on this slide, I wanted to show a
20 comparison of the density that would be permitted under a
21 matter of right development on this site and then what's
22 being proposed. And I think not to get into too much detail,
23 that the chart on the right shows the distribution of IZ
24 units, the seven units that were in the building. You can
25 see the two three bedroom units that are there.

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1 But I think the most important point on this slide
2 would be under the proposed. With the additional half of FAR
3 density that's being requested, we gain an additional 6,000
4 -- We gain an additional FAR, half an FAR of square footage.
5 And when you do the calculation that results in 75 percent
6 of the density being proposed, which is the IZ set aside
7 requirements would be 6,733 required IZ .that's compared to
8 what would be required under a matter of right development
9 of the 2,818 square feet.

10 So in effect, as a result of the half an FAR that
11 we're requesting, assuming the board is inclined to grant the
12 request, that's an increase of almost 4,000 square feet of
13 IZ. When you do the calculation, when you figure out, okay,
14 well at 6,700 square feet of IZ, what's that percentage of
15 the overall project of the 27,765 square feet that's proposed
16 overall? That's approximately 24 percent of the building.

17 Given this zone and construction type, the normal
18 set aside requirement for IZ ranges in between 10 and 12 and
19 a half percent. We're at 24 percent. And the reason for
20 that is that the additional half of a FAR that we're
21 requesting is considered bonus density. And so when you
22 apply the IZ calculation, 75 percent of the additional
23 density that we're requesting goes right to IZ.

24 And so again, that's why we're looking at a 24
25 percent set aside as opposed a 10 to 12 and a half percent

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1 under matter of right conditions. I mean, that's a
2 significant increase in IZ that would result from this
3 requested relief. Next slide. Thank you.

4 Finishing off just through the next couple slides
5 on standard of review, in terms of noise associated with the
6 operation of the proposed use. The proposed use is a
7 conforming residential use and so noise generated by the
8 operation of the proposed apartment building will be similar
9 to adjacent and nearby buildings. We don't propose any
10 outdoor storage materials or outdoor processing fabricating.
11 In the last criteria there is not applicable because it's the
12 RC-1 zone we're dealing with, not the RC-3.

13 Next slide. The proposed use in the building are
14 in keeping with the objectives of the RC zones. We're gonna
15 develop new housing, we're gonna maintain heights and
16 densities that are at appropriate levels. And we'll protect
17 against damaging traffic parking, environmental social
18 aesthetic impacts.

19 The building is well designed, fits within the
20 surrounding context and it provides adequate parking. We do
21 not participate a huge number of vehicular trips given it's
22 the transit accessibility of the site in proximity to
23 amenities. Next slide, please. Thank you.

24 Lastly, the proposed use is consistent with
25 typical moderate to medium density residential development.

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1 Moderate density development. If you were to look to the
2 framework elements for guidance on what would be typical of
3 moderate density residential development, you're looking at
4 density up to around 1.8.

5 Medium density residential ranges between 1.8 and
6 four FAR. The proposed density is 2.66 FAR. It's well
7 within that range, it's also consistent with the height and
8 density of adjacent nearby buildings. If you look at the
9 height and density of buildings that have been constructed
10 immediately, north south, and to the west of the subject
11 property, you can see a comparison there.

12 The building immediately to the north has a height
13 of approximately 48 feet nine inches, density, 2.41.
14 Immediately to the south, the building is 50 feet 2.75 FAR,
15 both of those buildings were subject to very similar BZA
16 approvals, with respect to relief. The building to the west
17 across Champlain, that was a PUD, approved by the Zoning
18 Commission, at a height of 55 feet, 3.63 FAR. We are right
19 within those ranges. They're very similar to adjacent
20 buildings.

21 Next slide. This just shows a rough massing,
22 showing the comparison of the massing of the proposed
23 building to the buildings immediately to the north and south.
24 Very similar in scale, very similar in character, when you
25 look at the elevations and the character of the design. I

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1 believe that's my last slide. But next slide, Mr. Chairman
2 and members of the board, that completes my presentation.
3 I believe that the request for four special exceptions from
4 height density, lot occupancy and closed court requirements
5 meets the standard of review under Subtitle X and Subtitle
6 K of the regulations. And I'm happy to take any questions.

7 CHAIRPERSON HILL: Okay. Does my fellow board
8 members have any questions of the applicant? Okay. Mr.
9 Young, is there anyone here wishing to speak?

10 MR. OTTEN: I do.

11 CHAIRPERSON HILL: Yeah. You can bring the person
12 in, please. Hello. Can you hear me?

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

14 CHAIRPERSON HILL: Yes. Could you introduce
15 yourself for the record please?

16 MR. OTTEN: Yes. This is Chris Otten, I live at
17 2203 Champlain Street, Northwest.

18 CHAIRPERSON HILL: Okay, great. Mr. Otten,
19 welcome. As a member of the public, you'll go ahead and have
20 three minutes to testify. I have a clock there running for
21 you, and you can begin whenever you like.

22 MR. OTTEN: Thank you very much, Chairman Hill.
23 I've lived on Champlain Street for seven years. I'm a few
24 addresses down from the subject site. I have submitted, for
25 the record, and I would love for you guys to accept it into

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1 the record, written testimony that accompanies my verbal
2 testimony. And it includes an image of the plats of the
3 surrounding neighboring homes and buildings.

4 What's interesting is that, this project, they're
5 calling it an addition. And the Orwellian use of this term
6 is based on, you know, keeping a wall and a facade on front.
7 And basically it's a hundred percent vertical brand new
8 construction. Unfortunately by doing that, they are
9 continuing the nonconforming issues with the site, lot
10 occupancy and yard issues. And unlike any other project in
11 the neighborhood, including the new ones, just next to it,
12 as cited by Mr. Dettman, they all have kind of reasonably fit
13 within the lot occupancy required by Reed-Cooke regulations
14 and also the rear yard. So this would be an outlier.

15 Also outlining, is just the pure fact to calling
16 this an addition. It is clearly not in addition. So they
17 are, in viewing upon themselves, self-inflicted design
18 choices that require these special exception relief. Bottom
19 line is, you know, there has to be -- The Reed-Cooke one area
20 is moderate density. They wanna squeeze in buildings here
21 along this whole corridor, and that's fine. But it has to
22 meet the Reed-Cooke neighborhood regs before a reason.

23 I mean, there's only so many people you could pack
24 in here. The ANC unfortunately did not put on the record
25 numerous concerns that were highlighted at the committee

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1 level. That apparently didn't get on the record here, about
2 shadow, air and light studies, the traffic in the alley, the
3 noise, these sort of things that associated with a
4 nonconforming building and perpetuating that nonconformance.

5 Clearly, minimizing the impact is what we're
6 trying to get at here. Putting more three bedroom units in
7 this building would do that, because obviously children have
8 a far less impact than adults who have cars and whatnot. And
9 so, we were asking the applicant, including at the ANC
10 meeting, to include more three bedroom units. We understand
11 today they included two, three bedroom units.

12 We think that should be increased to a bigger
13 degree. They're asking for a lot of relief. We need a lot
14 of relief. We need family size housing in Adams Morgan that
15 is affordable. And so, they want to continue their
16 nonconforming use that brings more impacts to our community,
17 then we also need help with needing some of our residential
18 needs, according to the Reed-Cooke regs, and that includes
19 family sized housing.

20 That is what we put on the record. We will be
21 impacted otherwise adversely. And we just simply ask the
22 board, take note of this, how this is an outlier project in
23 the relative sense of all the other projects and existing
24 buildings. So newly granted projects and currently existing
25 buildings, they have large rear yards, they have met lot

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1 occupancy. This applicant doesn't want to do that, but we're
2 asking, "Look, then minimize the impact and get more family
3 sized units into the building." Two, he's not gonna cut it.
4 Two, three bedroom units is not gonna cut it. I'll leave it
5 at there, sir. And I appreciate your time and I hope you'll
6 accept my written testimony for the record.

7 CHAIRPERSON HILL: Hi. Okay. Thank you, Ms.
8 Otten. We did put it in the record. It is in the record and
9 I can see it now, actually.

10 MR. OTTEN: Okay. And that's the PDF with the
11 image?

12 CHAIRPERSON HILL: Yeah.

13 MR. OTTEN: Okay. Very good. Thank you.

14 CHAIRPERSON HILL: Does the board have any
15 questions for the witness? Okay. Does the applicant have
16 any questions for the witness?

17 MR. FREEMAN: I don't have a question, but at the
18 appropriate time I would like to respond. But no questions.

19 MR. HILL: All right. Okay. Thank you, Mr.
20 Otten. Thank you for your testimony. All right, Mr. Young,
21 if you could please remove the witnesses from the hearing.
22 Okay. I guess you guys see that what's been put into the
23 record also. Let's see. All right. Mr. Freeman, so you'll
24 get a chance now, you have a conclusion.

25 MR. FREEMAN: So --

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1 CHAIRPERSON HILL: You have the AMC on as well.

2 MR. FALESCHINI: I'm sorry. Yeah. I'm
3 Commissioner Jake Faleschini.

4 CHAIRPERSON HILL: I'm sorry, commissioner.
5 Commissioner, you have an opportunity, obviously, to give as
6 much testimony as the applicant gave, and also provide any
7 testimony that you'd like to provide to the board. So if you
8 could please go ahead and give your testimony, you're
9 welcome.

10 MR. FALESCHINI: Thank you, Mr. Chair, and
11 honorable members to the committee, thank you so much for
12 having me here today. I really appreciate the opportunity
13 to present on this. First, I just wanted to read into the
14 record that at a duly noticed public meeting held on March
15 2nd, 2022, with a quorum present, the advisory neighborhood
16 commission 1C voted 700, in support of the special exceptions
17 sought in this case by the applicant.

18 And then, some of the reasons for which we voted
19 such in that case. So first off, just for a little bit of
20 context, I provided a Google form to the neighborhood where
21 neighbors were given an opportunity to provide feedback about
22 the development and to voice any concerns. I received 28
23 submissions from our neighbors. And most of the residents
24 agreed to put their comments on the official record.

25 I summarized all those comments during our public

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1 committee meeting, which might explain to you why that was
2 a two hour committee meeting. In the end, our committee
3 voted unanimously in support of these special exceptions
4 being sought. First, this exact design was already approved
5 by the zoning board once. The developers met, we believe,
6 the legal requirements for these exceptions to be granted.

7 And also, when they first sought this in 2006,
8 they significantly scaled down the development from what they
9 originally proposed in 2004, in order to meet the needs of
10 the neighborhood as expressed that time. Two, as the
11 applicant has already stated well on the record, granting the
12 relief triggers inclusionary zoning laws to go into effect
13 that would provide several more units of reduced cost units
14 for the neighborhood. Of the additional square footage of
15 building space that we voted in support of, most of the added
16 space would go to affordable housing.

17 Third, the building designs were approved in 2006,
18 and had been on the book since then. Any neighbors, buying
19 or renting a nearby condos, would've had the opportunity to
20 be on notice that this type of development was at least
21 somewhat likely to be built in the future. Fourth, the
22 buildings on either side of the proposed development and
23 directly across the street, all received the exact same
24 exceptions for height and density, or at least very close.

25 It was hard for the committee to justify treating

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1 this building any differently, simply because the units to
2 either side of them got built sooner. Fifth, the developer
3 said that they will open the curb along Champlain to parking,
4 which would provide at least two more parking spaces along
5 the street. Agreed to provide a car share in the garage to
6 reduce car demand from the building, and to put in electric
7 car charging stations inside, in order to meet environmental
8 conservatives of the neighborhood.

9 And also, after considerable discussion, as you
10 saw, they provided two, three bedroom family size
11 inclusionary zoning units and moved around where the
12 inclusionary zoning units inside the building were located,
13 to make more equitable distribution of that inclusionary
14 zoning and to make sure that our neighbors who are in those
15 inclusionary zoning, have the opportunity to raise families
16 in the neighborhood.

17 And that was of the utmost concern of our ANC.
18 So in summary, Adams Morgan desperately needs more affordable
19 housing. And if reasonable zoning requires developers to
20 provide more affordable housing, then our ANC is generally
21 in support of that, which explains why we voted unanimously
22 to support the special exceptions sought in this case. With
23 that, I'm happy to answer any questions that you all may have
24 about this project.

25 CHAIRPERSON HILL: All right. Thanks,

1 commissioner. And again, sorry. I missed you there at the
2 beginning.

3 MR. FALESCHINI: Not at all. Thank you so much,
4 Mr. Chairman,

5 CHAIRPERSON HILL: Do you have any questions,
6 commissioner, for anyone that's here, office of planning
7 and/or the applicant?

8 MR. FALESCHINI: I do not.

9 CHAIRPERSON HILL: Okay. Does the board have any
10 questions for the commissioner, and if so, raise your hand?
11 Commissioner Miller.

12 COMMISSIONER MILLER: Thank you, Mr. Chairman, and
13 thank you commissioner for your testimony in your work on
14 this case and many other things in your neighborhood. Just
15 one question. I think, you testified to this, but if you
16 could just reiterate. I think you said that you didn't think
17 that it is in character with what's been in this particular
18 immediate neighborhood. What's proposed is in character with
19 new and existing developments that are there. Can you just
20 state your view on that again, please?

21 MR. FALESCHINI: That's correct. Yeah. I believe
22 that it is in character, and the commission voted as such on
23 March 2nd.

24 COMMISSIONER MILLER: Thank you.

25 MR. FALESCHINI: Thank you.

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1 CHAIRPERSON HILL: Okay, great. Anyone else? No.
2 Okay, great. Mr. Freeman, is there anything you'd like to
3 add in conclusion?

4 MR. FREEMAN: I would like to just take a couple
5 of minutes to go through some of the comments, the testimony
6 in opposition. It may take me a week of thought, obviously,
7 but I would like to go through some of those points so that
8 the record is clear, in terms of the actual facts as it
9 relates to those comments.

10 CHAIRPERSON HILL: Okay.

11 MR. FREEMAN: So Mr. Young, if you could pull up
12 the applicants slide presentation? I'm looking at the red
13 end version of the comments, so I'll be going through that.

14 CHAIRPERSON HILL: Which one is trying to pull up,
15 Mr. Freeman?

16 MR. FREEMAN: The applicants' presentation slides.

17 CHAIRPERSON HILL: Okay. You mean, your
18 PowerPoint.

19 MR. FREEMAN: The slides that we just went
20 through.

21 CHAIRPERSON HILL: Okay.

22 MR. FREEMAN: Sorry, I don't have that exhibit
23 number here. I think the first overarching -- Next slide.
24 Next slide, please. Yeah. Right. So I think the first kind
25 of theme that may be prevalent, at least, in a written

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1 testimony in the oral testimony, is that we have somehow
2 called this an addition in renovation instead of new
3 construction, because that somehow creates a different
4 standard of proof.

5 That is not the case, whether it was an addition,
6 a new construction, whatever, we would still have the same
7 standard of proof. It's a special exception from the
8 applicable requirements, court, lot occupancy, FAR and
9 height. The thing is standard of proof. It's not a
10 different burden of proof. The written testimony, and I
11 think the oral testimony, somehow maybe is saying that,
12 because of the relief that we've requested we're somehow
13 required to provide benefits to offset that relief. As
14 Commissioner Miller knows, that may be true at the Zoning
15 Commission that is not true for a BZA case.

16 The standard for relief on a BZA case, whether you
17 meet the standards for that relief. So there's no balance
18 in that we have to say, "Because of this relief, we gotta
19 provide 10, three bedroom IZ units." That's just not the
20 standard for the BZA special exception relief. Secondly,
21 there's just a lot in here about like, outweigh in adverse
22 effects and providing more housing to do that. Again, that's
23 not the standard.

24 Secondly, there was, in writing and testimony,
25 some statement that this is a, "Outlier." Of a building.

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1 First of all, this project, again, was approved in 2006, at
2 the same height and density that is proposed. What this
3 chart shows, the building to our immediate north is 48 feet,
4 nine inches. The building to our immediate south is 55 feet.
5 The building across the street -- And I may be getting mixed
6 up. But the building across the street is 50 feet.

7 So this is well within the heights of the existing
8 buildings to our immediate south, north, west. If you look
9 further up the street, the things shown in blue, that blue
10 range -- Let me just make sure I have my PD correct. Things
11 shown in blue are four to five stories. Things shown in peak
12 loop are six to seven stories. So this is not a street
13 that's characterized by, like low density row homes.

14 This is a street that includes buildings of the
15 same size and density, as what this applicant is proposing.
16 In fact, it is the same height and density as the board
17 approved in 2006. It's the same height and density that the
18 board actually relied on in approving some of those other
19 cases. For example, in approving the Morgan, which is the
20 building to the immediate north of our side, the board said
21 in that case, case number 18330, the board, when they approve
22 that project, they said, "The height of the subject building
23 i.e., the Morgan, will be compatible with the surrounding
24 area being appropriate to the EIE building immediately
25 adjacent to the north. Any approved that brans knob

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1 development, immediately adjacent to the south, i.e., this
2 building."

3 So when they approved the building to the north,
4 they specifically approved that because they found that was
5 consistent with the height of our approved project. So this
6 argument that this is somehow outside of the context of the
7 neighborhood, does not withstand analysis. There's a comment
8 that all of the buildings have sizable rear yards. We meet
9 the rear yard requirement. We're not asking for any rear
10 yard relief.

11 The argument about lot occupancy. To be clear,
12 the building today, has a lot occupancy of 95.9 percent.
13 That is the lot occupancy today. As part of our project, we
14 are reducing that to 83.7, on the lower levels, and then the
15 upper levels would be about 63 percent. So we are reducing
16 the lot occupancy from what's there today as a result of this
17 development. So the argument that --

18 I'm not even clear what the argument on lot
19 occupancy is. But we are, in fact, reducing the lot
20 occupancy. That's there. There's comment about DDOT and,
21 you know, the under evaluated impacts. There's a full DDOT
22 reporting the record, there's a full office of planning
23 reporting the record. Again, I think there's a suggestion
24 that because we called it an addition, that the evaluation
25 is somehow different.

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1 The DDOT evaluation is an evaluation of the
2 building and the impacts of the building, not the form of
3 relief. And DI determined that there are no adverse impacts
4 and that the conditions that they felt were necessary, we
5 agreed to. So there's no difference of evaluation from DI,
6 based on whether it's an addition, or renovation, or new
7 construction. Their evaluation is of the building as
8 proposed, which is what we presented and they recommended
9 approval of.

10 Of no shadow studies in the record to determine
11 light and air impacts. Mr. Dettman talked about light and
12 air. You know, you've seen this before, it's in a number of
13 orders that the board has issued, the number of orders that
14 the Zoning Commission has issued. There is no easement for
15 light and air or views across another property owner's
16 property. So to the extent that someone is claiming that
17 they have light and air, or impacts, none of those have been
18 raised by the way.

19 We haven't heard that other than Mr. Otten saying
20 it. There's been no testimony to that effect, that someone's
21 light, air, or privacy are adversely impacted. But even if
22 they did, the board is owning adjustment and the court of
23 appeals has said, "There are no rights to that across another
24 property owner's property." And as we demonstrated, the only
25 people that may make that argument, the people to the

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1 immediate north, our building is 12 to 25 or 26 feet, set
2 back from those properties. So I'm not sure.

3 So the record clearly establishes that there are
4 none, but to the extent there, there is no indication that
5 there're adverse impacts to light, air, or views. I'll leave
6 it at that. And then the last point, where they say, "The
7 board should add at least 10, three bedroom units that serves
8 families and lower income brackets."

9 Mr. Dettman described the fact that we are already
10 at 24 percent affordable, which is what the zoning
11 requirements would require for this site. Which, by the way,
12 when our project was initially approved, there was no IZ
13 required, by the way. We're now at 24 percent. But
14 respectfully, the board can't impose an IZ requirement above
15 what the regulations required.

16 And the regulations do not require 10, three
17 bedroom IZ units as part of the standard of review for the
18 relief in this case. So think I covered all of their
19 comments. I'm happy to answer any questions. But in our
20 view, the record clearly indicates that we meet all of the
21 standards for relief, the office of planning supports and
22 recommends approval. The Department of Transportation
23 recommends approval.

24 The ANC, when the witness said, "We need, or we
25 want." the ANC, which is, to my understanding, is the

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1 representative of the neighborhood, the full ANC voted
2 unanimously to support our application, both at the committee
3 level and the full ANC meeting. So we have full ANC support.
4 You see the ANC commissioner here, who provided the
5 discussion of the level of analysis that they engaged in, in
6 order to come to that support. So I think it's absolutely
7 clear that this application meets all standards for relief,
8 and we believe the board should approve it. Thank you.

9 CHAIRPERSON HILL: Okay, Mr. Young, if you could
10 drop that slide deck, please? Mr. Freeman, just to be clear,
11 again, it's exhibit 45 that has DDOTs report with their TDM
12 plan recommendations, and your client is in agreement to
13 that, as well as not building in that triangle lot area in
14 the rear yard that is also in the Office of Planning's
15 report, concerning access to that driveway. Correct?

16 MR. FREEMAN: Correct.

17 CHAIRPERSON HILL: Okay. Does anybody have any
18 questions of the applicant, and if so, please raise your
19 hand? Commissioner Miller.

20 COMMISSIONER MILLER: Yeah. Thank you, Mr.
21 Chairman, just quickly. Mr. Freeman, thank you for your
22 presentation and all of your team's comments today. Just to
23 clarify my own mind, there are 33 residential units being
24 proposed in this development, seven of which -- Correct me
25 if any of this is wrong. There's seven of which are

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1 inclusionary zone and units. Two of the seven are three
2 bedroom units and, obviously, seven out of 33 units is over
3 20 percent.

4 And the square footage you've pointed out was 24
5 percent of the total square footage of residential units.
6 That would be inclusionary zoning. Can you just tell me,
7 just so I have the whole picture, what the breakdown is of
8 the other five IZ units in terms of size and what the
9 breakdown of size is of the market rate units, the 26, I
10 guess, market rate units, what's their --

11 MR. FREEMAN: The plans on sheet A-02A, has that
12 table and our presentation slide, it's harder to see on a
13 presentation slide. But our IZ breakdown, on the ground
14 floor, we have two, one bedroom IZ units, one of which is
15 727, the other of which is 590. On the second floor plan,
16 we have one two bedroom IZ unit at 912 square feet. We have
17 another one bedroom at 654, and we have another one bedroom
18 at 6603.

19 On the third floor, we have a three bedroom IZ
20 unit at 1016 square feet. And on a fourth floor, our three
21 bedroom unit is 1016 square feet. In terms of comparison,
22 the only three bedroom units in this building are these IZ
23 units. So that, in our view, is important. The one bedroom
24 units are comparable in size, right there proportionate to
25 the size of the market rate. So there's some one bedroom

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1 units at 525, there's some one bedroom units at 529.

2 So, you know, our one bedroom units are equal to,
3 if not larger, than a number of the market rate, one bedroom
4 units, as is the case with the two bedroom, right? The IZ
5 two bedroom is 912. We have a market rate of two bedroom at
6 929. So they're comparable in terms of size.

7 COMMISSIONER MILLER: Okay. Well, I thank you for
8 that information. I think it is very commendable that the
9 only three bedroom units that are part of this, that only
10 family size units are inclusionary zoning, and that they're
11 located on the higher floors, which is important, as you've
12 said. Just one more thing. What is the complan map and land
13 use map designation for this site and area? Is it moderate
14 density, residential?

15 MR. FREEMAN: I don't wanna be incorrect, because
16 I know -- So the proposed use is consistent with moderate to
17 medium density residential. I'm gonna ask Mr. Dettman, just
18 to confirm for us our comp plan designation.

19 COMMISSIONER MILLER: Do the ANC commissioner
20 seems to know what it is there?

21 ANC COMMISSIONER: I believe it's moderate to
22 medium density residential.

23 COMMISSIONER MILLER: On the future land use map?

24 ANC COMMISSIONER: That's my understanding. Yes.

25 MR. FREEMAN: Yeah. We're double checking,

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1 because we want to be absolutely clear what it is.

2 ANC COMMISSIONER: Thank you.

3 COMMISSIONER MILLER: Anyway. Thank you. That's
4 the only question I have. My decision or deliberation won't
5 be dependent on it, but I just wanted to know that

6 MR. FREEMAN: It's moderate density residential.

7 COMMISSIONER MILLER: That's what I thought

8 CHAIRPERSON HILL: You said moderate density
9 residential?

10 MR. FREEMAN: Correct.

11 CHAIRPERSON HILL: What else from the board? All
12 right. Mr. Freeman, any last comments?

13 MR. FREEMAN: No. Thank you for your time today.
14 And we look forward to your deliberations.

15 CHAIRPERSON HILL: Okay. Right. I'm going to
16 close the hearing on the record. Mr. Young, could you please
17 excuse everyone? Bye, commissioner, bye everyone else.
18 Okay. I can start, I mean, I think it's an interesting
19 project. I think it's a good project. I think that it has
20 gone through the process. It already went through the
21 process once before. And I guess back before us again, or
22 it's been back before us in different capacities.

23 In terms of the criteria with which were to
24 review. I do believe and would agree with the analysis that
25 have been provided by the Office of Planning, concerning the

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1 different subtitles. I would also agree three with the TDM
2 plan, and I reviewed it that the DDOT is proposing an exhibit
3 45 as well as that small triangle not being built on, that's
4 in the rear of the property to have better access for the
5 driveway. And that is reflected in the plans as well.

6 I would give great weight to the ANC and their
7 testimony that they had gone through. It sounds like they've
8 done a lot of work to get to where they feel more comfortable
9 with it, and has gotten the applicant to even increase the
10 family size units. I mean, again, I don't really
11 particularly like this term, "Family size units." I mean,
12 everybody's a family. But nonetheless, I suppose if there's
13 a third bedroom, it supposedly means there's a child, which
14 means that there's, you know, a family. I don't know.

15 But nonetheless there are all kinds of families,
16 and it doesn't mean that if you have a three bedroom unit
17 you're necessarily a family or not. But I do know that it's
18 something that the city has been, you know, pushing for more
19 and it's nice that they are actually the IZ units. In terms
20 of, you know, the increased density that they're proposing
21 to get as well as the amount of units that they're proposing
22 in order to get that density, that's per, you know, the
23 Zoning Commission and the regulations that are there.

24 That's not something that the BZA gets to tweak.
25 as it's before us, I mean, they're here with the requested

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1 relief and they are adhering to the regulations to allow to
2 get that additional FAR. I am, as has been mentioned already
3 by my colleagues, excited that the IZ units are actually not
4 just in places where the IZ units usually end up, which is
5 in kind of the worst spot.

6 Or, you know, it seems as though the applicant has
7 actually done their best to put the IZ units in a place that
8 is also nice. So I would agree to go with the analysis of
9 the Office Planning, that a DDOT and of the ANC in my
10 analysis. And I will be in favor of this application with
11 the TDM plan, as well that triangle lot being put forth in
12 a condition as this application I will be voting in favor.
13 I'm gonna go start with you, Mr. Smith, if I could.

14 MR. SMITH: I don't have too much to add beyond
15 what you just stated. I completely agree with your analysis
16 of this particular case. So I won't really delay the point.
17 I agree with OPs analysis of this case for each of the
18 subtitles, for the reasons that we can grant these various
19 special exceptions. And I agree, you know, wholeheartedly,
20 with the analysis that Mr. Freeman provided in a rebuttal of
21 some of the points that was raised against this development.

22 Previous members of this board approved this case
23 over a decade ago. And this proposed development from a size
24 and scale standpoint, is largely in keeping with that
25 original proposal. Aside from the additional density for the

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1 IZ units, which again, I commend the applicant and the ANC
2 for coming together to create additional IZ units which are
3 definitely needed within the district, and especially within
4 this area of the city. So with that, I will support. I give
5 great weight to OP staff support and the ANC support in the
6 application.

7 CHAIRPERSON HILL: Okay. Mr. Blake.

8 MR. BLAKE: I agree with the comments made by you
9 and Mr. Smith with regard to the case. I believe that based
10 on the record and testimony presented today, the applicant
11 has met the burden of proof to be granted relief. I would
12 note that, I think the applicant provided a very thought
13 presentations as to how the criteria we've met to meet the
14 special exception requirements. And I also thought that was
15 supported by the Office of Planning analysis, which I agree.

16 I would note that the standard for approval, and
17 we mentioned this before, was approved in the past and
18 required three variances. So the standard was much higher
19 under which it was approved before. And so, I think that
20 this is certainly, it's met the standard that. I guess, for
21 strong support from the ANC and the testimony was presented
22 today by the commissioner, did show that a lot of work and
23 thought went into this. DDOTs issues have been addressed and
24 there's no objection. So with that, I would give great
25 weight to the Office of Planning report. I would be in

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1 support of this project as well.

2 CHAIRPERSON HILL: Thank you, Mr. Blake.
3 Commissioner Miller.

4 COMMISSIONER MILLER: Thank you, Mr. Chairman.
5 I concur with all of your comments and the comments of the
6 board members, Smith and Blake, and I'm persuaded by the
7 arguments in case made by the applicant and the support
8 comments by the Office of Planning and the unanimous support
9 of the affected ANC. I already commented on the inclusionary
10 zoning aspect and as others have commendable, that is.

11 I would just comment that this is a residential
12 use of a building that's been vacant for a while now and
13 derelict. And it previously was a nonconforming industrial
14 use in what has been designated for a while now as
15 residential in the zoning and the land use map of the comp
16 plan. We're bringing this property back into productive,
17 conforming residential use with the relief that's being
18 requested here that meets the standards in our regulations.
19 So I'm prepared to support it today. Thank you, Mr.
20 Chairman.

21 CHAIRPERSON HILL: Thank you. And another note,
22 I guess that the -- Yeah. Okay. alright, I'm gonna go ahead
23 and make a motion then to approve application number 20584
24 as captioned right by the secretary and ask for a second, Mr.
25 Blake.

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1 MR. BLAKE: Second.

2 CHAIRPERSON HILL: Motion main and Secretary Mr.
3 Moy, you can take a roll call. I'm sorry. Hold on, hold on.
4 Let me make a motion again. Are you talking about the
5 condition?

6 MR. MOY: Yes, yes, yes,

7 CHAIRPERSON HILL: I'm gonna make a motion, again,
8 to approve application number 20584 as captioned and read by
9 the secretary, including the TDM plan that is an exhibit 45
10 in DDOTs report, and also that the applicant do not build on
11 that portion of the triangle lot in the rear of the property
12 that is both in DDOTs report and the Office of Planning's
13 report, and ask for a second, Mr. Blake.

14 MR. BLAKE: Second.

15 CHAIRPERSON HILL: Motion made and seconded. Mr.
16 Morgan, you can take a roll call.

17 MR. MOY: When I call each of your names, if you
18 would please respond with a yes, no, abstain to the motion
19 made by Chairman Hill, along with the conditions as he has
20 cited for record the motion with the conditions was seconded
21 by Mr. Blake. Zoning Commissioner Rob Miller.

22 COMMISSIONER MILLER: Yes.

23 MR. MOY: Mr. Smith, Mr. Blake, Chairman Hill.

24 CHAIRPERSON HILL: Yes.

25 MR. MORGAN: We have a board member not present

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1 nor participating, staff would record the vote as four to
2 zero to one. And this is on the motion made by Chairman Hill
3 to grant the relief as requested the motion was seconded by
4 Mr. Blake, also supported the motion is zoning Commissioner
5 Rob Miller and Mr. Smith. Again, the motion passes on a vote
6 of four to zero to one.

7 CHAIRPERSON HILL: All right. Thank you. This
8 one, I think, guys there's that other case that we have to
9 bring back before us. Can we just take a five minute break,
10 come back, do that case, take lunch, do the appeal. Okay.
11 Be right back in five minutes.

12 Hi, Mr. Moy. Can you hear me?

13 MR. MOY: Yes, sir.

14 CHAIRPERSON HILL: Can you call back in case
15 number 20599, please?

16 MR. MOY: Yes, sir. The board is back into its
17 public hearing session after a very brief recess. And the
18 time is at/or about 12:25 AM. And the board has returned to
19 case application number 20599 of Stephanie Ann Glier and
20 Brandon Woodward Glier, Trustees.

21 CHAIRPERSON HILL: Mr. Sullivan, can you hear me?
22 Could you reintroduce yourself the record please?

23 MR. SULLIVAN: Yes. Marty Sullivan, with Sullivan
24 and Barrels on behalf of the applicant.

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

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1 MS. GIORDANO: Yes. Cynthia Giordano with Saul
2 Ewing Law Firm.

3 CHAIRPERSON HILL: Okay. Mr. Sullivan, is there
4 anything you'd like to tell us?

5 MR. SULLIVAN: Yeah. It looks like we have an
6 agreement, and it relates to frosting on windows and a fence.
7 And we would like to request that this, if possible, be
8 scheduled for decision next week, and we think we can get
9 everything wrapped up by then.

10 CHAIRPERSON HILL: Okay. So --

11 MS. GIORDANO: If I can just add to that, the idea
12 is to leave the record open to for a plan to show the fence.

13 CHAIRPERSON HILL: Okay. Again, what the board
14 is charged to do is look at the regulations and how we
15 believe those regulations are being met. Not necessarily,
16 you know, an agreement that comes to between parties.
17 However, it would be nice to be able to obviously see
18 whatever it is you guys are talking about. So that we have
19 everything before us, in order to deliberate. You are
20 stating that you think you can put some things into the
21 record by when, Mr. Sullivan or Ms. Giordano?

22 MR. SULLIVAN: I guess, we should put in an agreed
23 plan. So I'll defer to Ms. Giordano, but I would suggest
24 Monday or Friday, possibly.

25 MS. GIORDANO: I think that works for us. If that

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1 leaves enough time for the board. I know they're anxious to
2 get a decision scheduled.

3 CHAIRPERSON HILL: Okay. Well, if you guys got
4 us something by, I mean, the 25th is two days from now.
5 You're saying that, Mr. Sullivan, there's a chance you can
6 get something by then?

7 MS. GIORDANO: Monday is correct.

8 MR. SULLIVAN: I'll try most.

9 CHAIRPERSON HILL: I'll give you Monday. If you
10 guys can get it into the record by Monday. And Mr. Moy,
11 you'd let me know if I'm missing anything anywhere. If you
12 can get this into the record by Monday, then that gives the
13 board -- If the board doesn't mind, it gives the board at
14 least Tuesday to review before we could come forth for a
15 decision on Wednesday the 30th, which would be fine with me
16 unless the board has any issues. And if the board has any
17 issues, please raise your hand. Seeing no hands being
18 raised. Mr. Moy, can we do that?

19 MR. MOY: Yeah, it's doable, Mr. Chairman, if it's
20 clear that the supplemental filing to the record is due
21 Monday, March 28th, and there's indication that it's agreed
22 upon plan with the party in opposition. And if the board
23 would wish the ANC, as an option to weigh in on that filing
24 as well. And if you do, then I guess it would only be a day
25 for them to respond. If there is one at all from the ANC

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1 that this at this juncture. This is due Monday and the ANC
2 would be the following day, on Tuesday, March 29th.

3 CHAIRPERSON HILL: And I mean, Mr. Sullivan,
4 again, the design that you guys are talking about is actually
5 not moving the window. The window is staying where the
6 window is. You guys just found out glazing.

7 MR. SULLIVAN: Correct.

8 CHAIRPERSON HILL: Okay. All right. Then I'll
9 think -- So, the ANC yeah. If you can leave that time as
10 well. And then I guess we would see something with party
11 status being withdrawn. Is that also the point on Monday?

12 MR. SULLIVAN: Yes.

13 CHAIRPERSON HILL: Okay. All right. So we'd have
14 everything with which we could provide our analysis by
15 Monday, and then we'll have a decision on the 30th. So Mr.
16 Moy, if we could leave the record open for any change to the
17 plan and agreement that the applicant would like to put
18 forward with the neighbor, as well as I guess, withdrawing
19 the opposition from the neighbor, and get that into the
20 record.

21 The ANC would obviously be served this, and I
22 don't see how the ANC would have any different thought
23 considering no changes are being made except for glazing.
24 But we leave the record open for the ANC, the ANC can always
25 drop something off, even, you know, the day of the hearing,

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1 obviously. And so, we'll put this on for decision then on
2 the 30th of March. Okay. Okay. Any questions, Ms.
3 Giordano?

4 MS. GIORDANO: No questions.

5 CHAIRPERSON HILL: Okay. Any questions Mr.
6 Sullivan?

7 MR. SULLIVAN: No. Thank you. All right. Then,
8 unless you guys speak up, I'm closing the hearing and leaving
9 the record open for the exhibits that have been requested of
10 us. And I'm gonna go ahead and close the hearing. Okay.
11 So that's it. Our decision. Okay. It is 12:30. Try to get
12 here at one o'clock

13 MR. MOY: Mr. Chairman?

14 CHAIRPERSON HILL: Yep. Go ahead. Mr. Moy.

15 MR. MOY: Our staff has alerted me that the
16 attorneys representing the appellant in the appeal case
17 that's coming up, there was an emergency on the principal
18 attorney representing.

19 And I was noted that he may not be able to return
20 to two o'clock, but if they're still room, maybe the board
21 may wanna hear from the associate. So that will give you
22 some information when you want to return after your lunch
23 break.

24 CHAIRPERSON HILL: All right. So you're saying
25 to bring the associate into the room for a moment?

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1 MR. MOY: Yeah. Just for a moment, hear the
2 status.

3 CHAIRPERSON HILL: Do you know the associate's
4 name or does Mr. Young

5 MR. MOY: Mr. Young has I believe the associate's
6 name is Anna. Just a second.

7 CHAIRPERSON HILL: Sure.

8 MR. MOY: Should be Ms. Anna Margolis.

9 CHAIRPERSON HILL: Okay. Mr. Young, can you pop
10 that person in. Ms. Margolis, can you hear me?

11 MS. MARGOLIS: Yes, I can.

12 CHAIRPERSON HILL: Can you introduce yourself just
13 so we know who you are?

14 MS. MARGOLIS: Yep. My name is Anna Margolis.
15 I'm an attorney with the Veritas Law Firm, and our firm
16 represents the appellant 4721 Sheriff Road, Northeast, LLC.
17 And it's appeal number 20654.

18 I've been in communications with Mr. Reed, in the
19 office and informed him that we had a, a last minute
20 situation. Mr. Kline, who will be presenting the appeal,
21 expects to be back no later than 2:00.

22 If he is back before, then I'm happy to call, if
23 possible, and give an update. But as of right now, I believe
24 he will be back by 2:00. So we'd really appreciate an
25 accommodation to begin and apologize for the, for the last

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1 minute noticed.

2 CHAIRPERSON HILL: I understand. Okay. My board
3 members, if that will work with you, all's schedule, then we
4 can come back at 2:00. And I'm just seeing everybody nod.
5 My problem is I have a 4:00 situation. And so, my 4:00
6 situation will actually not last very long.

7 And I love looking at my board members. And so
8 I don't know what's going to happen. I'm just kind of
9 throwing it out. We might break at 4:00 if that works for
10 you guys for like, you know, 15, 20 minutes, and then come
11 back after that, but who knows?

12 We might finish in two hours if that's possible.
13 We'll see how it goes. So Ms. Margolis then we'll come back
14 at 2:00 or my fellow board members will all come back at
15 2:00. We'll have a long lunch and come back at two o'clock.
16 All right.

17 MS. MARGOLIS: All right. Thank you so much.

18 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy, does
19 that work for you guys? Can you hear me?

20 MR. MOY: Yeah, I hear you, Mr. Chairman.

21 CHAIRPERSON HILL: Okay. Thank you.

22 MS. MARGOLIS: Thanks.

23 CHAIRPERSON HILL: Hi, Mr. Moy, can you hear me.

24 MR. MOY: Yes, sir, I hear you, and I see you.

25 CHAIRPERSON HILL: Okay. Great. You can call us

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1 back together and call us back in if you -- I mean, call our
2 next case.

3 MR. MOY: Thank you, sir. The Board is back in
4 its public hearing session after a lunch recess. And the
5 time for the record is at or about 2:04 p.m.

6 The next application before the Board is the
7 appeal, Appeal Number 20654 of 4721 Sheriff Road NE, LLC.
8 This appeal is pursuant to Subtitle X, Section 1100, from the
9 decision made on September 15, 2021 by the Zoning
10 Administrator, Department of Consumer and Regulatory Affairs.
11 The address of the property is 4719 Sheriff Road Northeast,
12 Square 5151, Lot 144, as noted in the submission into the
13 record.

14 As to preliminary matters, Mr. Chairman, this is
15 a reminder of the primary ones are as follows. The appellant
16 filed a motion for a summary reversal. Subsequent to that
17 motion, DCRA filed a response in opposition to the motion
18 under Exhibit 23. And the Board may wish to address with the
19 appellant a clarification of the lot number. That's it for
20 me, Mr. Chairman.

21 CHAIRPERSON HILL: Okay. Great. Let's see. Who
22 do we have with us? Is it Mr. Kline? Could you introduce
23 yourself for the record, please?

24 MR. KLINE: Yes. Thank you, Chairman Hill, and
25 members of the Board. Andrew Kline of The Veritas Law Firm

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1 on behalf of the appellant. And Anna Margolis of my office
2 is also present as I believe is Norbert Pickett, the
3 principal of the appellant.

4 CHAIRPERSON HILL: I don't see Mr. Pickett.

5 MR. KLINE: I see his square. I don't think he's
6 been elevated.

7 CHAIRPERSON HILL: Oh, now I see his square. Ms.
8 Margolis, could you introduce yourself for the record,
9 please?

10 MS. MARGOLIS: Anna Margolis with The Veritas Law
11 Firm on behalf of the appellant as well.

12 CHAIRPERSON HILL: Okay. Mr. Norbert, can you
13 hear me? Do you hear me?

14 MR. NORBERT: Yes. I can hear you. This is
15 Norbert Pickett

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

18 MR. NORBERT: Sure. My name is Norbert Pickett.
19 I'm the owner of 4721 Sheriff Road NE, LLC.

20 CHAIRPERSON HILL: Great. Thank you. Mr. Green,
21 can you hear me?

22 MR. GREEN: Yes.

23 CHAIRPERSON HILL: Could you introduce yourself
24 for the record?

25 MR. GREEN: I am Commissioner Anthony Lorenzo

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1 Green. I represent Single Member District 7C04.

2 CHAIRPERSON HILL: All right, Commissioner.
3 Welcome.

4 MR. GREEN: Thank you.

5 CHAIRPERSON HILL: Ms. Brown, can you hear me?

6 MS. BROWN: Yes, I can hear you. Can you hear me?

7 CHAIRPERSON HILL: Yes. Could you introduce
8 yourself for the record?

9 MS. BROWN: Yes. Andrea Brown, Assistant Federal
10 Counsel for DCRA. I'll be representing Mr. Matthew LeGrant,
11 Zoning Administrator.

12 CHAIRPERSON HILL: All right. Since we have
13 introduced everybody else, Mr. LeGrant, could you introduce
14 yourself for the record?

15 MR. LeGRANT: Chairman Hill, members of the Board,
16 Matthew LeGrant, Zoning Administrator, DCRA.

17 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
18 LeGrant. All right. Let's see. So, Mr. Kline, I guess how
19 this is going to -- well, first of all, this clarification
20 on the lot numbers, or at least that's what the Secretary
21 just asked about, could you clarify what the lot numbers are?

22 MR. KLINE: Yes. My understanding is the lots are
23 145 and 144 in Square 5151.

24 CHAIRPERSON HILL: Lots 145 and 144, Square 5151.

25 MR. KLINE: Correct.

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1 CHAIRPERSON HILL: Okay. All right, Mr. Moy, let
2 me know if that's an issue. So, Mr. Kline, I think you --
3 have you come before us before? I can't remember.

4 MR. KLINE: Yes. I get before you infrequently.

5 CHAIRPERSON HILL: Was it during COVID.

6 MR. KLINE: I don't think I appeared before you
7 during COVID.

8 CHAIRPERSON HILL: Okay.

9 MR. KLINE: I've also seen you around town at
10 various functions.

11 CHAIRPERSON HILL: There you go. All right. Mr.
12 Green, are you the commissioner for this case -- Commissioner
13 Green?

14 MR. GREEN: I am the representative for the
15 District this case is in, but I'm not representing the ANC.

16 CHAIRPERSON HILL: Oh, you're here to testify on
17 your own behalf?

18 MR. GREEN: That's correct.

19 CHAIRPERSON HILL: Oh, okay. Okay. Great. And
20 then somebody has asked you to come and be a witness for them
21 is that correct?

22 MR. GREEN: Well, I'm going to be a public witness
23 since -- I guess we'll get into it when we talk about the
24 case. The ANC --

25 CHAIRPERSON HILL: No, I under --

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1 MR. GREEN: Yeah. So I'm --

2 CHAIRPERSON HILL: No, I got you, Commissioner.
3 I'm just saying they -- as long as Mr. Kline, somebody is
4 having you as a witness, we don't take public testimony
5 during appeals.

6 MR. GREEN: Okay.

7 CHAIRPERSON HILL: And so I'm just trying to
8 understand -- I guess, Mr. Kline, is Commissioner Green
9 speaking on your behalf at some point?

10 MR. KLINE: Yes. The only issue that he would
11 speak to is that the ANC purports to have passed a resolution
12 in opposition to the appeal. And he would testify factually
13 that that was not supposedly -- that was passed at the public
14 meeting.

15 CHAIRPERSON HILL: Okay.

16 MR. KLINE: Given that we see this as a matter
17 law, I'm not sure that it's terribly relevant.

18 CHAIRPERSON HILL: Okay. Well, regardless, I just
19 want to understand how Mr. Green is going to be used in
20 testifying. So now I understand.

21 Okay. Let's see. So I'm looking at my fellow
22 Board members. In terms of this motion for summary reversal,
23 I mean, I know we've talked about it during our kind of the
24 different reports, that we've kind of looked at. And I don't
25 really think it's something that I would be comfortable

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1 granting.

2 I mean, I would want to go ahead and hear the
3 appeal as it's been put forward before us. And I don't even
4 know, like, I know we've had -- and I don't really want to
5 get into the back and forth about what is our purview, what
6 is before us, and I can bring, you know, our legal counsel
7 in to do that as well. But regardless, I would like to hear
8 the appeal.

9 And so that is why we'll go ahead, and I'll let,
10 Mr. Kline, I guess, if you want to argue it, you can. But
11 give me a second and just see if my fellow Board members --
12 I mean, what your thoughts are on this motion for summary
13 reversal.

14 And did I lose somebody? Where is Mr. Smith? Oh,
15 there is Mr. Smith. Okay. So I would not be in favor of
16 granting this motion. I don't know. I can't see Mr. Smith.
17 So, Mr. Blake, I'll get your opinion real quick.

18 MEMBER BLAKE: I would not be in favor of granting
19 a reversal as well. I believe we should -- we are obligated
20 to hear appeals that are brought before us. So I would not
21 be in favor of doing that.

22 CHAIRPERSON HILL: Okay. Commissioner Miller?

23 COMMISSIONER MILLER: Thank you, Commissioner.
24 And I agree that we should hear the merits of the appeal.

25 CHAIRPERSON HILL: Okay. Mr. Smith?

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1 MEMBER SMITH: Thank you. So, the fellow Board
2 members, I think we should -- we're obligated to hear the
3 merits of the case.

4 CHAIRPERSON HILL: Okay. Mr. Kline, I mean, you
5 can see where the votes, but if you want to waste your time
6 saying something, you can go ahead and do so.

7 MR. KLINE: No. I think the point is this. I'm
8 happy to argue the merits. I mean, the point is whether you
9 call it a ruling on a motion for summary reversal or a ruling
10 on the merits is of no difference to us. I think the point
11 is there are not any facts in dispute. I think the facts are
12 well established.

13 And what we're dealing with here is a point of law
14 and the interpretation of the zoning regulations. And a
15 decision has been made, an interpretation has been made,
16 which we vehemently disagree with. We think the plain
17 language of the statute says something else. And I'm happy
18 and prepared to argue that.

19 I do not know of any purpose for putting on
20 witnesses because frankly the issue is that this appellant
21 wishes to establish a cannabis cultivation center, and it has
22 been ruled that that is impermissible in an MU-3A zone. And
23 our position is as a matter of law that that's just
24 incorrect.

25 CHAIRPERSON HILL: Okay.

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1 MR. KLINE: So I can move forward and argue that,
2 and it may be a repetition of much of what is in the papers.
3 But I think it would be helpful to certainly have a
4 discussion about it.

5 CHAIRPERSON HILL: That's fine. I mean, you're
6 obviously here before us for some reason, Mr. Kline. And so
7 we'll go ahead and have you give your case as to why you
8 believe the Zoning Administrator has erred in his decision.

9 So I'm going to go ahead and make a motion to
10 dismiss the motion for summary reversal and ask for a second,
11 Mr. Blake?

12 MEMBER BLAKE: Second.

13 CHAIRPERSON HILL: Okay. Mr. Moy, we'll go ahead
14 and take a roll call just for efficiency. I don't know.

15 MR. MOY: When I call each of your names if you
16 would please respond with a yes, no or abstain to the motion
17 made by Chairman Hill to dismiss the motion for summary
18 reversal. The motion was seconded by Mr. Blake. Zoning
19 Commission Member, Rob Miller?

20 COMMISSIONER MILLER: To dismiss this motion for
21 summary reversal.

22 MR. MOY: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MR. MOY: Mr. Brown, I mean, Mr. Blake?

25 MEMBER BLAKE: Yes.

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1 MR. MOY: Chairman Hill?

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: Staff would record the vote as 4-0-1.
4 And the motion carries on the motion made by Chairman Hill
5 to dismiss. The motion was seconded by Mr. Blake. Also in
6 support of the motion to dismiss is Zoning Commissioner Rob
7 Miller, Mr. Smith. The motion carries, 4-0-1, sir.

8 CHAIRPERSON HILL: Okay. Great. All right. Mr.
9 Kline, so you can go ahead. And I got your exhibits here.
10 Go ahead and make your argument as to why you believe that
11 the Zoning Administrator erred in his decision. And I'm just
12 going to start a running tally of the clock there, I guess.
13 We'll move forward, Mr. Young, on the clock.

14 And then I think, Mr. Kline, you may -- I mean,
15 the way it works again, is you're going to go ahead and
16 present your case. Ms. Brown will have an opportunity to ask
17 questions of you. Ms. Brown will then have an opportunity
18 to present her case. You'll have an opportunity to present
19 questions to her. Then we'll come back for rebuttal from
20 you. And then, I'm going to have to look here at the
21 regulations again, the order, but it definitely starts with
22 you, Mr. Kline.

23 MR. KLINE: Absolutely.

24 CHAIRPERSON HILL: So I will go ahead and let you
25 begin whenever you like.

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1 MR. KLINE: Thank you so much. I appreciate that.
2 It was suggested earlier that we may be here four hours. I
3 don't think that's going to be the case. I think the issue
4 here is pretty straightforward. And what we are dealing with
5 is the construction of two sections of the zoning
6 regulations, one of which defines agriculture and one of
7 which defines light manufacturing.

8 When the request was made that the subject
9 property be certified for the zoning use for cultivation,
10 there was a ruling that what was contemplated was somehow
11 manufacturing, which we're going to get into here in a
12 minute.

13 First, I'm going to talk to you about the section
14 concerning the definition of agriculture and then we'll talk
15 about the section concerning the definition of light
16 manufacturing.

17 The relevant section is 11 DCMR B-200.2(a), and
18 it consists of four parts. And it's very interesting, the
19 four parts, because unlike other regulations in other
20 statutes, the first part says what it is in Section (a),
21 which I'm going to read in a minute. The second part says
22 what's typical. The third part gives examples. And the
23 fourth part gives some exceptions.

24 So what that section of the regulation says is
25 that agriculture, large, is defined as (1) the onsite

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1 cultivation or maintenance of plants, or the breeding or
2 keeping of animals and livestock, intended for personal use
3 or eventual sale or lease offsite.

4 Section (2) says typical products of an
5 agricultural use include produce, field crops, flowers,
6 ornamental crops, livestock, poultry, honeybees or other
7 animal husbandry.

8 Section (3) examples include, but are not limited
9 to farm, truck garden, beekeeping, greenhouse, dairy or
10 horticultural nursery. And (4) contains exceptions. This
11 use category does not include the customary landscaping of
12 yards, residential gardening or household pets.

13 So the first thing one must do when applying this
14 section of the regulations is look at Number (1). Number (1)
15 says the onsite cultivation or maintenance of plants or the
16 breeding or keeping of animals and livestock.

17 In this case, we're not talking about the breeding
18 or keeping of animals and livestock. We're simply focused
19 on the onsite cultivation for maintenance of plants.

20 Now it is black letter law that words are to be
21 given their ordinary and customary meaning when construing
22 statutory language. If it's clear on its face, we don't go
23 any further. We don't look at legislative intent. We don't
24 look at precedent. We don't look at anything. We look at
25 the plain language and the plain meaning of the words that

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1 are before you.

2 In this case, we have plants. And I don't think
3 that there can be any debate that cannabis is not a plant
4 that produces flowers. That's what it is. That's what it
5 does.

6 So in response to the request, it was ruled that
7 the zoning regulations do not use the term nursery in the
8 provisions but does mention agriculture under use categories
9 as follows. And then it cites what I just read. And then
10 says as you can see the cultivation of marijuana or cannabis
11 is not included. Well, indeed that is the case because there
12 are no specific crops that are mentioned in that section.

13 Strawberries aren't mentioned. Mushrooms aren't
14 mentioned. Peppers aren't mentioned. Tomatoes aren't
15 mentioned. Lettuce isn't mentioned. There are no specific
16 crops that are mentioned. And I don't think there can be any
17 debate or any dispute that cannabis or marijuana, whatever
18 you want to call it, is a crop.

19 So the fact that it is not mentioned under the
20 typical products, the typical products are field crops,
21 flowers. Cannabis is a flower. That's what it is. And in
22 any event, the term typical products is an effort to clarify
23 Number (1), which seems to be clear on its face, the
24 cultivation or maintenance of plants, which is exactly what
25 we're dealing with here.

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1 It would appear that based on Mr. LeGrant's
2 conclusion that one could not grow strawberries in an
3 agricultural zone or in an MU-3 zone because they're not
4 mentioned nor is lettuce mentioned.

5 Now in the reply to our motion, it is suggested
6 that somehow the cultivation of cannabis is more intensive
7 than the cultivation of other plants and crops. We don't
8 believe that to be true, number one, but more importantly
9 there is nothing in the zoning regulations that suggests that
10 one looks at the intensity of the particular activity in
11 making the determination as to whether it's agriculture. It
12 is simply is it a crop? And in this case, it's a crop. I
13 mean, there can't be any class in this. This is as plain as
14 can be.

15 Now let's contrast that with light manufacturing,
16 which is defined in 11 DCMR 100.2, light manufacturing, as
17 defined in the zoning regulations, is a light production,
18 distribution and repair use where all processing,
19 fabricating, assembly or disassembly of items takes place
20 wholly within an enclosed building.

21 The issue here is that the growing of plants is
22 not like production. It's not distribution. It's not
23 repair. It is agriculture as clear as can be.

24 Now there was a focus on the second part of this
25 section in the District's reply in that -- and there is kind

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1 of a circular argument that's made that because this takes
2 place in a building potentially that this somehow becomes
3 light manufacturing and therefore it must be in light
4 manufacturing because it needs to be contained within a
5 building. That's the argument as I understand it. It seems
6 to go around in circles.

7 The point is this. Agriculture, and we cited a
8 Forbes article in the papers, agriculture is modernizing.
9 It's developing. And indeed there are many agricultural uses
10 that are moving indoors. And we have a -- I know of someone
11 that's growing lettuce in Baltimore, and they have a
12 tremendous indoor facility.

13 Now if it's determined that those need to be
14 treated differently in some way, that's the job of
15 regulations. That would require a public hearing. And how
16 do we regulate these? What do we do?

17 And this Board and the Zoning Commission is
18 certainly well aware that things change and regulations are
19 sometimes needed. But when they are, regulations are
20 considered impasse. They are not to be implemented by fiat.
21 That, well, hey, we think this could be an excessive use in
22 the community so therefore we're not going to allow it.
23 That's not the job of the Zoning Administrator.

24 The job of the Zoning Administrator is to
25 interpret and administer the regulations as written. And

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1 when the language in the regulations are clear on their face,
2 and we're talking about crops, and cannabis is a crop, then
3 these other factors, it's not material. We don't look at
4 those.

5 It certainly would be within the purview of
6 rulemaking authority to make them relevant, to say, well,
7 gee, we need to look at all these factors. If you're going
8 to do indoor cultivation of lettuce or you're going to do
9 indoor cultivation of cannabis or whatever the crop is, then
10 we should look at the impact with respect to power demands
11 and the other things that are mentioned in the government's
12 papers. But in the absence of that, we are left with the
13 clear language of the regulations, which requires that
14 agriculture activities be allowed in this zone.

15 Now I think that there is an Exhibit 4, which we
16 have tendered, which sheds some light on the Zoning
17 Administrator's apparent hostility to cannabis growing
18 activities. And it's inexplicable to me. I don't understand
19 it. But there was a follow-up request. And this is not
20 before you. I use this as evidence of bias or
21 unreasonableness. I'm not suggesting this is before you as
22 an appeal.

23 But this same appellant requested of the Zoning
24 Administrator, well, if it's manufacturing, there perhaps
25 should be some level of activity that would be allowed as an

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1 accessory use. And I'll give you a couple of really good
2 examples of where that's been done in a couple of other
3 cases.

4 The growing of beer is unquestionably
5 manufacturing. No one is argue that that's agricultural.
6 It's manufacturing. The production of wine is manufacturing.
7 Distilling spirits, manufacturing. Well, we have brew pumps
8 and distillery pumps and wine pumps that are located in
9 commercial zones where that activity is allowed. And it is
10 allowed as an incidental, or accessory use is the term, in
11 connection with the main activity, which is the operation of
12 a bar or restaurant as the case may be.

13 Now when we asked the Zoning Administrator, well,
14 there must be some level of what you consider to be
15 manufacturing activity. We think it's agriculture but for
16 purposes of discussion, let's concede that it's
17 manufacturing. There must be some level of that activity
18 which would be allowable as an accessory use.

19 And we also cited the fact that under the cannabis
20 regulations, you can even grow six plants per individual in
21 a residence. So that activity is permissible in a
22 residential zone. But for whatever reason, a reason that I
23 cannot fathom, the Zoning Administrator has taken the
24 position that there is no level of cannabis cultivation that
25 can take place as an accessory use in an MU-3 Zone.

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1 Now I don't understand it. But I think for
2 purposes of this hearing, and we'll appeal that if necessary
3 but that's not before you. But what is before you as the
4 Zoning Administrator seems to have for whatever reason some
5 hostility to this activity to the point where he will not
6 allow any of the activity to occur in a commercial zone
7 despite the fact that it's allowable in a limited respect in
8 a residential zone and despite the fact that there are other
9 obvious uses where manufacturing is allowed in a commercial
10 zone when it's an accessory use to another permitted use.

11 And we would submit to you that the regulations
12 are very, very clear. They're clear on their face. There's
13 no ambiguity and that this decision should be reversed and
14 should be summarily reversed despite the striking of the
15 motion. There isn't any issue here.

16 Now, you know, I know the motion was denied. I
17 would point out that there is some exigency here in that
18 there is an RFP out before ABRA, which is now controlling
19 cannabis. And in order for his application to proceed before
20 ABRA, he needs a zoning certification and that's next week.

21 And we honestly have been, Mr. LeGrant, a very fun
22 time. And I am very surprised this ruling. I don't
23 understand it. I do not see how before you it is supportable
24 simply based upon the plain English words of the regulations,
25 which are not subject to interpretation because they are

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1 very, very clear. And we would ask that you reverse the
2 decision and allow a cultivation site to proceed at the
3 subject location. Thank you.

4 CHAIRPERSON HILL: Okay. So I'm first going to
5 see if my fellow Board members have any questions for Mr.
6 Kline at this point. Mr. Blake?

7 MEMBER BLAKE: Yes. This question is for Mr.
8 Kline or Mr. Pickett, whoever can answer it. Could you
9 describe -- Mr. Pickett, did you have, let's see, a license
10 at this point to provide as a cultivator or as a dispensary,
11 dispenser?

12 MR. KLINE: He has a license for a dispensary.

13 MEMBER BLAKE: Dispensary, okay. And what takes
14 place at the dispensary exactly?

15 MR. PICKETT: Cannabis to patients. So we've been
16 open for three years already.

17 MEMBER BLAKE: Okay. And do you manufacture any
18 products at the dispensary?

19 MR. PICKETT: No, we do not.

20 MEMBER BLAKE: Okay. So you retail this stuff
21 basically.

22 MR. PICKETT: Yes.

23 MEMBER BLAKE: Okay. Great. In the -- just so
24 I can understand clearly, in the cultivation center, what
25 would take place there?

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1 MR. PICKETT: We would grow cannabis there in
2 order to have better control over our supply because given
3 the multistate operators that have licenses. They are
4 virtually anywhere, which means they have a retail license
5 and they have a cultivation license.

6 So us on the east end of the city, we don't get
7 the same product supply at the same time or at the same price
8 or under the same terms. So the patients on the east end of
9 the city pay a different price or might not have product
10 availability of the same product available to them so they
11 have to travel in pain across the city to get their product,
12 which is available. So this would actually help us out
13 tremendously if we were able to integrate it, and the
14 patients would benefit from lower prices and also product
15 availability.

16 MEMBER BLAKE: In terms of, how does the process
17 actually take place? You would actually grow it at your
18 facility and then how would it transfer from the seed to the
19 end product that you would deliver for your retail sales?

20 MR. PICKETT: So sure, sure. So we would actually
21 grow -- we would grow it right next door to the building.
22 And also then we would supply our dispensary. Our retail
23 medical cannabis dispensary is right next door to it.

24 Also it's going to serve -- we are the only
25 unionized facility in the District of Columbia. We unionized

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1 with the UFCW back in 2020. It will serve as an
2 apprenticeship program for the UFCW where people will come
3 and train in the District of Columbia, Maryland and Virginia
4 to train to also get jobs in cannabis.

5 I was voted co-chair of that. And it's an
6 important program for the community. I think it's important
7 for DC as well.

8 MEMBER BLAKE: Okay. Maybe I can clarify by
9 saying, can you just describe the process that you would
10 entail to get from the seed to the final product that you are
11 offering at your dispensary?

12 To my understanding, there may be some intensive
13 process that takes place. Is it just you grow the plant and
14 then it's done? Or is there something that takes place to
15 get us to that point?

16 MR. PICKETT: Well, the process would be we have
17 seeds. We grow the clones. The clones become plants. When
18 the plants, when it's ready to harvest, we just take them to
19 a room. We hang them upside down. And then some of it we
20 will prepackage to sell in the dispensary and some of it we
21 will sell in bulk. But it's not really intensive at all.
22 It's the same as growing tomatoes or daisies or lilies or
23 anything else. We use the same tools and the same
24 ingredients.

25 MEMBER BLAKE: It seems as though for medical

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1 marijuana -- this is for medical marijuana. There are fairly
2 stringent standards from what I understand in terms of the
3 quality and consistency of the product. That doesn't sound
4 very consistent. It sounds recreationally like brewing beer.
5 I can see that. But this sounds like a very rigid product
6 for medical services. Is that process any different in your
7 mind?

8 MR. PICKETT: Yes, I mean, the product is tested.
9 So, yeah, the way we grow it and the way we handle it, it's
10 all regulated. And it's tested. So, yeah, it's much
11 different than, you know, somebody who has brought it home
12 recreationally. So we are regulated, like Mr. Kline said,
13 by ABRA. So we're monitored all the way from seed to sale,
14 to when we sell it to the patient.

15 MEMBER BLAKE: Just one last question. What type
16 of product would you anticipate creating at your cultivation
17 facility? Would it include oils, extracts? What would you
18 be making there? Just plain --

19 MR. PICKETT: We've been open for -- and that's
20 a great question by the way. Thank you. We've been open for
21 three years, and 94 percent of our sale are flower. That's
22 what our patients prefer. So we would grow flower because
23 that's where our sales are and that's all we would do to
24 provide for our patients.

25 MEMBER BLAKE: And so you have a segment that you

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1 would only target. But the cultivation center, as I
2 understand it in the industry in DC, are only divided into
3 really two or three segments. Is that right? How would you
4 describe the industry segment?

5 MR. PICKETT: I'm sorry. I don't understand the
6 question. What do you mean segment?

7 MEMBER BLAKE: The District of Columbia licenses
8 people in this sector to do a couple of activities. What are
9 those activities?

10 MR. PICKETT: There's only two. You are either
11 a retail medical cannabis dispensary or you're a cultivation
12 facility.

13 MEMBER BLAKE: Okay. So the cultivation --

14 MR. PICKETT: (Simultaneous speaking) a
15 cultivation.

16 MEMBER BLAKE: So the cultivation facility does
17 a lot of things just beyond growing because it has to create
18 a finished product. Is that right?

19 MR. PICKETT: Yeah. It can. I mean, it grows and
20 then they package it. Some of the cannabis dispensaries are
21 like -- some of them prepackage the flower. Some prefer it
22 in bulk. Sometimes they pre-roll into a joint with paper
23 because, you know, some are senior citizens. They have
24 arthritis so they can't roll it themselves. So that's about
25 the extent that we would be doing because that's where most

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1 of our business lies.

2 MEMBER BLAKE: But at this point, the District
3 does license you to do full services, which would -- doesn't
4 that include things like edibles and other such things? I
5 don't think there is a license that is provided for a narrow
6 window. I think it's kind of like an all-inclusive
7 cultivation license, isn't it?

8 MR. PICKETT: Yes, yes. One of the license you
9 are able to do that. When the product is dry, that's when
10 it's finished. We'll start the finish. And so that's what
11 our intention is to do is to continue to provide quality
12 flower to our patients because of what they like.

13 Yes, that does come with that. You are able to
14 do those that you just mentioned.

15 MEMBER BLAKE: Okay. Thank you for that.

16 MR. PICKETT: You're welcome. Thank you.

17 CHAIRPERSON HILL: All right. Anyone else from
18 the Board? No? Okay. All right. Ms. Brown, do you want
19 to go ahead and give us your response, please?

20 MS. BROWN: I'm not sure if this is the
21 appropriate time to ask any questions of Mr. Kline or Mr.
22 Norbert, but I do not have any questions for them. If I
23 could proceed --

24 CHAIRPERSON HILL: I apologize. And thank you,
25 Ms. Brown, for clarifying for me. I had forgotten. Yeah,

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1 so you don't have any questions for them. Did you want us
2 to pull up your slide deck?

3 MS. BROWN: Yes, I would appreciate that. Thank
4 you.

5 CHAIRPERSON HILL: Okay. And for my fellow Board
6 members, the slide deck was submitted late. And I actually
7 want to see it in the record. So I'm going to go ahead and
8 allow it in the record unless any of my fellow Board members
9 have an issue. And if so, please go ahead and speak up.

10 MR. KLINE: I have an issue. I haven't seen it.

11 CHAIRPERSON HILL: Okay, Mr. Kline. Do you have
12 access to a computer?

13 MR. KLINE: I'm on one right now.

14 CHAIRPERSON HILL: Okay. Let's see whether you
15 can pull it up then. This often happens with us, Mr. Kline,
16 where the slide deck, I usually get it like the day of or
17 the day before. And if it's something that you think you're
18 going to need time to respond to, then we can deal with it
19 at that time as well.

20 So I'm going to go ahead and let them go ahead and
21 give their presentation and then you can ask questions. And
22 if you have any issues or you have some suggestion as to how
23 to move forward, I'm welcome to hear it.

24 MR. KLINE: Thank you.

25 CHAIRPERSON HILL: Go ahead, Ms. Brown.

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1 MS. BROWN: Thank you, Chairman Hill. Thank you,
2 member of the Board. We are here today because appellant,
3 4721 Sheriff Road NE, LLC challenges the Zoning
4 Administrator's determination that medical marijuana
5 cultivation is not an agricultural use permitted in the MU-3A
6 Zone.

7 I want to take the time to start off just by
8 clarifying something on the record. Mr. Kline alluded to
9 some hostility on the part of Mr. LeGrant. And I want to
10 take the time to state that Mr. LeGrant is a zoning
11 professional with years of experience who treats each
12 applicant fairly and considers the merits of each case.

13 Second, regarding a discussion of marijuana
14 cultivation as an accessory use, your rules of practice and
15 procedure state that an appeal may not be amended to add
16 issues not identified in the pre-hearing statement.

17 The accessory use argument not identified by the
18 appellant initially. And so we would ask that that not be
19 included in today's discussion if possible.

20 CHAIRPERSON HILL: No. I understand that. And,
21 Mr. Kline, and I know that legal will back me up on this.
22 Whatever it was that you originally listed in terms of your
23 argument that the Zoning Administrator made error of, that's
24 the only thing you can argue with us today, Mr. Kline.

25 MR. KLINE: I think I made a -- I thought, I hope

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1 I made it crystal clear that I didn't expect you to review
2 that today that I was merely using that exhibit to show that
3 the determination of marijuana uses when compared to other
4 types of uses seems to be completely inconsistent without
5 reason.

6 CHAIRPERSON HILL: Okay. So then you're not
7 adding --

8 MR. KLINE: And that's it.

9 CHAIRPERSON HILL: -- the accessory use argument
10 is not something you're adding to this appeal then, correct?

11 MR KLINE: Not at all. And I never suggested it.

12 CHAIRPERSON HILL: All right. Okay.

13 MR. KLINE: I tried to make that clear and if I
14 did not, I apologize.

15 CHAIRPERSON HILL: Okay. Thank you, Ms. Brown.
16 Go ahead.

17 MS. BROWN: Thank you for that clarification. As
18 DCRA pointed out in its brief, the cultivation of marijuana
19 is markedly different or distinguishable from the types of
20 agriculture permitted in 11 DCMR B-200.2(a).

21 Testimony from the Zoning Administrator Matt
22 LeGrant will show that he correctly categorized medical
23 marijuana cultivation as light manufacturing under the zoning
24 regulations. Additionally, the Zoning Administrator
25 testimony will show that his determination is consistent with

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1 his longstanding interpretation of the zoning regulations,
2 which dates back to 2011 and is on record.

3 You will see that Mr. LeGrant properly and
4 consistently categorized medical marijuana cultivation in the
5 same manner as he did in the past, as light manufacturing.
6 And he did so again in this appeal.

7 Accordingly, we submit that the Zoning
8 Administration did not act arbitrarily, and we respectfully
9 request that the appeal be denied.

10 If I could proceed with questioning Mr. LeGrant.
11 I'm not sure of the next order you'd like to take, Mr.
12 Chairman Hill.

13 CHAIRPERSON HILL: That's exactly correct, Ms.
14 Brown.

15 MS. BROWN: Okay. Mr. LeGrant, would you please
16 state your name for the record, please?

17 MR. LeGRANT: Yes. Good afternoon, again.
18 Matthew LeGrant, Zoning Administrator.

19 MS. BROWN: How long have you been in the position
20 of Zoning Administrator?

21 MR. LeGRANT: Approximately 16 years.

22 MS. BROWN: Mr. LeGrant, the appellants challenge
23 your determination that medical marijuana cultivation is not
24 an agricultural use permitted in MU-3A. Can you describe how
25 you arrived at that determination?

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1 MR. LeGRANT: Yes. Thank you. So the
2 determination that I communicated to the appellant is
3 consistent with my longstanding interpretation that medical
4 marijuana cultivation centers are best classified as a light
5 manufacturing use.

6 I have consistently treated that in applications
7 going back now over a decade and have issued determination
8 letters in regard to numerous other cultivation centers.

9 MS. BROWN: Thank you. In our Presentation 5 we
10 have, I believe, it's the definition of agriculture, large,
11 and light manufacturing. Could those be shown, Chairman
12 Hill?

13 CHAIRPERSON HILL: Sure. Do you want to go ahead
14 and pull that up, Mr. Young? Do you want the definitions?
15 I think it's Slide 3. Is that correct?

16 MS. BROWN: Yes, that's correct. Right there.
17 That's good. Thank you. Mr. LeGrant, how are these sections
18 of the zoning regulations relevant to the appeal before us?

19 MR. LeGRANT: Yes. I'll get to that in a moment.
20 But actually to clarify, the determination I made in this
21 case, and I think the previous slide speaks to that, my email
22 to Mr. Hudson, I believe, on September 15, 2021, was my
23 determination in this case and consistent with what I just
24 stated that a cultivation center was treated as light
25 manufacturing.

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1 Moving to the section which, of course, Mr. Kline
2 has already covered and so I won't spend a lot of time on
3 that, this is what we call a use category. It's under the
4 zoning regulations. Uses are under Section B-200.2. Uses
5 are grouped into 35 different categories. And one of them
6 in here is the agriculture large category. And that, again,
7 as Mr. Kline read it, you can see that it talks about these
8 types agriculture uses.

9 Then what was also covered was the specific
10 definition in the definition section of the zoning
11 regulations in Section B-101.2 for light manufacturing. And
12 I'll focus on this for a moment.

13 It's a light production, distribution, repair use
14 for all processing, fabricating, assembly or disassembly of
15 items take place only within an enclosed building. So those
16 are the relevant sections of the use category and the use
17 areas that are relevant, I believe, in this appeal.

18 MS. BROWN: Thank you. And why has light
19 manufacturing in your view consistently been the correct use
20 category for medical marijuana cultivation?

21 MR. LeGRANT: Well, from my experience, the
22 facilities required for marijuana cultivation are very
23 intensive. They employ real lights, chemicals, equipment,
24 things of that nature. So early on in this process, going
25 back over a decade, I categorize them as they are more akin

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1 to manufacturing operations. They're not like growing
2 flowers in an open field. It's distinguishable.

3 MS. BROWN: Can you expand on that a little by
4 talking about agriculture in contrast to light manufacturing?

5 MR. LeGRANT: Sure. So agriculture use is allowed
6 at almost every zoning district in the District of Columbia.

7 For example, R-1B allows agriculture use. So here
8 in those areas where agriculture is allowed, you can grow big
9 crops or no crops and flowers as a matter of right and,
10 again, I believe in almost every zoning district in the city.

11 But what we have here is a proposed business by
12 the appellant is a commercial growing operation that is a
13 highly regulated product, marijuana, where typically is a
14 special plant and it is cultivated for a medical marijuana
15 cultivation center for a specific use, pharmaceutical grade
16 medicine. And it comes with all types of testing standards,
17 regulations, currently by ABRA but in its history it included
18 the Department of Health for several years. And I think it's
19 been about two or three years since it's been now overseen
20 by ABRA.

21 So I don't think it's the same level as growing
22 flowers or field crops. And I took this information into
23 consideration in making my determination.

24 MS. BROWN: Are there any commercial or
25 agricultural uses anywhere in the District to the best of

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1 your recollection?

2 MR. LeGRANT: Not that I can recall. The land in
3 the District is, of course, very scarce and at a premium.
4 So we don't see commercial agricultural operations in the
5 city, people using land to grow crops.

6 There are a couple instances of nonprofits having
7 community gardens. And I think there may be a couple CFOs
8 that utilize the agriculture use category for those, but it's
9 very scarce. It's a very rare use here in the District of
10 Columbia.

11 MS. BROWN: Going back to the PDR Zone, the zone
12 that you identified as the proper zone for medical marijuana
13 cultivation, what does this zone allow?

14 MR. LeGRANT: Okay. The PDR, or Production
15 Distribution Repair Zone used to be called the commercial
16 manufacturing on manufacturing zones in the previous set of
17 zoning regulations ZR-58. And then ZR-16 came along in
18 September 2016, it was basically renamed the PDR.

19 Then as for most intensive uses, intensive uses
20 are permitted in the PDR Zones like light manufacturing.

21 MS. BROWN: And what kind of goods are you
22 referencing when you talk about light manufacturing as a use
23 category? Are there any limitations?

24 MR. LeGRANT: It can mean widgets. It's not
25 limited to the types of goods. Light manufacturing includes

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1 production, distribution, repair or processing and making of
2 items takes place within a fully enclosed building as is the
3 case of every medical marijuana cultivation center that I
4 have seen.

5 So light manufacturing is allowed in PDR Zones to
6 minimize encroachment on any compatible uses to protect the
7 surrounding areas. It spells the integrity of what's being
8 manufactured on the site. I think that was consistent with
9 the Commission's allowance of light manufacturing uses in PDR
10 Zones.

11 MS. BROWN: Thank you. Chairman Hill, could I
12 switch to the next slide if possible?

13 CHAIRPERSON HILL: Sure. Go ahead, Mr. Young.

14 MS. BROWN: Matt, you were talking earlier about
15 your familiarity with commercial grower operations and
16 cannabis cultivation centers in the District. Have you seen
17 medical marijuana cultivation centers and their facilities
18 before?

19 MR. LeGRANT: I have not been inside one
20 truthfully. I've seen representations by applicants in other
21 cases, floor plans and so forth. I'm not an expert by any
22 means. But cultivation centers are highly regulated by ABRA.
23 I've seen photos of these operations as I noted, and they
24 have always involved an enclosed and conditioned space,
25 artificial lighting, hydroponic tanks and with chemical

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1 nutrients to regulate the temperature and humidity of the
2 space.

3 MS. BROWN: Thank you. Mr. LeGrant, how does a
4 picture like this which depicts an example of a medical
5 marijuana cultivation center, how does that affect your
6 determination or how is it relevant to the light
7 manufacturing use determination?

8 MR. KLINE: Your Honor, I'm going to object to
9 being surprised with these slides. I'm frankly shocked that
10 counsel did not share these with us prior to this hearing.

11 CHAIRPERSON HILL: Okay. Mr. Kline, what is it?
12 Say that again, I'm sorry.

13 MR. KLINE: I said I'm stunned that counsel did
14 not share with us as required by the rules what she intended
15 to introduce at this hearing. I just am flabbergasted that
16 I'm seeing these slides for the first time, and counsel never
17 bothered to share them with us as is required by the rules.
18 I don't understand.

19 CHAIRPERSON HILL: Go ahead, Ms. Brown.

20 MS. BROWN: Chairman Hill, it is not my
21 understanding that the presentations for the appeal must be
22 exchanged. It is my understanding that they must be
23 submitted to staff and ready for the hearings. I could be
24 mistaken.

25 CHAIRPERSON HILL: That's all right. Mr. Kline?

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1 Mr. Kline?

2 MR. KLINE: Yes.

3 CHAIRPERSON HILL: I'm trying to run a hearing.
4 Okay? And so again, at the end of the hearing, but during
5 this, you know, if you want to think of other ways that we
6 can better make this work for you, then let me know, right?
7 I mean, this is again something that I'm just trying to get
8 through the presentation and the argument. And I'll let my
9 legal division here let me know if I'm doing this in any
10 particular way that is not the way that way that we're
11 supposed to do it, right?

12 And so let me go ahead and get through the
13 presentation here with Ms. Brown and then you can go ahead
14 and ask your questions as well. And I'll ask legal, who is
15 listening, if they'll let me know if there's any way that
16 we're doing this in any other way that we normally haven't
17 done, which is, you know, I get slide decks all the time, you
18 know, just before the hearing because of the way that kind
19 of basically it's been going on since COVID started to be
20 quite honest.

21 However, if you think that you need more time to
22 look at other things and we need to come back again so you'll
23 have another opportunity as though you don't have an
24 opportunity now to respond to them, then we can go ahead and
25 figure that out as well.

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1 MR. KLINE: Thank you.

2 CHAIRPERSON HILL: So, Ms. Brown -- sure. No
3 problem, Mr. Kline. So, Ms. Brown, if you could continue.

4 MS. BROWN: Thank you, Chairman Hill. Matt, I
5 want to redirect you to this example of a medical marijuana
6 cultivation center. Is there anything that you see that
7 would inform your determination of the light manufacturing
8 use category for medical marijuana cultivation centers here?

9 MR. LeGRANT: Well, as I just stated, you know,
10 obviously enclosed buildings, artificial lighting, we can't
11 really see the -- I'm assuming, I'll make an assumption here,
12 of the hydroponic tanks that the material is sprouting from.
13 But, yeah, that's all consistent with what I've seen for
14 cultivation centers and being most akin to light
15 manufacturing in my rulings to date.

16 MS. BROWN: Thank you. And I want to ask you very
17 plainly in your opinion is the cultivation of medical
18 marijuana considered agriculture under the zoning
19 regulations?

20 MR. LeGRANT: No, it is not. And I've never
21 categorized it that way.

22 MS. BROWN: Have you previously issued any zoning
23 determination letters where you concluded that a light
24 manufacturing use is the proper use category?

25 MR. LeGRANT: Yes, I have. Consistently, as I

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1 think I already noted from the inception of the program, I've
2 considered cultivation centers always as light manufacturing.

3 MS. BROWN: Thank you. And, Chairman Hill, can
4 you switch to the next slide, please?

5 CHAIRPERSON HILL: Sure.

6 MS. BROWN: Mr. LeGrant, I want to call your
7 attention to the following slide. How is this letter
8 relevant to --

9 CHAIRPERSON HILL: Mr. Young, if you can zoom in
10 there? And for all there, and Mr. Kline, also if you can,
11 I think you can pull it up on your computer and then it's
12 easier to zoom in.

13 MR. LeGRANT: Yes. Thank you, Ms. Brown. So,
14 right, this is an example of the letter from 2011 that was
15 submitted to me for a determination as to how to categorize
16 the zoning regulations for, I'll call it, a medical marijuana
17 cultivation center. And of course at that point in time, it
18 was under ZR 58 in previous rules. And I think I already
19 noted the zoning at this particular location was a CM-2 Zone.
20 That's been succeeded now in ZR-16 as the PDR Zones.

21 But as you can see, extending back to 2011 and
22 since then, this letter is an example of the many, many
23 letters that I have issued to applicants for cultivation
24 centers as long as they fall within the light manufacturing
25 category in the zone that allows that use.

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1 MS. BROWN: Is it correct to say that categorizing
2 medical marijuana as light manufacturing has been your
3 longstanding interpretation under the zoning regulation?

4 MR. LeGRANT: Absolutely, I have categorized it
5 that way.

6 MS. BROWN: And have you ever been asked by the
7 Council to provide a zoning interpretation regarding medical
8 marijuana cultivation centers and where they're allowed in
9 the District?

10 MR. LeGRANT: Not directly from the City Council.
11 But I was asked internally of our department DCRA to figure
12 out what was the appropriate zoning use category going back
13 to that point in time. Shortly before the Council legalized
14 medical marijuana in the District, I worked in consultation
15 with the Office of Planning. And they agreed with my
16 determination. At that time, the Department of Health and
17 ABRA, as I noted earlier, regulated marijuana uses in
18 cultivation centers and dispensaries.

19 MS. BROWN: Thank you, Mr. LeGrant. I have no
20 further questions right now.

21 CHAIRPERSON HILL: Okay. Thanks, Ms. Brown.

22 MR. LeGRANT: Thank you.

23 CHAIRPERSON HILL: Okay. All right. Let's see.
24 Does the Board have questions of the Zoning Administrator?
25 I'm going to start with Mr. Blake.

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1 MEMBER BLAKE: Yes. How many licensed cultivation
2 centers are there in the District of Columbia at this point?

3 MR. LeGRANT: I'm not sure of the exact number.
4 I believe it might be between 8 and 10.

5 MEMBER BLAKE: Are they all located in the PDR
6 Zone?

7 MR. LeGRANT: Yes.

8 MEMBER BLAKE: Okay. Thanks. Are there any PDR
9 -- any sites that are co-located between a dispensary and a
10 PDR and a cultivation center that you know of?

11 MR. LeGRANT: I believe if I could recall, there
12 are a couple instances applicants procured either on the same
13 site a cultivation center and dispensary. The dispensary is
14 a retail use and that is also a permissible use in PDRs. So
15 I think there might be at least one or two sites in which
16 they might be co-located.

17 MEMBER BLAKE: Thank you.

18 CHAIRPERSON HILL: Okay. Anyone else?
19 Commissioner Miller?

20 COMMISSIONER MILLER: Thank you, Mr. Chairman, and
21 thank you to the appellant and DCRA for -- I think thank you
22 for bringing this forward today and making your arguments.

23 So my question to Mr. LeGrant or counsel would be
24 I've seen the statements that it's a longstanding
25 interpretation that it's only allowed -- that cultivation

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1 centers are only allowed in the PDR Zone. I see the email
2 that you sent to the appellant. I see the letter to the
3 Queens Chapel property.

4 The letter to the Queens Chapel property, I don't
5 see that personally as proving a longstanding interpretation
6 that it's only allowed in the CM-2 or PDR Zone. The owner
7 in that case, the property owner in that case, was just
8 asking, I'm in this zone. Is it permitted? You said yes in
9 that zone it is permitted. You didn't say it's only
10 permitted there. I don't know if you have a longstanding
11 written interpretation elsewhere. You said there are many
12 examples of it. But I just don't see it in the record that
13 we have before us.

14 I did hear a response to Mr. Blake's question,
15 which was helpful, that the other six or eight cultivation
16 centers are all located in PDR Zones if that's what you --
17 I think that's what you responded to, Mr. LeGrant. But I
18 don't know if there were interpretation letters ahead of
19 those -- issuances of those licenses, which said they're only
20 allowed and this is the only place you can go. This is the
21 only zone you can go in. I just don't see a letter in that
22 record or in the interpretation of the record that says
23 that's the only place it can go. So I don't know if you want
24 to comment on that before I move on to another point.

25 MR. LeGRANT: Well, thank you, Commissioner. So

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1 the nature of those letters is there is a specific question,
2 can I do a cultivation center here? And, you know, I
3 determine what zone, if it is in those historical cases, a
4 CM-RM zone and currently, of course, in a PDR Zone, I would
5 answer in the affirmative. They ask me, can we do it in this
6 zone? And I said yes. But I did not utilize language that
7 you noted that it's only allowed --

8 COMMISSIONER MILLER: Well, did you have a letter
9 that says you can't -- that someone was not in the PDR Zone
10 and another letter where you said that? Where you said, no,
11 you can't do it in this mixed use zone, this mixed use
12 commercial zone or just all commercial zone, you can't do it
13 because it's only allowed -- do you have a letter that -- I'm
14 not asking you to amplify a record, but is there -- is that
15 in your case files at DCRA?

16 MR. LeGRANT: Yes. I would say in my 12 years of
17 dealing with medical marijuana questions, there have been
18 instances where people have said I would like to do a
19 cultivation center in an MU or in predecessor commercial
20 zones, and I respond, I'm sorry. You can't. As the Zoning
21 Administrator to approve there be light manufacturing, you
22 cannot do it in that zone without Board relief and probably
23 mentioned that you could do it in a PDR Zone. I probably
24 have some emails in my computer on that regard.

25 COMMISSIONER MILLER: Well, that might have been

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1 helpful to have that denial letter as evidence of your
2 longstanding or any denial letters as evidence of your
3 longstanding interpretation. But we don't have that in the
4 record currently.

5 My next point is a question about the -- I was
6 going to bring this up before Mr. Kline even brought it up,
7 even though he didn't bring it up as an issue that he was
8 appealing. But I just want to try to understand -- I think
9 I know, I think I understand what the difference might be.
10 But I want to try to understand what the difference is
11 between a brew hub that's usually incorporated with the --
12 the brewery that's incorporated with the pub, the retail pub.
13 It's either onsite or nearby often or it's the same facility,
14 I think, as I understand it.

15 Is the brew pub specifically -- I mean, and I
16 realize that cannabis cultivation is not called out
17 specifically as an included example, included but not limited
18 to example, of what's allowed in -- what's considered an
19 agricultural use. But is the brew pub specific -- so it's
20 open to some interpretation whether you look at the plain
21 language or whatever, precedent or whatever. But in the brew
22 pub case is that something -- is that used specifically
23 called out in the zoning regulations as permitted in mixed
24 use and commercial zones?

25 MR. LeGRANT: Well, let me describe how I treat

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1 brew pubs, which is --

2 COMMISSIONER MILLER: Is it called for in the
3 zoning regulations?

4 MR. LeGRANT: They are not.

5 COMMISSIONER MILLER: They are not. Okay. So --

6 MR. LeGRANT: I can add --

7 COMMISSIONER MILLER: -- you're doing an
8 interpretation. So you're doing an interpretation there as
9 well?

10 MR. LeGRANT: Yeah. So I feel it is an
11 interpretation, a published interpretation about brew pubs
12 on the DCRA website where my zoning interpretations that
13 speak to, you know, what is the break point of how much you
14 served onsite versus shipped offsite to help that
15 categorization of is it a drinking establishment or is it a
16 manufacturing facility?

17 And I'll just add here the thing about alcohol
18 consumed in a brew pub which you can go and have a sandwich
19 and drink and you can consume that onsite. That's not the
20 case with a cultivation center or a dispensary. You can't,
21 to my knowledge consume anything onsite.

22 COMMISSIONER MILLER: Okay. Okay. I guess I have
23 no further questions at this time, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Great. Thanks. Mr.
25 Smith, you got anything?

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1 MEMBER SMITH: One thing. Just for clarification,
2 I think I had heard -- maybe I heard it. Mr. LeGrant, I just
3 have a question about production of -- different types of
4 agricultural or different types of plants or crops within the
5 district in a similar manner to a cultivation center where
6 there are plants grown internally under, using your words,
7 an intense process.

8 And my question is, are you familiar with
9 something such as a hydroponic crop such as growing lettuce
10 internally where there is an intensive process growing under
11 a light? What would you classify that type of use as if that
12 has occurred within the District? Would that be considered
13 a light manufacturing use?

14 MR. LeGRANT: Well, first of all, as I'm trying
15 to think back, I'm not recalling, like, lettuce or
16 strawberries being grown hydroponically in the District.
17 Now, I have read about operations elsewhere. I think there's
18 a huge one up in Brooklyn or New York City that has that.

19 So I would continue to say that the -- if that use
20 was presented before me, I would have to make a
21 determination. Is it, like, really agriculture or is it
22 light manufacturing?

23 I will say one of the key aspects of my
24 determination here this particular plant, and I will concede
25 it's a plant, is highly regulated material. And it's subject

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1 to very strong licensing and registration requirement by our
2 registration agency, ABRA. So ultimately I may determine
3 that lettuce or strawberries be agriculture and allowed in
4 other areas of the District. But to date I have not treated
5 cannabis or medical marijuana in that same vein because of
6 its specific, highly regulated nature.

7 COMMISSIONER MILLER: But the brew pub's highly
8 regulated nature didn't stop you from interpreting that as
9 permissible in commercial zones, Mr. LeGrant.

10 MR. LeGRANT: That's true. And looking at that
11 again, as I noted, in a brew pub you can grow the material,
12 the beer onsite. You can sit down and consume it onsite so
13 none of it is shipped offsite.

14 COMMISSIONER MILLER: So it's the consumption
15 onsite, you're saying, is the distinction, not the intensity
16 of the use or production?

17 MR. LeGRANT: No. It specifically --

18 COMMISSIONER MILLER: I just am trying to
19 understand what the distinction is.

20 MR. LeGRANT: Okay. In the brew pub example, I
21 would say it's distinguishable because of the consumption
22 aspect, the onsite consumption aspect of beer.

23 COMMISSIONER MILLER: I interrupted somebody
24 else's questioning. And I got in line, I'm sorry. I got out
25 of line, I'm sorry, Mr. Chairman.

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1 CHAIRPERSON HILL: That's all right, Commissioner
2 Miller. It's an open mic forum at this point with us.

3 MEMBER SMITH: Just as clarification, as a side
4 bar from what Mr. Miller was saying, so one of the reasons
5 why, and I think I heard it -- one of the reasons that you
6 classify this as a light manufacturing use is intensive. So
7 there's plenty of uses that are regulated by some agency
8 within the District. Is there a particular part of the
9 process so between growing and selling this product or this
10 plant that kicks it into being considered an intensive use?

11 And I think, you know, Mr. Blake had that line of
12 questioning. So is there something within that stage and
13 that period that you can speak to and some interpretation of
14 the reason why you would consider it a light manufacturing
15 use?

16 MR. LeGRANT: I cannot think of a specific step
17 in the process that I would say, oh, that step was or was not
18 occurring at all and then it would be fine as something else
19 besides light manufacturing. I view it as the totality of
20 the use. A highly regulated product in an enclosed building
21 subject to an intensive process including the factories I
22 mentioned, the artificial lighting, the controlled
23 environment, the hydroponic tanks, those things all together
24 came to -- that's how I came to the conclusion that a
25 cultivation center is most appropriately classified as light

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1 manufacturing.

2 MEMBER SMITH: Okay. All right. Thank you.

3 CHAIRPERSON HILL: Okay. Oh, Mr. Blake, go ahead.

4 MEMBER BLAKE: I would just like to clarify this
5 here. Because the way that Mr. Picket described the process
6 that he would entail for his facility sounds less intensive
7 and less extensive than what you described exists at the
8 cultivation centers elsewhere.

9 I'd like to try to reconcile those two. Maybe you
10 could explain, Mr. LeGrant, why you think there might be a
11 difference. He said, you know, it's a fairly straightforward
12 process, not very much different than that. But in your
13 instance, you described it as being a much more intense
14 process in developing it. Do you have any sense of how we
15 can reconcile those two?

16 MR. LeGRANT: I guess I was using my experience
17 of I've seen many applications for cultivation centers. And
18 they included the factories I've described already of how
19 that material is grown.

20 The appellant here did not present to me
21 information that said, wait a second. We're doing something
22 different than other cultivation centers. I think what I
23 inquired at the time was, is it going to be growing in an
24 enclosed space? And I think the answer correctly was yes.

25 So given my experience of other cultivation

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1 centers, I concluded that that is -- similar to other
2 cultivation centers and similar to my longstanding
3 application or classification of that use as light
4 manufacturing, I concluded this would be the same then.

5 CHAIRPERSON HILL: Thank you.

6 COMMISSIONER MILLER: Chairman, I have a question
7 for the applicant similar to those and then one that goes
8 with that. That's all as well. When I can.

9 CHAIRPERSON HILL: Commissioner, we'll come back
10 in a sec. Mr. Kline, so you'll have -- so just to kind of
11 clarify stuff. I've kind of looked over some of the
12 regulations of things while I had a chance to take a look at
13 some of the process. Again, oddly enough, like I guess the
14 appellants are supposed to submit everything so that other
15 people have had an opportunity to take a look at it.

16 The slide deck that you're speaking of that DCRA
17 has put forward, I mean, again, what we have done in the
18 past, and it's just primarily been happening since COVID
19 because when we were live, people would come with their
20 presentations, and they would give their presentation. And
21 then we'd see whatever their presentation was. And that
22 would be an opportunity for the other party to ask questions,
23 rebut and whatever the case may be during the hearing.

24 So just to clarify again, because you brought up
25 the whole item with the presentation, you'll have an

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1 opportunity to provide, well, rebuttal, all right, on
2 anything that's been put forward here at this point. And now
3 you will have an opportunity to ask any questions of the
4 DCRA.

5 And so, you know, I think that you'll have enough
6 time to respond to the things that came forward during the
7 presentation. And so I just wanted to kind of provide some
8 clarity with that. But, again, if there's some issues at the
9 end that you have with how your client has been treated
10 during this process, just let me know.

11 MR. KLINE: No, I appreciate that, Chairman Hill.
12 And, I mean, I think you thus far have treated us all with
13 respect. And I don't question that.

14 As you pointed out, I think at the outset, I'm not
15 here often, but I do practice before many administrative
16 agencies in the District. And it's been my experience, and
17 it's a theorem of civil practice, that there's full
18 disclosure beforehand and then there's not an element of
19 surprise. I don't think it's a big problem here. But, you
20 know, I point it out because in my experience in other
21 administrative agencies and certainly in civil court, the
22 whole idea is there's not surprise. People are supposed to
23 know beforehand what the other side is presenting.

24 CHAIRPERSON HILL: Yes, yes. And, Mr. Kline,
25 thankfully -- and I shouldn't say thankfully. We're not a

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1 real court in that, you know, I'm not a real lawyer, and I'm
2 not even pretending to play one.

3 MR. KLINE: But you get to make decisions like one
4 so (simultaneous speaking).

5 CHAIRPERSON HILL: That's why they say quasi-
6 judicial. It basically means not really judicial.

7 MR. KLINE: Thank you.

8 CHAIRPERSON HILL: Let's see. So back to this.
9 Mr. Kline, do you have questions or Mr. LeGrant or, you know,
10 any of the present -- I'm sorry, any of the testimony that
11 was given?

12 MR. KLINE: Yes, I do.

13 CHAIRPERSON HILL: Sure.

14 COMMISSIONER MILLER: Before you get to that, Mr.
15 Chairman.

16 CHAIRPERSON HILL: Sure.

17 COMMISSIONER MILLER: I have one more question of
18 Mr. LeGrant or Ms. Brown from DCRA if I could.

19 CHAIRPERSON HILL: Please go ahead.

20 COMMISSIONER MILLER: And then we can go to Mr.
21 Kline's questions and the rebuttal. Did you consider, Mr.
22 LeGrant, I know this isn't -- I don't think this is in the
23 record so maybe I shouldn't be asking about it. But I just
24 happen to know that the law that established, that
25 authorized, legalized medical marijuana, it did have one

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1 provision that spoke to the location of, I believe, it is my
2 understanding, my recollection, had one provision, one
3 sentence that speaks to where dispensaries, cultivation
4 centers and maybe testing laboratories can be located or
5 where they can't be located, not where they can be. That's
6 an important distinction. It prohibited them from being in
7 any residential district or within 300 feet of a preschool,
8 primary or secondary recreation center.

9 Obviously, that isn't dispositive because there
10 are the zoning regulations, which is what we're interpreting
11 here, which don't specify the use specifically. But did you
12 take into consideration the fact that the Council and Mayor
13 in their law that authorized these facilities did not
14 prohibit them in commercial districts, mixed use districts?
15 Did you take into consideration that fact, if it is a fact?
16 That's what I recall.

17 MR. LeGRANT: Well, Commissioner, what I recall
18 the law, and I remember going back 12 years ago when the law,
19 at least the legislation, was a 70 page book. It was very
20 detailed. And I do not recall that provision frankly.

21 I do know that the spacing requirement from
22 schools and parks and churches and so forth, as you may have
23 noticed in my 2011 letter, initially DCRA was tasked with
24 that analysis and applicants had to provide information. And
25 we did an independent analysis of that 300 foot spacing

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1 standard. That has since been shifted over to the licensing
2 entity now, ABRA. So in some ways the question before zoning
3 regulations themselves, of course, do not address these
4 directly.

5 But in short answer, I'm not aware of that
6 limitation or that language in the medical marijuana
7 legislation itself. I was simply going back to 2011 and
8 right around that time the impression was what are these
9 uses? And I determined then and continued to date
10 dispensaries are retail, cultivation centers are light
11 manufacturing.

12 COMMISSIONER MILLER: Okay. Thank you for that
13 response.

14 CHAIRPERSON HILL: Okay. All right. Mr. LeGrant,
15 can you hear me?

16 MR. LeGRANT: Yes.

17 CHAIRPERSON HILL: All right. So I got to tell
18 you this is going to take me a while to -- it might be
19 clearer for some other people. But it's going to take me a
20 while to kind of chew through all of this just a little bit.

21 So can you tell me, like, what is agriculture in
22 this zone then? Like what does agriculture mean to you in
23 this zone?

24 MR. LeGRANT: Well, as we've already covered,
25 there is a category of large agriculture. It's a permissible

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1 use, maybe a permissible use in the zone. So if somebody
2 came in and had an acre of land and wanted to put in crops,
3 open to the sky, I would say, oh, that looks like it fits
4 within there and then it would be permissible.

5 CHAIRPERSON HILL: Open to the sky. Well, I'm
6 just trying to parse this out a little bit. It may not be
7 a whole
8 acre. Maybe it's a tenth of an acre, whatever, it doesn't
9 matter, right? It's just open to the sky, like --

10 MR. LeGRANT: But I would add that this includes
11 greenhouses. So someone can have their greenhouse. So as
12 with any application on a case-by-case basis, I would have
13 to make a determination, oh, okay. And then a greenhouse
14 with flowers, okay, that appears to be large agriculture.
15 That's permitted in the zone. You could do it there.

16 CHAIRPERSON HILL: So why are the flowers that --
17 I mean, the manufacturing part, I mean, the flowers, they
18 still have to cut the flowers, put the flowers in a box, send
19 the flowers wherever it's going, right?

20 MR. LeGRANT: True.

21 CHAIRPERSON HILL: So that's different. And I'm
22 just jumping around. And it's going to -- and I'm going to
23 have to take a little bit of time with this as well. But the
24 difference, again, that I heard from your testimony is,
25 again, pharmaceutical grade medicine, like, flowers are not

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1 pharmaceutical grade medicine, right? So that's where it's
2 kicking it into more of a light manufacturing than just
3 cutting some flowers and putting them in a box?

4 MR. LeGRANT: As I stated earlier, the totality
5 of the use. It's a highly regulated product. It's in an
6 enclosed building. It has an intensive process as I
7 understand it, artificial lights, hydroponics, controlled
8 humidity and temperature and so forth, the totality of that
9 led me to conclude that it's distinguishable from agriculture
10 and is better or more correctly considered light
11 manufacturing.

12 CHAIRPERSON HILL: And Mr. LeGrant, I don't
13 necessarily think you're wrong. And I don't necessarily --
14 and I know that you've already said no to other people, you
15 know, all these other people are going to come back and say,
16 hey, you told me no, right? And so, you know, it was still
17 a plant then, right?

18 So I understand the intensity of the use, like,
19 you know, that's what I'm just trying to get my head around
20 between like tomatoes, right? They have a bunch of tomatoes,
21 and they have to box the tomatoes and they have to ship the
22 tomatoes then that still would be agriculture in your mind
23 because -- or it depends on how intense the manufacturing is
24 of the tomatoes?

25 MR. LeGRANT: Chairman, again, on a case-by-case

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1 basis, I would have to see the application that came before
2 me to see if, you know, it was growing tomatoes and growing
3 them into tomato paste and say, well, I think it's
4 manufacturing. If it's growing tomatoes and perhaps and then
5 having people come by, drive by and picking the tomatoes off
6 the vines themselves to consume at their home, maybe that
7 would fall in the category of agriculture.

8 CHAIRPERSON HILL: Okay. Okay. All right.
9 Anybody else before I move on to Mr. Kline? Okay. I'm
10 moving you to Mr. Kline, please, if you don't mind asking
11 your questions.

12 MR. KLINE: Thank you, Mr. Chairman. Good
13 afternoon, Mr. LeGrant. Nice to see you.

14 MR. LeGRANT: Hello, Mr. Kline. Good to see you.

15 MR. KLINE: So let's talk about tomatoes for a
16 minute. So if someone were growing tomatoes, on its face
17 that would be permissible agriculture, correct?

18 MR. LeGRANT: Well, as I just stated to the
19 Chairman, I would have to see, you know, what is the use --
20 what is happening specifically? Are you growing tomatoes in
21 the field? Are you growing tomatoes in the greenhouse? I
22 would probably say the growing of tomatoes would most likely
23 be categorized as agriculture.

24 MR. KLINE: Okay. And if those tomatoes were then
25 harvested, they were picked that would still be agriculture

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1 in your mind, correct?

2 MR. LeGRANT: I would agree.

3 MR. KLINE: Okay. And then if they're boxed or
4 if they're otherwise prepared for distribution, that's part
5 of agriculture, isn't it?

6 MR. LeGRANT: Well, when you say prepared for
7 distribution, I think there would have to be some
8 clarification of what was involved with that.

9 MR. KLINE: Understood. No processing. In other
10 words, they're going to be picked. They're going to be put
11 in boxes. And they're going to be shipped or they're going
12 to be put in some sort of packaging to be distributed, either
13 picked up or distributed to grocery stores or even shipped
14 out of state, that's all part of agriculture, isn't it?

15 MR. LeGRANT: I would still come down on the side
16 of agriculture in that regard, yes.

17 MR. KLINE: Okay. So if I hear you it seems to
18 me, I mean, I think you said many times this is highly
19 regulated material. This is a highly regulated product. And
20 that's one of your concerns, correct?

21 MR. LeGRANT: Correct.

22 MR. KLINE: All right. And do you not trust ABRA
23 to enforce regulations with respect to this activity?

24 MR. LeGRANT: Well, in all due consideration, of
25 course, would I trust ABRA as an agency? Is that the

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1 question?

2 MR. KLINE: Yeah, I mean, ABRA, just so the record
3 is clear, and I think you said it, but just so we're clear,
4 ABRA is responsible for regulating this highly regulated
5 material, correct?

6 MR. LeGRANT: That's true.

7 MR. KLINE: Right. So that's ABRA's
8 responsibility. Yet you have concerns. Do you not trust the
9 Agency to fulfill its mission to regulate this highly
10 regulated material?

11 MR. LeGRANT: Let me answer it this way.
12 Applicants for medical marijuana uses typically stop
13 initially in my office first. They have to get a letter --
14 that was the issue before us today, a letter of determination
15 from me, is the location of something -- and there ABRA
16 defers to me -- is this the location in which the zoning
17 regulations allow the use? That's very narrow. That's what
18 we're encumbered with. And then it goes on, if the answer
19 is yes, they go on, as you well know, to the licensing and
20 registration process.

21 The knowledge that this particular substance has
22 to work with that process to me is important in the
23 determination of how the use is categorized. And that's
24 where I consistently come down in terms of cultivation
25 centers and light manufacturing.

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1 MR. KLINE: Okay. Now you said that a greenhouse
2 with flowers on its face would be permissible agriculture in
3 the same, correct?

4 MR. LeGRANT: I would agree, yes.

5 MR. KLINE: All right. But if those flowers are
6 cannabis, that determination changes. Is that your position?

7 MR. LeGRANT: Yes.

8 MR. KLINE: Okay. And that is because they're
9 highly regulated?

10 MR. LeGRANT: Right.

11 MR. KLINE: But they're highly regulated by
12 another agency, not your agency? Is that right?

13 MR. LeGRANT: Yes, yes, ABRA, yes.

14 MR. KLINE: All right.

15 CHAIRPERSON HILL: I just want to ask a clarifying
16 question, Mr. Kline, just for me. Mr. LeGrant, I thought it
17 wasn't so much that they're regulated, that the plants are
18 regulated. It was that there is manufacturing involved to
19 get to the end product.

20 MR. LeGRANT: Well, there's -- I guess, I'll
21 restate. The totality of the use, it is a very highly
22 regulated product. It's not the fact that ABRA is regulating
23 it. It's a substance that, you know, I don't think you could
24 open up a stand on the side of the building and say, hey,
25 come buy this material. You can't because of the nature of

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1 the material. That is one factor.

2 The other factors as I've already stated is, you
3 know, in close space, subject to the process in which the
4 plants are developed and, as I've already stated, the lights,
5 the tanks and the controlled environment.

6 CHAIRPERSON HILL: Okay. I just want to clarify
7 that it wasn't just the one thing, that it was a regulated
8 plant.

9 MR. KLINE: I'm not done.

10 CHAIRPERSON HILL: I didn't think you were done.

11 MR. KLINE: He did say it several times. I mean,
12 it was repeated six or seven times so I thought it important.

13 CHAIRPERSON HILL: I'm sorry, Mr. Kline. I wasn't
14 trying to interrupt your moment. I was just trying to make
15 sure I understood the question. So go ahead. Keep going.

16 MR. KLINE: Thank you, Chairman Hill. Mr.
17 LeGrant, did you have a -- what about growing the lettuce?
18 I mean, we talked about it, touched on it. Growing the
19 lettuce is agriculture, right?

20 MR. LeGRANT: I would say growing lettuce, from
21 my experience, what I've seen, I can't think of a lettuce
22 growing operation that is happening in the District, but
23 generally it appears that it would be agriculture.

24 MR. KLINE: All right. Now, and one of the other
25 concerns and I think you just expressed it again, is an

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1 intention to grow this product indoors. That's another
2 reason why this causes you to not supply it as something
3 other than agriculture. Am I correct in that?

4 MR. LeGRANT: In the definition of light
5 manufacturing, you and I are both -- probably the definition
6 of it includes language that says within an enclosed
7 building.

8 MR. KLINE: Right. But light manufacturing is
9 required to be done in an enclosed building, correct?

10 MR. LeGRANT: That's what the definition says,
11 correct.

12 MR. KLINE: Right. But agriculture is -- there's
13 nothing that prohibits agriculture from being conducted in
14 an enclosed building is there?

15 MR. LeGRANT: I would agree that there's no
16 requirements.

17 MR. KLINE: All right. Did you review any of the
18 material that we cited in our reply to your counsel's
19 response to our motion?

20 CHAIRPERSON HILL: Can you repeat that question,
21 Mr. Kline? I'm sorry.

22 MR. KLINE: Mr. LeGrant, did you review in the
23 material that we cited in our reply to your counsel's
24 opposition to our motion?

25 MR. LeGRANT: Yes, my counsel and I discussed

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1 that, yes.

2 MR. KLINE: Okay. Did you review the Forbes'
3 article?

4 MR. LeGRANT: The what?

5 MR. KLINE: The Forbes Magazine article.

6 MR. LeGRANT: You have to remind me, what did that
7 --

8 MR. KLINE: Well, let me read you from it. Let
9 me read from it to you and get your reaction to that.

10 CHAIRPERSON HILL: Mr. Kline?

11 MR. KLINE: Yes.

12 CHAIRPERSON HILL: I got you. And I want to hear
13 what you have to say because I'm just curious. But I just
14 want to point out again, you're not necessarily supposed to
15 be giving testimony. You're supposed to be asking questions
16 of whatever it was that Mr. LeGrant gave testimony on.

17 MR. KLINE: I understand, but this goes to -- I
18 mean, this is the question. I've got to set up the question,
19 you know, by what's in this article.

20 CHAIRPERSON HILL: Okay.

21 MR. KLINE: It says that there's an emerging
22 consensus that the agriculture industry needs to adapt to use
23 less water and chemicals, make crops less vulnerable to
24 change in the climate and produce more reliable yields. Part
25 of the answer may lie in the emerging startups growing

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1 produce in indoor environments where growing conditions can
2 be better managed. Now that describes not only food
3 production, but it also describes what we're talking about
4 here, doesn't it?

5 MR. LeGRANT: Well, you're talking about --

6 MS. BROWN: I would just state for the record that
7 I'm not sure if counselor is asking for Mr. LeGrant's expert
8 opinion on growing cannabis because I don't know that he's
9 experienced enough to provide testimony on a Forbes article
10 about industry best practices.

11 CHAIRPERSON HILL: I'm just going to ask Mr. Kline
12 to simplify his question because I was trying to follow
13 along. Like your question was whether or not cannabis -- I'm
14 sorry. Whether or not, you know, the fact that they're
15 growing tomatoes in a hydroponic environment is the same
16 thing as growing cannabis in a hydroponic environment.
17 That's your question?

18 MR. KLINE: That's fair. I was going to get
19 there, but you got there more quickly than I did.

20 MR. LeGRANT: Well, the thing --

21 MR. KLINE: Mr. LeGrant, so is growing hydroponic
22 tomatoes in a controlled indoor environment any different
23 than growing cannabis in a controlled indoor environment?

24 MR. LeGRANT: From a zoning regulations point of
25 view, yes.

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1 MR. KLINE: It is different. Okay. And why is
2 it different?

3 MR. LeGRANT: As previously testified, one of the
4 factors of this distinguishable -- between tomatoes and
5 cannabis is the nature of the material and its highly
6 regulated substance.

7 MR. KLINE: Okay. So we come back to the highly
8 regulated. I mean, I think some of the substance, that's
9 what we keep coming back to.

10 CHAIRPERSON HILL: And also the -- just the -- and
11 the totality of the whole thing.

12 MR. LeGRANT: Right.

13 CHAIRPERSON HILL: Sorry.

14 MR. KLINE: Now what if someone came to you and
15 wanted to grow poppies? What would be your decision with
16 respect to the cultivation of poppies?

17 MR. LeGRANT: Poppies?

18 MR. KLINE: Yeah.

19 MR. LeGRANT: Well, there's many different types
20 of poppies, Mr. Kline.

21 CHAIRPERSON HILL: Mr. Kline, he can't speak to
22 hypothetical anyway. I just know that he's going to -- do
23 you know how many questions -- I have a 4 o'clock cut-off
24 and, you've got a fascinating camera there that's like moving
25 back and forth. I've got to get me one of them. Do you know

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1 how many questions you have, Mr. Kline?

2 MR. KLINE: Just a few more.

3 CHAIRPERSON HILL: Okay.

4 MR. KLINE: Just a few more.

5 CHAIRPERSON HILL: Okay.

6 MR. KLINE: When you were asked about your
7 decisions to use -- your decision concerning allowing brew
8 pubs and wine pubs and what have you as an accessory use,
9 which I concede it is not before the Board at this point, you
10 said that distinguishing factor was onsite consumption was
11 available at those locations, correct?

12 MR. LeGRANT: That's one. I noted that factor,
13 yes.

14 MR. KLINE: Okay. So if onsite consumption of
15 cannabis were allowed at a cultivation site similar to what
16 is allowed with respect to distilleries, breweries and wine-
17 making facilities, which are unquestionably manufacturing,
18 that would change things in your mind?

19 MR. LeGRANT: Well, again, the question in the
20 appeal was not about an accessory use. And that's what the
21 brew pub scenario entails is an accessory use. I'm not sure
22 I can speak to that.

23 MR. KLINE: All right. You've been a Zoning
24 Administrator, I think you said for 16 years, correct?

25 MR. LeGRANT: Correct.

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1 MR. KLINE: And during the course of that, you've
2 had determinations that were reversed either by this Board
3 or the DC Board of Appeals, correct?

4 MR. LeGRANT: On occasion, yes.

5 MR. KLINE: On occasion. I know you're good, and
6 you're usually right. And some of those may have been
7 longstanding determinations, correct?

8 MR. LeGRANT: Yes.

9 MR. KLINE: Okay. So the fact that there's a
10 longstanding determination is really irrelevant as to what
11 the law may be as determined by this Board or the Court of
12 Appeals, isn't it?

13 MR. LeGRANT: That's up to the Board.

14 MR. KLINE: Right. But consistently wrong is
15 still wrong, isn't it?

16 MR. LeGRANT: I'm going to agree with you on that.
17 Consistently wrong is wrong.

18 CHAIRPERSON HILL: Consistently right is right.

19 MR. KLINE: I think --

20 CHAIRPERSON HILL: All right, Mr. Kline, go on.

21 MR. KLINE: That's all I have.

22 CHAIRPERSON HILL: Okay.

23 MR. KLINE: If you just beg my indulgence one
24 second --

25 CHAIRPERSON HILL: Yes.

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1 MR. KLINE: -- to make sure I haven't missed
2 anything. Oh, I do have a very important question. So you
3 stated that somehow the cultivation of cannabis is different
4 than the cultivation of strawberries or the cultivation of
5 lettuce, correct?

6 MR. LeGRANT: Correct.

7 MR. KLINE: All right. If we could pull up that
8 slide again that has the definition of agriculture, may we
9 do that?

10 CHAIRPERSON HILL: Which one was it or whose
11 presentation?

12 MR. KLINE: It was DCRA's presentation. I didn't
13 do the dog and pony so I don't have that.

14 MR. YOUNG: I have the presentation.

15 MR. KLINE: Thank you.

16 CHAIRPERSON HILL: Exhibit 25, Mr. Young. I'm
17 sorry, Mr. Young, are you there? I can read it.

18 MR. YOUNG: Yes.

19 CHAIRPERSON HILL: It was on exhibit --

20 MR. YOUNG: Sorry. I do. Can you read it?

21 CHAIRPERSON HILL: Exhibit 25, Slide 3.

22 MR. YOUNG: Yes, it's going to take me a minute
23 to pull it up.

24 CHAIRPERSON HILL: Okay. No problem. Mr.
25 LeGrant, like agriculture large is allowed in this zone,

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1 correct?

2 MR. LeGRANT: Correct.

3 MR. KLINE: Well, then I'll just ask him. I would
4 have liked to have it in front of us.

5 CHAIRPERSON HILL: That's all right. I can also
6 look at it, but then I'm also like light manufacturing also
7 makes sense to me, too. So I'm also -- that's why it's going
8 to take me a while to assess through. But go ahead with your
9 question, Kline.

10 MR. KLINE: Mr. LeGrant, so where is it in the
11 definition of agriculture from which you draw this
12 distinction between the cultivation of strawberries or
13 lettuce on the one hand or cannabis on the other hand? What
14 language in the agriculture definition do you point to that
15 makes that distinction?

16 MR. LeGRANT: Well, first of all, it's not a
17 definition. It's a use category. As I testified earlier,
18 it's one of 35 use categories, broad categorizations of uses.

19 As we noted in our filing, cannabis and marijuana
20 is not listed. It's not listed in this definition, in this
21 use category. And because of that aspect as well as the
22 other factors that hopefully I clarified today, the factors
23 are taken into consideration and the better fit that light
24 manufacturing is for this medical marijuana cultivation
25 center use instead of agriculture are made to -- that didn't

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1 sound like -- that are made by determination.

2 MR. KLINE: Okay. Are strawberries listed with
3 respect to agriculture?

4 MR. LeGRANT: No, no. And strawberries nor
5 tomatoes nor lettuce, the things we've just talked about
6 today, I would say that they're all produce perhaps.

7 MR. KLINE: In fact, there are no specific crops
8 that are mentioned are there?

9 MR. LeGRANT: Except flowers, I guess.

10 MR. KLINE: Well, aren't there many different
11 types of flowers? Aren't there cannabis flowers?

12 MR. LeGRANT: There are many types of flowers
13 including cannabis flowers. That's correct.

14 MR. KLINE: So the fact that cannabis is not
15 listed is really immaterial, isn't it?

16 MS. BROWN: Chairman Hill?

17 MR. LeGRANT: That's not true.

18 MS. BROWN: Some of these questions have been
19 asked and answered. I would just ask that we ask --

20 MR. KLINE: I'll withdraw it.

21 MS. BROWN: -- new questions instead of repeating
22 old questions.

23 MR. KLINE: I don't think I asked him that before.

24 CHAIRPERSON HILL: Okay.

25 MR. KLINE: But that's fine. I think the point

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1 is made.

2 CHAIRPERSON HILL: Yeah.

3 MR. KLINE: I have no further questions at this
4 time.

5 CHAIRPERSON HILL: Okay. Mr. Young, do you want
6 to drop that slide deck? Commissioner Miller, can you see
7 me there? I know I'm looking at you Commissioner. I'm just
8 looking at a fellow lawyer. I just realized that I'm
9 supposed to somehow manage lawyers. I'm not a lawyer. And
10 I'm supposed to tell lawyers when they're not asking the
11 right things the right way. And they're the lawyers. I'm
12 at a disadvantage.

13 MR. KLINE: You're doing fine.

14 CHAIRPERSON HILL: Oh, thank you so much. That's
15 so kind of you. I'm looking at Commissioner Miller because
16 he is a lawyer. All right. Okay. All right. I'm back to
17 me. Okay. So we've done everything.

18 All right. So do you, Mr. Kline, have a
19 conclusion? Oh, I'm sorry. Ms. Brown, you'll get rebuttal.
20 And I do have to -- I don't know, Mr. Kline, if you get a
21 rebuttal.

22 MR. KLINE: I'm the movant. I get rebuttal.

23 CHAIRPERSON HILL: Oh, you're the movant. Okay.
24 Great. There you go. Even more -- here we go. Okay. So
25 I'm looking through the list here. So go ahead and give your

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1 rebuttal, Mr. Kline. Then Ms. Brown will have questions of
2 your rebuttal. Then we're going to get a conclusion from
3 DCRA just because I like it. And then you'll get the last
4 word, Mr. Kline, with your conclusion.

5 MR. KLINE: That's fine. The only thing I have
6 is I would ask that you take administrative notice of DC Code
7 Sections 7-1671.06(g).

8 CHAIRPERSON HILL: Give me a second, Ms. Brown.
9 You're going to have to say that much slower because I'm
10 going to have to write it down.

11 MR. KLINE: I'm happy to, yeah. DC Code Section
12 7-1671.06, which is entitled Dispensaries and cultivation
13 centers, specifically subsection g --

14 CHAIRPERSON HILL: Subsection what?

15 MR. KLINE: Subsections g, g-1 and I think that's
16 it, g and g-1 and then the supply says --

17 CHAIRPERSON HILL: D as in dog?

18 MR. KLINE: As in George, sorry.

19 CHAIRPERSON HILL: G as in George and G as in
20 George dash 1?

21 MR. KLINE: Yes, sir. Thank you.

22 CHAIRPERSON HILL: Okay. And then keep going.
23 What did you say? What about it?

24 MR. KLINE: And what they say is, and something
25 we talked about, a dispensary, cultivation center or testing

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1 laboratory shall not locate in any residential district or
2 within 300 feet of a preschool, primary or secondary school
3 or recreation center. And then g-1 says within a retail
4 priority area as approved by the Council pursuant to the
5 Great Streets Neighborhood --

6 CHAIRPERSON HILL: And, counsel, you're mentioning
7 this in rebuttal why?

8 MR. KLINE: I mention because it was discussed and
9 raised with respect to other restrictions on the locations
10 of marijuana and cannabis dispensaries and cultivation
11 centers and reflects that the Council of the District of
12 Columbia, and I understand that the Planning Commission has
13 separate authority with that, but I'm only pointing out that
14 there was thought that was given as to where these might be
15 located by the Council for the District of Columbia and the
16 Council for the District of Columbia did not seek to restrict
17 it further, which does not bind you. But I think it is
18 something that perhaps you could take into consideration.

19 CHAIRPERSON HILL: Okay. That's your rebuttal?

20 MR. KLINE: That's my rebuttal. Thank you.

21 CHAIRPERSON HILL: Okay. Ms. Brown, do you have
22 any questions on rebuttal?

23 MS. BROWN: I have no questions on rebuttal,
24 Chairman Hill. Thank you.

25 CHAIRPERSON HILL: Okay. Ms. Brown, do you want

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1 to give us a conclusion and then Mr. Kline, you can give a
2 conclusion.

3 MS. BROWN: Yes. Okay. Chairman Hill and members
4 of the Board, I will be brief in offering a closing statement
5 today. You heard from the Zoning Administrator who testified
6 regarding how medical marijuana is different from other
7 agricultural uses and why. Based on his longstanding
8 interpretation of the zoning regulations, he determined that
9 medical marijuana cultivation is appropriate as a light
10 manufacturing use in a PDR Zone.

11 The Zoning Administrator's determination was not
12 arbitrary in this instance. Mr. LeGrant testified that he
13 considered the activities, the facilities, the equipment, the
14 conditions required for medical marijuana cultivation to
15 occur to the best of his knowledge based on previous cases,
16 and he did this with the goal -- excuse me. And this was
17 done in consideration of the highly regulated pharmaceutical
18 product that would be produced on the site.

19 The testimony today shows that Mr. LeGrant has
20 consistently categorized medical marijuana cultivation in
21 this way before, and this determination has survived over the
22 years. The record shows that the Zoning Administrator has
23 provided the same zoning interpretation in the context of
24 amendments to the legislation governing medical marijuana,
25 and he has provided it to applicants before.

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1 It should also be noted that the ANC report that
2 was submitted in this case is not in support of the appeal,
3 which should be given great weight.

4 For the reasons stated in our brief and at the
5 hearing today, we ask you to uphold Mr. LeGrant's zoning
6 determination and to deny the appellant's appeal. Thank you
7 for your time and consideration.

8 CHAIRPERSON HILL: Thank you, Ms. Brown. Mr.
9 Kline?

10 MR. KLINE: Yes. Mr. Chairman and members of the
11 Board, first I want to say that I have great respect for Mr.
12 LeGrant, and I don't want anything or any of my questions
13 today to be construed otherwise. I've worked with him many
14 times. He's very thoughtful. And I think he does a terrific
15 job. And I think the fact that he's been Zoning
16 Administrator for 16 years certainly is testament to that
17 fact.

18 Be that as it may, I don't think he got it right
19 this time. I think that the discussion that we've had today
20 was a very thoughtful one. And I think it is very
21 interesting. And I think it's one that should be handled by
22 regulators not by those interpreting the plain language of
23 a regulation. And that's the difference.

24 I'm not discounting in any way the concerns that
25 Mr. LeGrant has. I think they're perfectly appropriate to

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1 consider in the appropriate context. And that context, as
2 I said, would be the consideration of zoning regulations to
3 in some way regulate activity. But that's not what we're
4 here to do. That was not Mr. LeGrant's charge in this case.

5 His charge in this case was to look at the
6 language that's contained in the regulations and make a
7 determination based on that language. Now in the first
8 instance, the plain language doctrine rules. And the plain
9 language doctrine says that if you read it and it's clear on
10 its face, you don't look at all these other considerations.
11 You are charged with enforcing and administering the intent
12 of the statute drafter or in this case the rule maker.

13 And in this case we have a definition for a use
14 category, as Mr. LeGrant rightly points out, of agriculture,
15 which clearly encompasses the cultivation of crops, the
16 cultivation of flowers, which includes cannabis. And I don't
17 even -- all of these discussions about the impact and
18 everything else, none of that changes the plain language and
19 the fact that cannabis is clearly agriculture.

20 So then we turn to light manufacturing, which as
21 Mr. LeGrant properly points out, is his category. And if you
22 look at what's encompassed in light manufacturing, that's not
23 what we're dealing here. We're talking about growing plants
24 and cultivating them and then packaging them for sale much
25 like, and we beat it to death, strawberries, lettuce or any

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1 crop that you would grow.

2 And the fact that it's cannabis and the fact that
3 it's regulated, there isn't anything in the zoning
4 regulations that says it is to be treated differently because
5 it's regulated. And there isn't anything in the zoning
6 regulations which says that it's to be treated differently
7 because it's going to be done indoors. That's simply not
8 there.

9 And perhaps Mr. LeGrant is right, it should be.
10 But there's an appropriate avenue or venue to do that and
11 it's not in misinterpreting the clear language of the
12 statute. It's like drafting clear and concise regulations
13 so people are on notice as to what's expected of them and
14 what they're allowed to do in the variance zones in the
15 District of Columbia.

16 And just in closing I want to point out, there is
17 seems to be -- oh, this is a regulated activity, and we're
18 concerned and then there's complaints that it's being done
19 indoors. It would seem to me the fact that it's being done
20 indoors would mitigate against the very concerns that have
21 been expressed. I think that's an aside, and I don't think
22 it goes to any point. But it just shows that in terms of
23 interpreting the statute, we're far afield or Mr. LeGrant
24 seems to be far afield, which he rarely is.

25 And, you know, I have to say I have the utmost

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1 confidence in him. I want that to be clear. I just think
2 he got it wrong this time. And based upon the law as applied
3 to the cultivation of cannabis, we would respectfully request
4 that you reverse the Zoning Administrator's determination and
5 allow a zoning certification or direct Mr. LeGrant to provide
6 a zoning certification that this use is permissible at this
7 location. Thank you.

8 CHAIRPERSON HILL: Thank you. Okay. Thanks,
9 everybody. I'm going to see what my fellow Board members
10 would like to do. Do you all -- I have to take a call at 4
11 o'clock. Do you all want to -- do you all need anything
12 else? I'm looking at my Board members, at least right now.
13 Okay. The answer is no.

14 Do you all need more time than a week? Okay. I
15 got one shaking their head. Okay. Let's put this on for a
16 decision next week. And then if we somehow decide we need
17 something, we can figure it out then and we'll just do it for
18 that for now. Okay?

19 So I really appreciate everybody's time today.
20 I appreciate everybody's testimony. This has been very
21 informative and interesting because it's obviously an
22 interesting subject matter. It's not tomatoes. It's
23 actually more interesting than tomatoes.

24 And so we're going to let everybody go. I'm going
25 to close the hearing on the record, Mr. Moy. Thank you all

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1 very much.

2 MR. KLINE: Thank you, Mr. Chair. Thank you,
3 Board members. I appreciate that.

4 MS. BROWN: Thank you, Chair. Thank you.

5 CHAIRPERSON HILL: Thank you. You all have a nice
6 day. Mr. Moy, this is on for a decision next week. And do
7 you need anything else from me, Mr. Moy?

8 MR. MOY: No, sir.

9 CHAIRPERSON HILL: Okay. It is 4 o'clock. I've
10 actually --

11 MR. PICKETT: Mr. Hill, can I just in real quick?

12 CHAIRPERSON HILL: Mr. Norbert, I already closed
13 the hearing in the record.

14 MR. PICKETT: Okay.

15 CHAIRPERSON HILL: So you would have to talk to
16 your counsel if you want to add anything else at this point.

17 MR. PICKETT: Okay. Great. All right. Thank
18 you.

19 CHAIRPERSON HILL: All right. Let's see. Thank
20 you, Mr. Norbert. Sorry. Speak to your counsel. All right,
21 Mr. Moy, I'm going to adjourn us. Is that good, Mr. Moy?
22 Are we done?

23 MR. MOY: Yes. We're done for the day. And I
24 don't have anything else for you for the Board.

25 CHAIRPERSON HILL: Okay. You guys, I'll see all

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1 next week or at least I'll see some of you next week.

2 MR. MOY: Well, Tuesday.

3 CHAIRPERSON HILL: Or Tuesday. Okay. Great.

4 Bye.

5 (Whereupon, the above-entitled matter went off the
6 record at 4:00 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

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