

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 30, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:49 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
MATT JESICK
JONATHAN KIRSCHENBAUM
STEPHEN MORDFIN
CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing on March 30, 2022.

CONTENTS

Application No. 20631 of 723 Morton, LLC	4
Application No. 20547 of 1005 Rhode Island Avenue NC Partner LLC	14
Application No. 20655 of 20th and Channing NE, LLC	46
Application No. 20646 of Paul Davidson	49
Application No. 20651 of Arie Albright and Shannon Blair	64
Application No. 20542 of Hossein Barekatain & Fardin Foroujan	83
Application No. 20657 of Laurie and Adam Sieminski . .	87
Application No. 20606 of Christopher Brown	95
Application No. 20592 of John and Linda Reveal	103
Appeal No. 20656 of Dupont East Civic Action Association	149

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

2 (10:49 a.m.)

3 CHAIRPERSON HILL: Thank you, Mr. Moy. You may
4 call our first hearing case when you get a chance.

5 MR. MOY: Sorry, Mr. Chairman. I was checking my
6 notes on this so --

7 CHAIRPERSON HILL: Okay.

8 MR. MOY: All right. The Board is into -- is in
9 its public hearing session. First case is Application Number
10 20631 of 723 Morton, LLC. This is the Applicant's request
11 for special exceptions from the following; minimum lot
12 dimension requirements, Subtitle E Section 201.1, and
13 pursuant to Subtitle E Section 201.4, Subtitle E Section 52-
14 06, and Subtitle X Section 901.2, rear yard addition
15 requirements, Subtitle E Section 205.4, pursuant to Subtitle
16 E Section 205.5, Subtitle E Section 52-01, and Subtitle X
17 Section 902.1, this will construct two attached three-story
18 with cellar and roof deck, flats in the RF-1 Zone, property
19 located at 723 Morton Street NW, Square 2894, Lot 91.

20 As Chair recalled, this application was heard at
21 the Board's hearing on February the 16th, and the Board
22 continued the hearing to today, March 30th.

23 CHAIRPERSON HILL: Okay. Ms. Wilson, can you hear
24 me?

25 MS. WILSON: Yes.

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1 CHAIRPERSON HILL: Can you --

2 MS. WILSON: Alex Wilson. I was going to go ahead
3 and introduce myself. Alex Wilson from Sullivan & Barros on
4 behalf of the Applicant.

5 CHAIRPERSON HILL: Okay. Great. Commissioner
6 Wray, are you there?

7 COMMISSIONER WRAY: Good morning. Yes.
8 Commissioner Wray from ANC 1A.

9 CHAIRPERSON HILL: Okay. Great. Thank you. All
10 right. Ms. Wilson, if you want to go ahead and tell us what
11 happened since the last time you were here. Maybe let's
12 start with that. Why don't you start with that?

13 MS. WILSON: Sure. So at the previous hearing,
14 we were requesting variance relief to subdivide because we
15 didn't have 32 feet of lot width. But since then, the
16 Applicant purchased about seven inches of lot width from the
17 adjacent property owner, and now we have the ability to
18 subdivide via special exception into two 16-foot wide lots
19 under the IZ voluntary special exception requirements of E
20 201.4.

21 CHAIRPERSON HILL: Okay.

22 MS. WILSON: And we also got a determination from
23 the Zoning Administrator that our proposal was submitted to
24 be approved via special exception.

25 CHAIRPERSON HILL: Okay. I apologize. Did we

1 walk through -- fully through your presentation the last
2 time? I didn't think so.

3 MS. WILSON: No.

4 CHAIRPERSON HILL: Okay. Do you want to go ahead
5 and walk us through your presentation -- and I have it pulled
6 up -- and why you believe your client is meeting the
7 standards for us to grant the relief requested? I am going
8 to put 15 minutes on the clock so I know where we are, and
9 you can begin whenever you like.

10 MS. WILSON: Great. Thank you. Mr. Young, would
11 you be able to pull up our presentation? Thank you. If you
12 go to the next slide, please?

13 The proposal is to create two new record lots
14 measuring 16 feet each and each improved with a flat. As I
15 mentioned at the previous hearing, we were seeking variance
16 relief, but now we are simply seeking special exception
17 relief in order to subdivide. And so both buildings are
18 considered one IZ development, and we are seeking relief
19 under E 201.4 subject to E 5206.2. And that is reviewed
20 under the general special exception requirements.

21 We are also seeking relief from the 10-foot rule
22 for the building on Lot B, and that is reviewed under E 52-
23 01. Next slide, please.

24 These are just showing photos of the existing lot
25 which is currently unimproved, and both adjacent neighbors

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1 are in support, and the ANC is also supporting. Next slide,
2 please. This is just another photo of the property. Next
3 slide, please. This is the rear of the property and the
4 adjacent property. Next slide, please.

5 The proposal meets the general special exception
6 requirements as the use itself is permitted by right. Each
7 of these buildings will be a flat. This is a row house
8 district, and we are proposing two row dwellings where
9 there's currently nothing. This lot has been vacant for, I
10 think, 10 years at least, and we are providing one IZ unit
11 which meets all of the criteria for approval under Subtitle
12 C Chapter 10. Next slide, please.

13 In terms of the specific requirements as E 52-01,
14 the shot of cities in the record demonstrate that the light
15 and air available to neighboring properties to the east won't
16 be unduly affected. There are no proposed windows on the
17 respective side to the proposed building, and there are other
18 taller buildings, the rear along the alley. The design was
19 reviewed and supported by the ANC. We do have shadow studies
20 and plans in the next slide if you're interested, or we can
21 pull up certain plans if there are specific questions. Thank
22 you.

23 CHAIRPERSON HILL: Go ahead. Yes, just -- you
24 don't have to go through the shadow studies, Ms. Wilson.

25 MS. WILSON: You would like to see the shadow

1 studies?

2 CHAIRPERSON HILL: You do not, no.

3 MS. WILSON: Okay. Great. So if you have any
4 questions, we do have plans on the next slide, and we're able
5 to answer other questions.

6 CHAIRPERSON HILL: Why don't -- Ms. Wilson, why
7 don't you drop -- Mr. Young, can you drop the slide back?
8 Let's see if my fellow Board members have any questions. The
9 only question I have, you guys bought seven inches, right,
10 is that what -- or that your car is in? And so I'm just kind
11 of curious just because it seems to me like there's buildings
12 built on both sides. Where did the seven inches come from?

13 MS. WILSON: So the neighbor to the left, their
14 building does not go to that lot line.

15 CHAIRPERSON HILL: Okay.

16 MS. WILSON: So we were able to purchase that
17 space between which I think will be better overall, because
18 then you don't have a seven-inch gap.

19 CHAIRPERSON HILL: Yes -- no, no, no. I just --
20 it seemed odd to me that they didn't build to lot line.

21 MS. WILSON: Yes.

22 CHAIRPERSON HILL: So that's why -- I just don't
23 understand but okay. Mr. Blake?

24 MEMBER BLAKE: Yes. Just a clarification. That
25 seven inches goes the entire length of the lot, is that a

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1 portion or this is the entire length?

2 MS. WILSON: So it goes to 33 feet and lot width
3 is measured to a point 30 feet back, so it still is
4 considered within the lot length.

5 CHAIRPERSON HILL: Anyone else? Can I turn to the
6 Office of Planning, please? Oh, sorry, Commissioner.
7 Commissioner Wray?

8 COMMISSIONER WRAY: Good morning. The ANC voted
9 in support. We've seen these plans a couple of times. We're
10 very happy they were willing to work with us. We know that
11 the neighbors are also in support of the plans as you're
12 going to see them. And we would have supported it if it
13 needed the variance, but we're very happy we got to the
14 special exceptions, so thank you.

15 CHAIRPERSON HILL: Commissioner, thanks for time,
16 for coming out, right. So it's still pending? Like I mean
17 you guys just want to see that thing developed, huh?

18 COMMISSIONER WRAY: Well, yes. I will clarify that
19 the property that was built there, there was a property there
20 for the last 10 years. The city had to knock it down because
21 the person -- the developer built it completely without
22 permits and totally against the zone. So there was nothing
23 about it that could have stayed. So we're happy to see it
24 gone, and we're very happy to see this come in place.

25 CHAIRPERSON HILL: Is that something that came

1 through -- they tried to come through us? No.

2 COMMISSIONER WRAY: I don't know if they ever tried
3 to get a BZA hearing. The -- I don't think it would have
4 gotten through, and they built an 8-unit apartment house in
5 a zone that's only for three-story row homes.

6 CHAIRPERSON HILL: Got it. Is this your SMD
7 Commissioner?

8 COMMISSIONER WRAY: It is. I live on the block.

9 CHAIRPERSON HILL: Oh. I was up there up not too
10 long ago. It's a lovely neighborhood.

11 COMMISSIONER WRAY: If you're at Book Hall, I'll --
12 I'd understand that.

13 CHAIRPERSON HILL: That's exactly correct. All
14 right. Okay. Let's see. Oh, can I hear from the Office of
15 Planning, please?

16 MR. MORDFIN: Good morning. I'm Stephen Mordfin
17 with the Office of Planning, and the Office of Planning is
18 in support of this application with the Applicant's purchase
19 of the seven inches as originally intended, the issues having
20 to do with how you can reduce the lot width for opting to
21 inclusionary zoning go away. So, therefore, we find that
22 this application is in conformance with the criteria for both
23 opting into the inclusionary zoning and also for going more
24 than 10 feet back from the rear wall of the adjacent property
25 to the east. So with that, we support the application.

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1 CHAIRPERSON HILL: Mr. Mordfin?

2 MR. MORDFIN: Yes.

3 CHAIRPERSON HILL: You guys were in denial of the
4 variance, right?

5 MR. MORDFIN: That is correct.

6 CHAIRPERSON HILL: And so while I'm glad -- well,
7 I shouldn't say I'm glad -- it would have been an interesting
8 argument, Mr. Mordfin. That's all I'll say. All right.
9 Does anybody have any questions for the Office of Planning?
10 Okay. Mr. Young, is there anyone here wishing to speak?

11 MR. YOUNG: I do not.

12 CHAIRPERSON HILL: Okay. Ms. Wilson, is there
13 anything you want to add at the end?

14 MS. WILSON: No, thank you.

15 CHAIRPERSON HILL: Commissioner Wray, is this all
16 we have for you today?

17 COMMISSIONER WRAY: It is. Thank you. Hope you
18 have a good day, Commissioner. Bye now.

19 CHAIRPERSON HILL: All right. Okay. I'm going
20 to go ahead and close the hearing on the record. I actually
21 think that they meet the criteria for us to grant the special
22 exception. I thought that -- I really -- I like the project.
23 I mean I think that it would -- and I now that Commissioner
24 Miller would have had more things to be interested in in
25 terms of if this had been a variance and the argument about

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1 this particular project, and it's participating with the IZ
2 program and that I just think it's odd that whole 7-inch
3 thing that had to get resolved, but I'm glad it got resolved.
4 However, beyond that, I do think they meet the criteria for
5 us to grant the leave requested. I am also going to give
6 great weight to the report that has been given to us from the
7 ANC as well as the announcement that has been provided by the
8 Office of Planning's report and will be voting in favor. I'm
9 going to start with Mr. Smith if that's okay.

10 MEMBER SMITH: Sure. I have nothing to add. I
11 completely agree with your analysis on this. I will just
12 state that we do have letters in support from the adjacent
13 property owners who are, you know, in favor and comfortable
14 with this -- the size and scope of this building being
15 located between them. And the ANC is also in support. So
16 with that, I give great weight OP's staff report as well.
17 I will support the application.

18 CHAIRPERSON HILL: Thank you. Mr. Blake?

19 MEMBER BLAKE: Yes. I would agree with all the
20 comments that you and Board Member Smith made with regard to
21 the standards, and I do believe the Applicant -- which I do
22 believe the Applicant has met. I also would add that DDOT
23 has no objection, and I will be voting of favor of granting
24 them.

25 CHAIRPERSON HILL: Thank you. Commissioner

1 Miller?

2 COMMISSIONER MILLER: Thank you, Mr. Chair. I
3 concur with all of your comments and think that this is a
4 good project, good in sale development project with the
5 outpatient in inclusionary zoning. Thank you.

6 CHAIRPERSON HILL: Thank you. Vice Chair John?

7 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have
8 nothing to add. With the amended application, it now becomes
9 a very straightforward application.

10 CHAIRPERSON HILL: Thank you, Vice Chair John.
11 I'll go ahead and make a motion to approve Application Number
12 20631 as captioned and read by the secretary and ask for a
13 second. Ms. John?

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: The motion is made and
16 seconded. Mr. Moy, if you could take a roll call?

17 MR. MOY: When I call each of your names, if you
18 would please respond with a yes, no, or abstain to the motion
19 made by Chairman Hill to approve the application for the
20 relief that is requested. The motion to approve was seconded
21 by Vice Chair John. Zoning Commissioner Rob Miller?

22 COMMISSIONER MILLER: Yes.

23 MR. MOY: Mr. Smith?

24 MEMBER SMITH: Yes.

25 MR. MOY: Mr. Blake?

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1 MEMBER BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Staff would record the vote as 5-0-0 and
7 this is on the motion made by Chairman Hill to approve.
8 Motion to approve was seconded by Vice Chair John also in
9 support of the motion to approve, Zoning Commissioner Rob
10 Miller, Mr. Smith, Mr. Blake, and of course Chairman Hill.
11 Again, the motion carries on the vote of 5-0-0.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
13 When you have an opportunity again, Mr. Moy, please feel free
14 to call the next case.

15 MR. MOY: The next application before the Board
16 is Case Number 20547 of 1005 Rhode Island Avenue NE Partner
17 LLC. This is the Applicant's request for special exceptions
18 from the matter-of-right uses of Subtitle you Section 401,
19 pursuant to Subtitle U Section 421 and Subtitle X Section
20 901.2; maximum permitted floor area ratio of Subtitle F,
21 Section 302, pursuant to Subtitle F Section 302.3, Subtitle
22 F Section 5206.1, and Subtitle X Section 901; and finally,
23 from the penthouse setback requirements of Subtitle C Section
24 1504.1(c)(1), pursuant to Subtitle C Section 1506.1 and
25 Subtitle X, Section 901.2. This would raise an existing two-

1 story principal dwelling unit and construct a new detached
2 three-store with penthouse and cellar, 8-unit apartment house
3 in the RA-1 Zone, property located at 1005 Rhode Island
4 Avenue, NE, Square 3870, Lot 48.

5 As you will recall, the Board last heard this case
6 on February the 16th and scheduled a limited scope hearing
7 for today's hearing.

8 CHAIRPERSON HILL: Okay. Great. Mr. Freeman, can
9 you hear me?

10 MR. FREEMAN: Yes, I could. Good morning.

11 CHAIRPERSON HILL: Good morning. Could you
12 introduce yourself for the record, please?

13 CHAIRPERSON HILL: Good morning. Kyrus Freeman
14 with the law firm of Holland & Knight on behalf of the
15 Applicant. My colleague Chris Cohen who's working on this
16 case is also on. I think you can see his image here.

17 CHAIRPERSON HILL: Okay. Great. And is it
18 Commissioner Oliver?

19 MS. OLIVER: Yes.

20 CHAIRPERSON HILL: Commissioner, could you
21 introduce yourself for the record?

22 MS. OLIVER: I'm sorry, I didn't hear you.

23 CHAIRPERSON HILL: That's okay. Could you
24 introduce yourself for the record?

25 MS. OLIVER: Oh, yes. I am ANC Commissioner

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1 Darlene Oliver, 5D05.

2 CHAIRPERSON HILL: Okay. Good morning,
3 Commissioner. Thanks for joining us. Let's see. Mr.
4 Freeman, could you tell us what happened since the last time
5 you were here?

6 MR. FREEMAN: Sure. So at the conclusion of the
7 last hearing, you asked the Applicant to file a construction
8 management plan, which we did. That's included as Exhibit
9 60A in the record. At that point, the Applicant had not met
10 with the ANC, although we've met within a series of meetings
11 but ultimately we went to meet with the ANC. Commissioner
12 Oliver can speak for the ANC report, but they voted to
13 approve the project that's included as Exhibit 61 in the
14 record. And our response to that ANC vote is included as
15 Exhibit 63 in the record.

16 CHAIRPERSON HILL: Okay. Great. Let's see. Mr.
17 Freeman, I think -- did you guys go through your full
18 presentation?

19 MR. FREEMAN: Yes, sir. We did a full
20 presentation, OP at 0 -- 057.

21 CHAIRPERSON HILL: Okay. Could you do me a favor
22 and go through again just -- I mean I know that I got -- I
23 don't know if you're prepared to do so or not, but just go
24 through your slide deck and go over again the regulations
25 real quick?

1 MR. FREEMAN: Sure. I would ask Mr. Young then
2 if he could pull up Exhibit -- give me a second, I believe
3 it would be --

4 CHAIRPERSON HILL: It's -- 57 --

5 MR. FREEMAN: -- 57.

6 CHAIRPERSON HILL: -- 57.

7 MR. FREEMAN: And I will try to get through it
8 timely since you've seen this already.

9 CHAIRPERSON HILL: Yes.

10 MR. FREEMAN: All right. Just as a reminder, this
11 is an image of the proposed development. We're replacing an
12 existing single-family home with an 8-unit building. Next
13 slide, please.

14 Site location is mid-block south side of Rhode
15 Island Avenue. It's zoned RA-1 which is it tries to permit
16 low rise apartments. We've identified here a number of other
17 BZA cases for very similar -- pursuant to which the Board
18 approved very similar relief. Next slide, please. Existing
19 conditions; it's the site of the yellow house. Next slide,
20 please. So what are we asking for? We're asking for a
21 special exception to allow new residential development in a
22 RA-1 zone. We're asking for a special exception -- and I
23 should say that's a standard special exception. Any multi-
24 family project in the RA-1 zone needs that relief. We're
25 asking for a special exception to essentially opt in to IZ.

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1 I think you just approved that same relief for a similar
2 project, the prior case. The FAR is 1.08. So we're asking
3 for special exception relief, and this is important not to
4 Hamilton House but because the east side of the penthouse
5 does not meet the setback requirement. The penthouse is five
6 -- the penthouse is 10 feet. Our setback at the east edge
7 is 5'11", so we're asking for special exception relief from
8 that.

9 As I mentioned, as you might recall from the last
10 time around, the Office of Planning recommended support with
11 no conditions. DDOT recommended support with one condition,
12 that we provide the required bike spaces which we are doing,
13 and they're shown on our plan. Next slide, please.

14 CHAIRPERSON HILL: Yes. Mr. Freeman?

15 MR. FREEMAN: Sir?

16 CHAIRPERSON HILL: That's great. I mean that's --
17 I wanted to hear that, a recap of that one. And then if you
18 would just kind of again show me where the IZ unit is?

19 MR. FREEMAN: Next slide, please? The IZ unit is
20 -- let me double-check. It's on the first floor I think it
21 says in the report. That's likely right. I wanted to tell
22 you the exact location, the square footage of the unit. If
23 you give me just one second to get -- answer that. IZ unit
24 is first level, Unit 102. It's a two-bedroom, two-bath unit
25 that's 848 --

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1 CHAIRPERSON HILL: Okay.

2 MR. FREEMAN: -- square feet.

3 CHAIRPERSON HILL: Got that, see that. And if you
4 want to go to slide -- just to slide 8 and 9

5 MR. FREEMAN: Sure. Mr. Young, 8 and 9?

6 CHAIRPERSON HILL: Go to 9, Mr. Young.

7 MR. FREEMAN: Well, let -- if I can show you just

8 --

9 CHAIRPERSON HILL: Sure. Go ahead. Which one?

10 MR. FREEMAN: -- one thing on this. So
11 importantly, the relief is not to have a penthouse. The
12 relief is from the setback requirements along the east edge
13 of the roof. I mean this is important because it comes up
14 in the ANC report. This penthouse is only accessible by the
15 units below. It's not a real penthouse. It's not a
16 recreation space for the entire building. It only provides
17 access for the units below. Next slide, please.

18 These are just some images of the site from the
19 rear, and this is intended to show, in our view, substantial
20 difference from other properties across the alley. Next
21 slide, please. Is this the slide you wanted to see, Mr. --

22 CHAIRPERSON HILL: Yes. Just do 9, 10, 11, and
23 12.

24 MR. FREEMAN: Sure. So for the special exception,
25 again, the special exception is deemed appropriate so long

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1 as you meet the standard. Next slide. It has to be reviewed
2 by agencies including the Office of Planning and OP has a
3 report in support, and they go through all of these
4 conditions.

5 Next slide, please. Again, 421.1 is got to be
6 referred to a variety of agencies. That has happened in this
7 case. OP has submitted a report recommending approval. The
8 case record includes all of the information that's your 421.4
9 requirements. That's at Exhibit 52A.

10 Next slide, please. So our relief, again, we're
11 going to 1.08. That is assumed to be appropriate so long as
12 you provide one IZ unit. Again, this is an 8-unit project
13 which are otherwise subject to IZ. We are opting in to IZ
14 to provide an IZ unit in order to achieve the 1.8 that they
15 are. As noted in the OP report, the additional density
16 doesn't really have any adverse impact on air, light,
17 privacy, or any of the adjacent neighbors. Next slide,
18 please.

19 Again, penthouse is, this is new. So prior to
20 these setbacks one to one, we're only -- we're less than
21 that. We're half to half. So the penthouse is 10 feet.
22 We're at 5'11". Next slide, please. It's along the east
23 edge of the roof. All other setbacks, north, south, and
24 west, we meet or exceed the --

25 CHAIRPERSON HILL: Okay. That's good, Mr.

1 Freeman. I'm sorry. I just wanted to hear a couple of those
2 other things.

3 MR. FREEMAN: Sure.

4 CHAIRPERSON HILL: And the Board can also ask
5 their questions, because they have the slide deck as well.
6 Before you move the slide deck, does the Board have any other
7 issues from the slide deck and if so, raise your hand. I'm
8 looking at your pictures. Oh, Vice Chair John?

9 VICE CHAIR JOHN: Yes. I wanted to hear more
10 about how the Applicant meets 1506.1(c). I believe that's
11 requirement for granting relief.

12 MR. FREEMAN: Hold on. Give me a second. Is it
13 the next slide?

14 VICE CHAIR JOHN: I don't know. It's 1506.1(c)
15 1204, describe the requirement for relief, and the Applicant
16 needs to demonstrate one of the following, if I read the
17 regulation correctly.

18 MR. FREEMAN: Oh, 15 -- I'll just look for the
19 Office of Planning report; 1506.1, granting relief. As a
20 special exception, a, grant a special exception for the
21 penthouse and setback relief will not impair the intent of
22 the regulations or have negative impacts on adjacent
23 properties. The intent of the regulations is to minimize the
24 visibility of penthouses and minimize any potential impacts
25 such as undue levels of shadow. Again, in this case, the

1 setback is just at the east edge of the roof, so instead of
2 being set back 10 feet, we're set back 5'11", and we also
3 have a side yard at that edge. The side yard normally is not
4 required but if you have one, it has to meet a certain width.
5 So along the east edge, in addition to the setback, we also
6 have the side yard setback which provides for that additional
7 light, air, and ventilation.

8 So, another point we make is that the building,
9 as a whole, is permitted. It has a total height of 40 feet
10 plus a 12-foot penthouse, so that would be 52 feet; whereas
11 in our case, our total height of building plus penthouse is
12 only 45 feet. So from a height and mass perspective, the
13 height and mass is less than what is permitted as a matter
14 of right.

15 Subtitle Section D, Applicant shall demonstrate
16 that reasonable effort has been made for the housing of
17 mechanical equipment, stairways, and elevator penthouses to
18 be in compliance with the setback. So I didn't note -- I
19 should note we've actually reduced the size of the penthouse
20 from what was initially filed to what we're showing now. So
21 that additional effort, in our view, demonstrates our efforts
22 to reasonably comply.

23 Strict application, subpart C; strict application
24 would be unduly restrictive. Again, we talk about the fact
25 that we have side yards on each side, although we aren't

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1 required to do that. I would note we don't say this in our
2 commitment, but the regulations actually changed during the
3 pendency of this application. If you recall, the penthouse
4 regulation used to require a half to half setback, which is
5 actually what we're doing here. And the regulations changed
6 during the course of this case.

7 Finally, we show that if we were to comply, our
8 stairwell would have to be shifted west, which would
9 adversely impact the layout of the units on each floor of the
10 building which runs contrary to the goal of providing kind
11 of larger units. All of these units in this project are two-
12 bedroom plus. The units on the third level are three
13 bedrooms. So in our materials, we show that the shift to
14 that stair also adversely impacts the layout of a number of
15 those units.

16 VICE CHAIR JOHN: Okay. Thank you, Mr. Freeman.
17 You only have to prove one of those four or five items, so
18 thank you.

19 MR. FREEMAN: Thank you.

20 CHAIRPERSON HILL: Okay. Mr. Young, can you drop
21 the slide deck? Commissioner Oliver, can you hear me?

22 MS. OLIVER: Yes, I can. Can you

23 CHAIRPERSON HILL: Yes, we can. Thank you.

24 MS. OLIVER: Hold on.

25 CHAIRPERSON HILL: Sure. Would you like to go

1 ahead and give your testimony?

2 MS. OLIVER: Yes, sir. In discussion with the
3 residents, they are -- and the ANC Board, they are opposition
4 to this project. The -- one of the main reasons is -- well,
5 not one of the main reasons -- a reason is the penthouse.
6 This property sits in the middle of the community, and it's
7 -- the other projects that are coming into the community are
8 6 units. This is 8 units. So it does loom over the other
9 houses, and the penthouse is going to be even higher than
10 that. The residents on both sides have major problems with
11 the penthouse having a party or any noise or trash and lack
12 of privacy up there.

13 Also, at our ANC meeting, Dr. Bowman stated he
14 reduced -- stated that he reduced the 8 units to 6 units at
15 the request of the impacted residents. When we went back and
16 looked at the BZA records, that hadn't been done. He was --
17 I don't know where he pulled that one from, but that had not
18 been done. He was stating something that wasn't true. And
19 also, if he -- the residents had asked him to just bring it
20 down and have it look like the community. It does not look
21 like the community. It stands out. It's like a sore thumb
22 in the community. So they are very, very upset. These are
23 residents who are senior citizens who have been living there,
24 some over 50 years, and they just did not want this
25 disruption to their community.

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1 When I told them -- we had to have a separate
2 meeting. We had one meeting and then when Dr. Bowman
3 announced that he would reduce 8 units to 6 units, that was
4 a surprise to me. We had to have another meeting the second
5 day so we -- so I could go back and look at the renderings
6 to make -- and -- because he stated that. And when I found
7 out, I was like, "He's not telling the truth." He did not
8 lower the units to fit into the community, which the
9 community had asked. So that was a major sore point. And
10 I think that's about it, sir.

11 CHAIRPERSON HILL: Okay. Thank you, Commissioner.
12 I'm just looking here at your guys' report. Does -- okay,
13 does the Board have any questions for the Commissioner? Vice
14 Chair John.

15 VICE CHAIR JOHN: So Commissioner, are you
16 authorized to represent ANC, what's it, is it 5C?

17 MS. OLIVER: C05.

18 VICE CHAIR JOHN: So you're the single member
19 district commissioner?

20 MS. OLIVER: Yes.

21 VICE CHAIR JOHN: So I see that the Commission
22 voted but there was no authorization for you to represent the
23 full Commission.

24 MS. OLIVER: What do you mean no authorization?

25 VICE CHAIR JOHN: Well, typically, the vote says

1 who is authorized to represent the Commission at the hearing.

2 MS. OLIVER: Is that the Form 129?

3 VICE CHAIR JOHN: Yes.

4 MS. OLIVER: It's there.

5 VICE CHAIR JOHN: It's there but maybe someone
6 else can help me take a look at it. If anyone will --

7 CHAIRPERSON HILL: Commissioner --

8 (Simultaneous speaking.)

9 VICE CHAIR JOHN: I think it affects whether or
10 not we can give the ANC report great weight. We can hear the
11 testimony but if it's -- if you're not properly authorized,
12 then we can't give your testimony great weight. I'm trying
13 to pull it up. Does anyone know where that exhibit is?

14 CHAIRPERSON HILL: I'm at Exhibit 65. I think
15 Vice Chair John, I know the report can be given great weight,
16 and I guess, you know, Commissioner's testimony will be taken
17 in the way it's taken. But the report, I do believe can be
18 given great weight and --

19 VICE CHAIR JOHN: Exhibit 61.

20 CHAIRPERSON HILL: Oh, 61. Commissioner, you guys
21 are -- your main concern is the penthouse, is that correct?

22 MS. OLIVER: The penthouse and the amount of
23 units. We had asked that he bring it down to 6 units so it
24 fits in with the ambience, let's say, of the community.

25 CHAIRPERSON HILL: Got it.

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1 MS. OLIVER: And he just flatly refused to do
2 that.

3 CHAIRPERSON HILL: Vice Chair John, are you good?

4 VICE CHAIR JOHN: Sure. If the -- sure.

5 CHAIRPERSON HILL: Okay -- okay.

6 MEMBER SMITH: I think I have just one question --

7 CHAIRPERSON HILL: Yes, Mr. Smith.

8 MEMBER SMITH: -- and it's to the ANC
9 Commissioner. Let's see. Ms. Oliver, you said that the ANC
10 and the community had some concerns about the number of
11 units. How many units is in the apartment building to the
12 east --

13 MS. OLIVER: Six.

14 MEMBER SMITH: -- that exists now?

15 MS. OLIVER: Six.

16 MEMBER SMITH: It's six, okay. And there would
17 be a development to the west that will have 18 units. Were
18 there some concerns that were raised about a density increase
19 along the block?

20 MS. OLIVER: I'm sorry, I couldn't hear you. Say
21 again?

22 MEMBER SMITH: The apartment -- there's a proposed
23 development that would allow to the west of this application
24 that we're here -- that we're speaking about now that would
25 have 18 units. Were there just some concerns about density,

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1 increased density in the neighborhood?

2 MS. OLIVER: Yes.

3 MEMBER SMITH: Okay. Thank you. That's all the
4 questions I had.

5 CHAIRPERSON HILL: Okay. Mr. Freeman, you got any
6 questions for the Commissioner?

7 MR. FREEMAN: I don't have any questions. I will
8 have a little response in rebuttal if given the opportunity.

9 CHAIRPERSON HILL: Okay. All right. Mr. Jesick,
10 are you there?

11 MR. JESICK: I'm here, Mr. Chairman.

12 CHAIRPERSON HILL: Oh, great. Thank you, Mr.
13 Jesick.

14 MR. JESICK: Okay. Great.

15 CHAIRPERSON HILL: Please introduce yourself for
16 the record, Mr. Jesick?

17 MR. JESICK: Thank you. Yes. My name is Matt
18 Jesick. I am the OP representative for this application.

19 CHAIRPERSON HILL: Okay. Does the Board have any
20 questions for the Office of Planning? Okay. Mr. Jesick,
21 I've read your report. I mean you guys aren't concerned
22 about the density, is that correct?

23 MR. JESICK: That's correct. The Applicant is
24 complying with the FAR that's permitted when providing an
25 inclusionary unit.

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1 CHAIRPERSON HILL: Okay. All right. Mr. Freeman,
2 do you have any questions for the Office of Planning?

3 MR. FREEMAN: No, Mr. Chairman.

4 CHAIRPERSON HILL: Commissioner Oliver, do you
5 have any questions for the Office of Planning?

6 MS. OLIVER: No, sir.

7 CHAIRPERSON HILL: Mr. Young, is there anyone here
8 wishing to speak?

9 MR. YOUNG: We do not.

10 MR. FREEMAN: Mr. Freeman, you seem to think --
11 I'm not saying think -- you would like to have something to
12 say at the end?

13 MR. FREEMAN: Yes.

14 CHAIRPERSON HILL: Okay. Please, go ahead.

15 MR. FREEMAN: I did just want to respond quickly
16 to the comment about the character of the neighborhood, and
17 I would point you to -- the Board has approved a number of
18 cases along Rhode Island Avenue. For example, Case Number
19 20539, which is at 1009 Rhode Island Avenue, just a couple
20 doors over, that's been approved as an 8-unit building.
21 1001, which is the next step over was also approved as an 8-
22 unit building. So as it relates to the character and context
23 of the neighborhood, the -- you should be aware that the
24 Board has approved and we cite in our Exhibit 53 an 8-unit
25 project, an 8-unit project, a 16-unit project, an 8-unit

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1 project, an 8-unit project, another 8-unit project. So our
2 proposal is consistent with that.

3 Secondly, in terms of density, density is more
4 than just number of units. It's height. It's lot occupancy.
5 It's a variety of things. So we comply with all of those.
6 And as Mr. Jesick indicated, the increase in FAR as a result
7 of the special exception is 891 square feet. That area is
8 going directly into the IZ unit. The IZ unit is 848 square
9 feet. So there may be a difference but obviously, there's
10 hallway, there's other ancillary space associated with the
11 delivery of that unit. So this increase is directly
12 attributable and presumed appropriate because it's a special
13 exception because of the provision of this affordable unit
14 within the project. And again, we're not asking for relief
15 to have a penthouse. We're asking for relief from the
16 setback along the east end.

17 So that concludes our -- my response. Again, I
18 think the record clearly indicates that we meet all of the
19 standards for relief, and we would ask that the Board approve
20 our application.

21 CHAIRPERSON HILL: Thank you. Mr. -- okay, I'll
22 get to you Mr. Blake. Mr. Freeman, what is to the right-hand
23 side of the building again right now? Is that a new
24 apartment building that was developed?

25 MR. FREEMAN: If you're looking at the site to the

1 right, there's an approved BZA case that hasn't been built
2 yet but to the left, there's a white apartment building in
3 front of --

4 CHAIRPERSON HILL: Do you know the number of units
5 that are going into the one to the right? I can't remember.

6 MR. FREEMAN: Eighteen.

7 CHAIRPERSON HILL: Okay. All right. Mr. Blake,
8 you had a question?

9 MEMBER BLAKE: Yes. I want to just go back to the
10 issue with the ANC. I certainly appreciate the comments that
11 Commissioner Oliver's pointing out. But I was looking at the
12 authorization form on this report, and it does seem to be a
13 little bit confusing in terms of who is authorizing who to
14 do what and if, in fact, the Commissioner is authorized. IT
15 looks like it's her signature and it's not authorized by the
16 Vice Chair or Chair of the ANC. So for that reason, I would,
17 too, also question whether it was, in fact, should be granted
18 great weight. I think the vote did take place but I don't
19 think the written report is appropriately documented to
20 authorize.

21 MS. OLIVER: The Vice Chair's name is on there.
22 Harry Thomas.

23 CHAIRPERSON HILL: Okay. I don't have any issues
24 with the --

25 MEMBER BLAKE: IT should --

1 CHAIRPERSON HILL: I don't have any issues with
2 the form there. If -- Ms. Nagelhout, can you hear me?

3 MS. NAGELHOUT: I can.

4 CHAIRPERSON HILL: Do you have any issues with the
5 form or the Exhibit? Do you know, do you want to take a
6 minute?

7 MS. NAGELHOUT: Yes. Which Exhibit are you
8 looking at?

9 CHAIRPERSON HILL: It's Exhibit, I think --

10 MS. OLIVER: Sixty one.

11 MS. NAGELHOUT: Sixty-one, okay.

12 CHAIRPERSON HILL: Sixty-one.

13 MS. NAGELHOUT: It requires -- just to follow up
14 with Mr. Blake -- it requires that the Chairperson or the
15 Vice Chairperson sign the form. Ms. Oliver is authorized to
16 present the report, but there is no signature by the
17 Chairperson or the Vice Chairperson. I don't know whose
18 signature appears next to -- now is that Commissioner Harry
19 Thomas's signature in the third block, Ms. Oliver?

20 MS. OLIVER: I'm not looking at the form right
21 now, but his name --

22 MS. NAGELHOUT: Did Mr. Thomas sign the report?

23 MS. OLIVER: Yes.

24 MS. NAGELHOUT: Okay. So that's his signature
25 that's there?

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1 MS. OLIVER: Yes, ma'am.

2 MS. NAGELHOUT: It's just not printed. I think
3 he signed in the wrong place. So if that's his signature,
4 I'm fine, Mr. Chairman.

5 CHAIRPERSON HILL: Okay. Mr. Blank, you got your
6 hand up.

7 MEMBER BLAKE: I did. It does seem -- I don't
8 want to go through this explanation. I would -- and again,
9 I don't want to go through it too much extent, but the
10 signature is still missing at the bottom of her signature.
11 And I think she signed it above her name appropriately, but
12 that is -- that doesn't -- and I can't represent, I'm not a
13 handwriting expert, but the signature look very similar to
14 the one -- this is an electronic signature. It's very
15 similar to the one in your DocuSign below in the written
16 statement, so I'm not clear on exactly if that is Mr.
17 Thomas's signature. I wasn't clear that Mr. Thomas was the
18 Vice Chair of the ANC.

19 CHAIRPERSON HILL: Okay. So you all realize we
20 got like a long day, you know, coming up, right, okay? Like
21 the appeal is still at the end of the day. All right. So
22 I can -- I'll let Mary go ahead and take a look -- or Ms.
23 Nagelhout -- sorry -- as to whether or not I need to leave
24 the record open for this document to be signed appropriately.
25 I believe that it's pretty clear that the ANC voted 3-0-2 not

1 to support. Is that correct, Commissioner Oliver?

2 MS. OLIVER: Correct.

3 CHAIRPERSON HILL: Okay. So that's Commissioner
4 Oliver's testimony. So I'll go ahead now and wait for Ms.
5 Nagelhout whether or not I got to keep the record open, which
6 I can go ahead and do. And then -- so outside of that, you
7 all got any more questions for the Commissioner?
8 Commissioner Miller?

9 COMMISSIONER MILLER: Thank you, Mr. Chairman.
10 Not a question for the Commissioner whose testimony I
11 appreciate, but -- and not to delay unreasonably the length
12 of your day today after yesterday's day here at BZA, but just
13 a question for Mr. Freeman to remind myself or remind -- to
14 remind me what the number of the eight units, just remind me
15 what the size is of the -- the size breakdown is and -- yeah.

16 MR. FREEMAN: Sure. So thank you for that. There
17 are eight units. They range in size from 816, 749, 870, 848,
18 870, 848, 917 plus 346, 848 plus 294. So they're -- you
19 know, they're decent square footages. They're all two-
20 bedroom, two-bath on the cellar through the second level.
21 On the third floor are three bedrooms, two baths. And again,
22 the IZ unit is 848 square feet, which is larger than some of
23 the market rate units.

24 COMMISSIONER MILLER: Thank you for that. And the
25 IZ unit is how many bedrooms?

1 MR. FREEMAN: Two bedroom, two baths on the first
2 level of the building.

3 COMMISSIONER MILLER: Okay. Thank you very much.

4 MR. FREEMAN: You're welcome.

5 MS. NAGELHOUT: Mr. Chair?

6 CHAIRPERSON HILL: Yes.

7 MS. NAGELHOUT: I would just say that the
8 signature looks the same to me at the bottom of the form and
9 at the bottom of the letter, so I don't know if that's
10 Darlene Oliver or Harry Thomas. That's a call for the Board.
11 I will point you to the great weight requirements, too, which
12 is Y -- Subtitle Y, 406.2, which calls for the signature of
13 the ANC Chair or Vice Chair.

14 CHAIRPERSON HILL: Okay.

15 MS. NAGELHOUT: And I would remind you, too, that
16 the great weight requirement means that you address the
17 issues and concerns, the legally relevant issues and concerns
18 with particularity. It just means you address them, not that
19 you necessarily agree with them or have to follow the
20 recommendation.

21 CHAIRPERSON HILL: I understand. Okay. So I will
22 look to -- so Ms. Nagelhout, can we deliberate on this case,
23 and I can leave the record open for a clarified signature on
24 the ANC's report so that we were -- will be able to give it
25 great weight?

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1 MS. NAGELHOUT: If you'd like. I don't -- I'm not
2 sure why you would want it after you deliberate. You have
3 a report. It's up to the Board to decide whether it meets
4 the great weight requirements or not.

5 CHAIRPERSON HILL: Okay. I'll let my fellow Board
6 members then determine what they would like to do. I'm
7 comfortable moving forward, and I believe that the testimony
8 that Ms. Oliver is giving is to what actually happened at the
9 ANC meeting. I completely understand and do not disagree
10 with the regulations and how they state that the signature
11 for the report needs to be the Chair and the Vice Chair, and
12 I would be more than happy to wait for a signed report in
13 order to deliberate on this case. And I'll kind of go around
14 the table, and I guess see where we are with people. I'll
15 start with you, Mr. Smith.

16 MEMBER SMITH: I agree with you, Chairman Hill.
17 I think I'm fairly comfortable with the testimony that was
18 provided by Ms. Oliver, and I would prefer not to leave it
19 open, but I would just rather go forward with this case.

20 CHAIRPERSON HILL: Commissioner Miller?

21 COMMISSIONER MILLER: I concur with Board Member
22 Smith and, you know, I think during this pandemic period,
23 we're all used to signing documents that our signatures are
24 automatically done and we're not handing over a piece of
25 paper at a live in-person meeting. I think we can be

1 flexible in terms of the signature requirement here and give
2 the great weight that -- to the concerns and address them
3 with particularity so.

4 CHAIRPERSON HILL: Mr. Blake?

5 MEMBER BLAKE: Yes. Notwithstanding what we've
6 said about it, I do think that we have heard the concerns
7 that have been addressed by Ms. Oliver. They are, you know,
8 reasonable concerns about the issues which are raised, and
9 they were, in fact, addressed at the -- have come up
10 periodically. I think Mr. Freeman could probably verify he
11 probably participated in the hearings that those issues came
12 up, and he did address them in his statement addressing the
13 Board. So I do believe it did occur. We have the comments
14 and we do have a response from the Applicant on all of these
15 issues. So I do think we can address them summarily. And
16 I'm comfortable granting, you know, great weight to the
17 report, but I do think we can address all these concerns, and
18 they have been voiced adequately.

19 CHAIRPERSON HILL: Vice Chair John?

20 VICE CHAIR JOHN: So I'm comfortable moving
21 forward, and I'm fine with addressing each of these issues
22 raised by the ANC and deciding those issues and at least
23 discussing those issues, because as, well, counsel says,
24 that's what great weight requires. But I want it to be clear
25 that this requirement has to be complied with, and I agree

1 that this is -- there's a pandemic going on but, you know,
2 the form is pretty clear that it has to be signed by the
3 Chairperson or the Vice Chairperson in order to be granted
4 great weight. So it's -- you know, that's what the
5 regulation says.

6 But in this case, I wanted it -- I wanted to make
7 a point of it so that Ms. Oliver knows that in the future,
8 there should be an effort made to have the Chairperson sign
9 the form or have a delegation in writing that says that Ms.
10 Oliver is authorized to sign on behalf of the Chairperson.

11 I know it's a technicality but it's important, and
12 the Board needs to make sure that it, you know, addresses the
13 issues in a way that it cannot be reversed on appeal. So
14 that's the only reason I wanted to make a point of it, not
15 that I'm not appreciative of Ms. Oliver's work and her
16 testimony. Thank you.

17 CHAIRPERSON HILL: Thanks, Vice Chair John. I
18 didn't think that you all were doing anything other than
19 making sure that we were able to technically give great
20 weight to the ANC and by speaking with legal counsel, it
21 sounds that we can at least address all of the issues in the
22 appropriate manner. So let's see, does anybody have anything
23 to say before I close the hearing? Okay. All right.
24 Commissioner, thanks for taking the time to stop in this
25 morning. Hope it wasn't too inconvenient for you.

1 MS. OLIVER: No.

2 CHAIRPERSON HILL: Okay. All right. You all have
3 a good day. Going to close the hearing and the record.

4 MR. FREEMAN: Thank you.

5 CHAIRPERSON HILL: Thank you. Bye-bye. Okay.
6 Who would like to start the deliberation? I have been -- I'm
7 tired of it. Let's go. Mr. Blake, would you like to start?
8 I mean Mr. Blake, you've been around a while. You've been
9 around a long -- I was --

10 MEMBER BLAKE: I --

11 CHAIRPERSON HILL: -- told already -- I was told
12 that you were off the rookie list. So Mr. Blake, you do what
13 you need to do. You do you.

14 MEMBER BLAKE: I've got to find my button here to
15 press. There. So I mean I reviewed the case in detail, and
16 I do think it is appropriate to go through all the terms and
17 conditions. I'm going to find my notes here. With regard
18 to the special exceptions for the new residential development
19 in RA-1 zone under you 421, the Applicant has basically done
20 everything appropriately. They had referred to the relevant
21 District agencies, DDOT, OSSE, and DPR for their comments.
22 There were no comments received from OSSE or DPR. DDOT, at
23 this date, has no objection to the project with conditions.
24 Those conditions regarded the long-term bike spaces and the
25 two vehicle parking spots. The Applicant is providing the

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1 long-term biking spaces in the basement as expected and there
2 are four vehicle parking spaces I recall. So in that sense,
3 they met that obligation.

4 OP also reviewed and made recommendations to the
5 site plan to raising the building, constructions and so forth
6 and ultimately had no objections to the architecture of the
7 project. And I would agree with the Office of Planning's
8 assessment that the use of the IZ to increase the FAR would
9 be in harmony with the general intent and purposes of the
10 zoning regulations and not going to adversely affect the use
11 of the neighborhood properties. And in fact, as we went
12 through the conducting of 5206.1, I believe we did cover the
13 reasons why, in fact, that that met that criteria as well.

14 As I go through this, as I said, the intent of the
15 past regulations, as Mr. Freeman pointed out, as did the
16 Office of Planning employees, is to minimize the ability of
17 the -- visibility of the penthouses and to minimize any
18 potential impacts such as undue levels of shadow. I think
19 the -- I agree with the Office of Planning's assessment that
20 the granting of penthouse relief will not impair the intent
21 of the zoning regulations because it will be set -- you know,
22 essentially will have the building set back from the property
23 line such that there will be two nine-foot side yards.
24 There's only one required. And the minor increase of
25 visibility should be more than offset by the increase of

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1 light available to the neighboring properties.

2 I would also agree with the Office of Planning and
3 the Applicant has made reasonable effort to locate the
4 stairway in compliance with the requirements that the
5 Applicant has demonstrated that strict application of the
6 setback requirement would result in construction that is
7 unduly restrictive to the property. They'd have to move the
8 staircase and impact three or four units and so forth.

9 So while it's clear there are some issues
10 remaining, a lot of -- for example, there are a lot of new
11 units that are coming into this area. I would leave these
12 projects -- the specific concerns stated by the ANC and
13 community have largely been addressed, however. So for that
14 reason, I believe I'm very comfortable with the application.

15 I think the Office of Planning report -- I just
16 like that and it recommended approval. DDOT had no
17 objections as we pointed out before, and I do think, as I
18 said, the majority of issues that were raised were addressed
19 by the Applicant in this. So for that, I would be prepared
20 to support.

21 CHAIRPERSON HILL: Great. Thank you, Mr. Blake.
22 Mr. Blake, I'm going to start with you first from now on.
23 That was really well said.

24 MEMBER BLAKE: Okay.

25 CHAIRPERSON HILL: No -- no. I mean it. That was

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1 really said. Thank you so much. Thank you. Mr. Smith?

2 MEMBER SMITH: I was about to say the same thing.
3 Took the words right, you know -- keep it going, Mr. Blake.
4 You know, I don't really have too much more to add beyond
5 what Mr. Blake stated. I do believe that when you go through
6 all the criteria, U 421 and the special exception criteria,
7 and Subtitle F 5206, I do believe that the Applicant has met
8 the burden of proof for us to grant the special exception.
9 You know, it is unfortunate that the ANC is opposed to this
10 application but, you know, I would just say that, you know,
11 being located near a Metro station is a double-edged sword.
12 It has its benefits and, you know, one of the benefits is --
13 well, I'll just leave it at that.

14 You know, looking at the opposition, the letter
15 provided by the ANC, I do, again, think that the Applicant
16 has met most of the criteria for us to approve this
17 application. I agree with Mr. Freeman that density can be
18 measured in a multitude of different ways and not necessarily
19 the number of units. It's bulk, size, the scale that I do
20 believe that this -- the design of this building does -- it
21 is in character with what we have approved along Rhode Island
22 Avenue in the past within the same block. Actually, I would
23 say it's smaller than some of the projects that we approved
24 in the same block. I went back and looked at some of the
25 other projects that were approved in previous years and this

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1 is smaller in context. And I do believe that it more so
2 respects the character of the existence of -- of the
3 remaining single-family dwellings that exist within that
4 block. So with that, I give OP staff report great weight,
5 and I concur with Mr. Blake's analysis and will support the
6 application.

7 CHAIRPERSON HILL: Thank you. Commissioner
8 Miller?

9 COMMISSIONER MILLER: Thank you, Mr. Chairman.
10 I concur with Board Members Blake and Smith in all of their
11 comments and would reiterate that I -- that the -- in my
12 opinion, the Applicant and Office of Planning have addressed
13 thoroughly each of the concerns that had been expressed by
14 the ANC in their opposition letter and would just note the
15 benefit of the -- of a big inclusionary zoning opt in unit
16 which regulates and provides for this new tenant to go to a
17 slightly higher FAR, 1.08 in this case, and the benefit to
18 the city of the larger units, two bedrooms and three bedroom
19 units that are included within this development. So I'm
20 prepared to support the application today. Thank you, Mr.
21 Chairman

22 CHAIRPERSON HILL: Thank you, Commissioner Miller.
23 Vice Chair John?

24 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I
25 agree with the comments so far, and I also believe that the

1 ANC's issues and concerns related to height, privacy, the
2 number of units and whether or not the project is consistent
3 with the surrounding -- or the character of the surrounding
4 neighborhood, but I'm going to give great weight to OP's
5 analysis and I would approve the application.

6 CHAIRPERSON HILL: Thank you. I thank my fellow
7 colleagues for taking all the time and effort in deliberating
8 and thinking about this application. I'm going to agree with
9 all the comments that were made. I'm going to make a motion
10 to approve Application Number 20547 as captioned and read by
11 the secretary and ask for a second. Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: The motion is made and
14 seconded. Mr. Moy, if you could take a roll call, please?

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 approve the application for the
18 relief that's being requested. The motion to approve was
19 granted -- or rather seconded by Vice Chair John. Zoning
20 Commissioner Rob Miller?

21 COMMISSIONER MILLER: Yes.

22 MR. MOY: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 MEMBER BLAKE: Yes.

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1 MR. MOY: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill?

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: Then staff would record the vote as 5-0-
6 0 and this is on the motion made by Chairman Hill to approve.
7 The motion to approve was seconded by Vice Chair John also
8 in support of the motion to approve, Zoning Commissioner Rob
9 Miller, Mr. Smith, Mr. Blake, and of course, Vice Chair John
10 and Chairman Hill. Motion carries, sir, 5-0-0.

11 CHAIRPERSON HILL: Okay. Great. Commissioner
12 Miller, is that it for you?

13 COMMISSIONER MILLER: That's it for me.

14 CHAIRPERSON HILL: Okay. You have a good day,
15 Commissioner.

16 COMMISSIONER MILLER: You have another great BZA
17 day.

18 (Laughter.)

19 CHAIRPERSON HILL: Sounded like something you hear
20 like Disneyland or King's Dominion, you have a nice -- enjoy
21 the ride. Okay. Commissioner May, you're with us, I guess,
22 correct?

23 COMMISSIONER MAY: Yes.

24 CHAIRPERSON HILL: Let's take a five minute, okay.
25 Is that all right? Let's take a little quick break, and

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1 we'll come right back. Thank you.

2 (Whereupon, the above-entitled matter went off the
3 record at 11:19 a.m. and resumed at 11:31 a.m.)

4 CHAIRPERSON HILL: Okay. Mr. Moy, if you could
5 call our next case when you get a chance and call us back in.

6 MR. MOY: Thank you, sir. After a quick recess,
7 the Board is back in its public hearing session, and the time
8 is at or about 11:32 a.m.

9 The next case before the Board is Application
10 Number 20655 of 20th and Channing NE, Northeast, LLC. This
11 is the Applicant's request for special exception relief from
12 the matter-of-right uses of Subtitle U Section 401, pursuant
13 to Subtitle U Section 421, and Subtitle X Section 901.2.
14 This would construct a new, detached, three-story, with
15 cellar and penthouse, 24-unit apartment house in the RA-1
16 Zone, property located at 2425 20th Street, NE, Square 4110,
17 Lot 17.

18 The preliminary matter here, Mr. Chairman is that
19 the Applicant has filed a request for a postponement and that
20 is in the case record under Exhibit 25, which is dated March
21 25th.

22 CHAIRPERSON HILL: Could you repeat the Case
23 Number again, Mr. Moy?

24 MR. MOY: 20655.

25 CHAIRPERSON HILL: Okay. That's what I got. Give

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1 me one moment everyone. Sorry. Okay. Ms. Ferreira, can you
2 hear me?

3 MS. FERREIRA: Yes.

4 CHAIRPERSON HILL: Could you introduce yourself
5 for the record, please?

6 MS. FERREIRA: Catarina Ferreira for 21th and
7 Channing NE, LLC. Good morning, Mr. Chairman and the Board.

8 CHAIRPERSON HILL: Good morning, Ms. Ferreira.
9 You guys want a postponement?

10 MS. FERREIRA: We do and it's really driven by the
11 extent of comments from the Office of Planning and the fact
12 that my clients wanted to investigate one of the issues
13 raised further before making the requested revisions to the
14 plans. So in order to allow for sufficient time for those
15 revisions to be made and adequate -- be adequately
16 coordinated with the Office of Planning, we would like to
17 have the hearing postponed, I think, for three weeks.

18 CHAIRPERSON HILL: Oh, 20655. Okay. All right.
19 You want to -- you're trying to get it postponed for three
20 weeks. Okay. Did you guys meet with the ANC yet?

21 MS. FERREIRA: We have met with the ANC several
22 times, and we have the support from the ANC, and I believe
23 there is a letter from the ANC that is in the case record.

24 CHAIRPERSON HILL: I didn't see the letter unless
25 it came in recently. Okay. Mr. Moy, can we get them back

1 within three weeks? What do we got in three weeks?

2 MR. MOY: All right, Mr. Chairman. On the third
3 week, which would be April the 20th, we just added a case to
4 April the 20th, so we have 10 cases on that, the following
5 week, April 27th, we have 9 cases.

6 CHAIRPERSON HILL: Okay. Well, let's do the 27th.

7 Ms. Ferreira, are you available that day?

8 MS. FERREIRA: I will be out of the country but
9 I'll make my helper come.

10 CHAIRPERSON HILL: Okay. All right. Let's do it
11 on the 27th. Okay. All right, Ms. Ferreira. We'll go ahead
12 and postpone you 'til the 27th, okay?

13 MS. FERREIRA: Thank you, Chairman.

14 CHAIRPERSON HILL: Thank you. Actually, Ms.
15 Ferreira, hold on a second. How many cases do we got, Mr.
16 Moy, you said, again on the 20th?

17 MR. MOY: We have nine. This will be the 10th
18 case.

19 CHAIRPERSON HILL: And you got -- how many have
20 you got on the 27th? You said you had eight?

21 MR. MOY: On the 27th, we have nine cases. I
22 meant --

23 (Simultaneous speaking.)

24 MR. MOY: This would be the 10th, but I neglected
25 to mention that we also have three expedited review cases

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1 which typically go very quickly anyways, right?

2 CHAIRPERSON HILL: On the 27th?

3 MR. MOY: On the 27th barring -- you know, barring
4 bad luck.

5 CHAIRPERSON HILL: Right. Ms. Ferreira, you've
6 already spoken to the ANC you're saying?

7 MS. FERRIERA: Yes.

8 CHAIRPERSON HILL: All right. Okay. Let's go --
9 and you're going to be out of the country on the 27th?

10 MS. FERREIRA: Correct.

11 CHAIRPERSON HILL: Okay. But you're not going to
12 be out of the country on the 20th?

13 MS. FERREIRA: Correct.

14 CHAIRPERSON HILL: Okay. Let's just do it on the
15 20th. All right. Let's do it on 3/20. And Ms. Ferreira,
16 please do everything you can to make this is as clean as
17 possible, okay?

18 MS. FERRIERA: Will do. Thank you so much.

19 CHAIRPERSON HILL: Okay. All right. We'll see
20 you on the 20th. Mr. Moy, when you can, you want to call our
21 next case?

22 MR. MOY: All right. So this would be -- okay.
23 Next case, Application Number 20646 of Paul Davidson. This
24 is the Applicant's request for special exception from the
25 penthouse requirements of Subtitle C Section 1501.1(b)(2),

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1 pursuant to Subtitle C Section 1501.1(c), and Subtitle X
2 Section 901.2. This would construct a third story, rear
3 addition, and penthouse to an existing, attached, two-story
4 principal dwelling unit, RF-1 Zone, property located at 931
5 5th Street, NE, Square 831, Lot 45.

6 And I believe there is -- the Applicant's motion
7 to waive a 21-day filing requirement, so I suspect it's
8 additional information, but I'd ask the Applicant to describe
9 that, sir.

10 CHAIRPERSON HILL: Okay. Mr. Davidson, can you
11 hear me?

12 MR. DAVIDSON: Yes.

13 CHAIRPERSON HILL: You're trying to get us to add
14 something to the record, is that correct?

15 MR. DAVIDSON: Yes. The ANC had brought up
16 mechanical equipment which I just wanted to provide a drawing
17 that showed -- they were worried that it might be seen from
18 the street, and so it's kind of a redundant drawing but it
19 just adds the mechanical equipment showing that it isn't
20 visible from the street.

21 CHAIRPERSON HILL: Okay. I would go ahead and
22 allow it into the record. If the Board has any issues?
23 Okay. All right. Mr. Davidson, if you guys go ahead drop
24 it in the record, then we can take a look at it. Mr.
25 Davidson, if you want to go ahead and walk us through your

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1 presentation, why you believe that you should be granted the
2 relief requested and how you're meeting the standard to grant
3 that relief? I'm going to put 15 minutes on the clock so I
4 know where we are, and you can begin whenever you like.

5 MR. DAVIDSON: So if we could bring up the
6 presentation, please? So I'll introduce myself. I'm Paul
7 Davidson. I've lived at 931 5th Street, NE since 2004. I
8 live here with my wife, Jackie and two kids. We've raised
9 them here. They're now 12 and 14. So this is our -- I
10 wanted to show you a little bit of the neighborhood. This
11 is our house, which is the smallest, narrowest on the block.
12 It is under 20 feet and 13'3 lot line width. Next slide,
13 please.

14 So stepping across the street, that's the little
15 yellow house there. And this is part of four kind of
16 abnormal row homes that exist on the block. These are the
17 only ones that have the first floor on grade. As you can
18 see, most of them are raised grade and then they also have
19 a raised first floor and about 50 percent of them also
20 include a mansard roof. So the average height on the block
21 is about 32 to 35 feet tall. Next slide, please.

22 This one's just some eye candy for the eyes. The
23 rear yard, not much to be said there but a two-story main
24 block and one-story dog leg which essentially contains all
25 the plumbing for the property, so the kitchen and bath are

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1 in that one-story addition. Next slide, please.

2 And then the garage, which is essentially a tin
3 box, we're proposing to demolish that and absorb that extra
4 lot occupancy into the addition. Next slide, please.

5 So I did get upon the roof to show you just
6 looking for 6th Street. Most of those homes are also raised
7 first-floor and some of them have already included a popup,
8 and then the one directly across has a penthouse, and then
9 up on a ladder looking to the left, you may be familiar with
10 507 and 505, they also have penthouses. I do realize that
11 all of these that I'm pointing out are built under different
12 regulations. Next slide, please. And just looking back
13 across towards the west from the roof there. Next slide.

14 So in terms of the zoning, it's single-family and,
15 you know, the proposal is to keep it single family. We plan
16 to move back into it after construction. We're proposing a
17 30 -- so it's -- to the top of the parapet, we're proposing
18 31-1/2 feet to the top of the room, we're at 30 feet, 30-1/2
19 feet. The lot occupancy changes very little, two square
20 feet, so we're just at 60 percent. Next slide, please.

21 So this is just the existing site plan, and I
22 would point out that it may be confusing. There is no 929
23 so my adjacent neighbor is 927 and 933. Next slide, please.

24 And these, I just provided to give context to the
25 penthouse. I don't know that you would have specific

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1 questions about the plans, but we can proceed to the next
2 slide. Next slide, please. That's just measuring from a
3 second floor there off a small landing and, you know,
4 because of the narrow lot width, there are a lot -- I can
5 only fit a code-compliant stair hallway which, you know, kind
6 of forces bedrooms to the front and back. So really, if you
7 want more bedrooms at the property, you have to go up a
8 level, so that's driven the design here. Next slide. And
9 just about the same as the second floor. Next slide.

10 So here we get to the heart of the matter, the
11 penthouse, which is just -- it does -- you know, it's just
12 a staircase and 28 square feet storage space. It is set back
13 dimension-wise in the wrong place. That's showing it from
14 the back of the parapet. So it's set back more than 15 feet
15 from the front edge, and I think it's over 16 feet from the
16 property line, and it takes up less than 20 percent of the
17 roof area. It's at like 14 percent, 108 square feet. It's
18 also only 9 feet tall. And then I provided a line of sight
19 drawing that shows that just a small piece of this shows from
20 the street view across the street. Next slide, please.

21 So in terms of the design, I mean overall, I never
22 wanted to make the front facade, you know, build to the 35-
23 foot height. It just would be out of scale with the existing
24 facade, and I've kept the ceiling heights low in here.
25 They're all at 8'6" which provides me with just enough space

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1 to run the mechanicals. And I'm not changing or proposing
2 any changes to the windows or door openings. They'll stay,
3 you know, their size and shape will stay the same. The
4 details will change. And then the rendering on the right is
5 the view from across the street devoid of any trees or
6 lampposts or cars. Next slide, please.

7 CHAIRPERSON HILL: Mr. Davidson, could --

8 MR. DAVIDSON: Yes.

9 CHAIRPERSON HILL: -- Mr. Davidson, I'm going to
10 cut to one question and then I think I'm going to let the
11 Board just kind of open up. Can you speak to the HVAC issue?

12 MR. DAVIDSON: So, you know, I went to great
13 lengths to design the house so that all the mechanicals were
14 hidden from street view and that they didn't have any vent
15 penetrations off the front and rear facades. And to do that,
16 I raised the parapet wall at the front 1'6" to be able to
17 hide all this. Those -- you know, I think their concern was
18 that I was going to put a big condenser unit at the front of
19 the house and somehow that would be seen from the street.
20 That was never the intention and I really wouldn't have built
21 a parapet at the front there but to hide mechanical and vent
22 penetration.

23 CHAIRPERSON HILL: Okay. Let me just ask my
24 fellow Board members before I ask to drop this slide deck --
25 and I'm looking -- does anybody have any questions that

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1 they'd like from the slide deck? Because I know we have an
2 opportunity to flip through it ourselves. I mean, just
3 because I have -- we have a pretty lengthy day, I'm trying
4 to be efficient. Okay. I don't see anybody raising their
5 hand. Mr. Young, could you drop the slide deck? All right.
6 Now I can see everyone. Does anybody have questions of the
7 Applicant? Okay. Can I turn to the Office of Planning?

8 MR. MORDFIN: Good morning again, Chair and
9 members of the Board. I'm Stephen Mordfin with the Office
10 of Planning. And the Office of Planning is in support of
11 this application. However, what we found out after
12 publishing our report and having discussions with the legal
13 division at OZ is that the specific number that we reviewed
14 this under, it should have been reviewed under Subtitle C
15 1501.1(c). And what that does is that just allows the
16 Applicant to put the addition on the roof. What he has
17 proposed, which is the penthouse, is in conformance with all
18 the regulations in terms of height, maximum nine feet; it
19 can't be more than 30 square feet. It's 28 square feet.
20 It's set back a distance equal to its height from the front
21 and rear. So what that does is because there are no specific
22 criteria for this is that shows that it is in -- when you go
23 to the general criteria for a special exception, it shows
24 that it does meet the intention of the zoning regulations in
25 that it meets all of those requirements. And then the second

1 item is that -- it's -- well, that is it. It is in
2 conformance with the requirements for a penthouse. So --
3 which are not part of the regulations. They're just
4 standards that are written in there.

5 So, therefore, we find that that penthouse can be
6 supported by the zoning regulations, and we are in support
7 of this application.

8 CHAIRPERSON HILL: Does the Office of Planning
9 have any comments about the -- concerning protecting the
10 rooftop architectural element?

11 MR. MORDFIN: I did discuss that with the Zoning
12 Administrator. There are no rooftop architectural elements
13 that need protecting on this building. All there is a
14 cornice and from the information that I received from the
15 Zoning Administrator, the three-foot setback that I think the
16 ANC is referring to, that applies to turrets, towers, mansard
17 roofs, or dormers or other similar like items. Those are
18 structures as opposed to the cornice, which is a decorative
19 feature on the facade of the building. So therefore, the
20 three-foot setback does not apply according to the Zoning
21 Administrator, and we abide by the interpretations of the
22 Zoning Administrator.

23 CHAIRPERSON HILL: Okay. Does the Board have any
24 questions of the Office of Planning? Commissioner May?

25 COMMISSIONER MAY: I thought that cornices were

1 included in the features requiring production, that -- were
2 cornices not included in that portion of the regulation?

3 MR. MORDFIN: It is not according to the Zoning
4 Administrator. I mean the three feet is an interpretation
5 of the Zoning Administrator's office.

6 COMMISSIONER MAY: I'm not asking about that.

7 MR. MORDFIN: And what he wrote me was a rooftop
8 addition to a building that has a cornice rooftop
9 architectural element is not required to be set back three
10 feet unlike from other rooftop elements such as turrets,
11 towers, mansard roofs, or dormers. And this is from an email
12 that was sent to me from Matt LeGrant, the Zoning
13 Administrator, on March 11th of this year.

14 MR. MORDFIN: Okay. But it -- now in the end, the
15 Applicant did set it back somewhat, right?

16 MR. MORDFIN: I think it's set back seven inches
17 so it's a little bit set back.

18 MR. DAVIDSON: If I could speak? I did after that
19 -- so I -- maybe I'm a little -- you know, because I was made
20 aware of this interpretation. Essentially, it's an
21 interpretation of an interpretation at this point, and it was
22 given -- and it was told to me a day before my hearing with
23 the ANC. So it was nothing I could address at my hearing.
24 And they did -- I did ask them, well, I don't have time to
25 amend my application for a special exception to the cornice

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1 rule.

2 I did say that, you know, I could set it back
3 further pretty simply without altering my plans on file at
4 DCRA in terms of like long evolved process of redoing my
5 electrical, mechanical, structural and also not impacting the
6 floor plan. So I did go ahead and set it back two feet,
7 which was -- and it didn't change the view from the street,
8 because I mean it really -- the lever is so long there at 76
9 feet. It really isn't exposing any more penthouse, not that
10 that's a particular requirement. So it was kind of like --
11 I want to -- I don't want to be in the situation where the
12 ANC isn't happy with my project and the BZA isn't or
13 something like that. And so I --

14 COMMISSIONER MAY: I wouldn't worry about that.
15 I think the ANC is unhappy with the Zoning Commission about
16 that.

17 MR. DAVIDSON: Yes. But I'm right in the middle
18 and it says -- you know, it's --

19 (Simultaneously speaking.)

20 COMMISSIONER MAY: -- was asking you a question.
21 I mean, I appreciate knowing that it was set two-feet back,
22 so that's really all I wanted to know.

23 MR. DOUGLASS: Okay. Sorry.

24 COMMISSIONER MAY: It's okay. All right. Thank
25 you.

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1 CHAIRPERSON HILL: Okay. Thanks, Commissioner.
2 Anybody else for the Office of Planning? Mr. Davidson, do
3 you have any questions for the Office of Planning?

4 (No audible response.)

5 CHAIRPERSON HILL: Mr. Young, is there anyone here
6 wishing to speak?

7 MR. YOUNG: We do not.

8 CHAIRPERSON HILL: Mr. Davidson, do you have
9 anything you'd like to add after the end?

10 (No audible response.)

11 CHAIRPERSON HILL: Okay. You're shaking your head
12 no for the record. All right. I'm going to go ahead and
13 close the hearing and the record. If you could please excuse
14 everyone? Okay. After reviewing the record, I am
15 comfortable with the presentation that the Applicant has made
16 in terms of how they're meeting the standard for us to grant
17 the relief requested. I would also agree with the analysis
18 that was provided by the Office of Planning and that of the
19 ANC. I still do think it's -- the whole cornice thing is of
20 interest and I guess will continue to be of interest as we
21 kind of work through different applications. However, in
22 this particular case, I believe the Applicant is meeting its
23 burden. So I'm going to go to approve. Mr. Smith, do you
24 have anything to add?

25 MEMBER SMITH: I don't have anything to add. I

1 will vote to approve this.

2 CHAIRPERSON HILL: Mr. Blake?

3 MEMBER BLAKE: I would not have anything to add
4 as well. I believe the Applicant has met the burden of proof
5 and he should be granted the leave. I would point to the
6 fact that the ANC is going to support -- is in support of
7 this project notwithstanding their concerns. And the DDOT
8 has no objection as well and there's support from the
9 adjacent neighbors on both sides as well. I'm finished.

10 CHAIRPERSON HILL: Thank you. Commissioner May?

11 COMMISSIONER MAY: Yes. I'm fine with this
12 application in terms of what's in front of us. I do think
13 that the Zoning Administrator made an error by saying that
14 the cornice does not need to be protected. I think that's
15 one of the points that the ANC is making in their latest
16 submission, is the current text of Section E 206.1 says that
17 RF-Zones rooftop architectural elements, original footprints
18 of the building such as cornices, porch roofs, turrets,
19 towers, dormers shall not be removed or altered, blah-blah-
20 blah, so on. Anyway, the word "cornices" is right in there,
21 so I don't know why they're not -- why the Zoning
22 Administrator said that it's not a feature that needs to be
23 protected. So that's very confusing to me.

24 However, hearing from the Applicant that, you
25 know,, he's already set in back two feet and that the -- you

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1 know, he could set it back three feet if that -- if it came
2 to that. I don't -- I think that's fine because we're not
3 specifically building on the two-foot setback if it winds up
4 that he'd have to move it back further then to comply with
5 the Zoning Administrator's take on the regulations. If the
6 Zoning Administrator reconsiders this, then, you know, he can
7 do so and not need to return to us it seems.

8 So in terms of what's in front of us right now,
9 I'm okay with it. Generally speaking, I'm not a big fan of
10 penthouses on row houses, but this is one where it really is
11 not -- it's set back far enough that it's not near a corner,
12 and there's -- if -- the nature of the block is such that
13 it's not going to be visible or really common that they're
14 making it visible from certain spots but not prominent. So
15 I'm fine with approving it.

16 CHAIRPERSON HILL: Thank you. Vice Chair John?

17 VICE CHAIR JOHN: So I'm fine with the penthouse,
18 and I agree with Commissioner May about the protection of the
19 cornice, and I think the Applicant's offer to set back the
20 third floor by two feet would be good. It would also break
21 up the monopoly of -- it's -- you know, it would sort of
22 mitigate that pop-up effect of that very tall structure in
23 the middle of the block if it was set back a little bit.

24 So my only question is if the plans would have to
25 be amended or if -- we're in support of the application, so

1 if we approve the application, whether there should be a
2 condition that the third floor would be set back, the
3 drawings would reflect that the third floor would be set back
4 two feet, because I'm not sure that the drawings on file with
5 us do show a two-foot setback. So I'm not sure if that's a
6 question for OZ Legal.

7 CHAIRPERSON HILL: So Vice Chair John, so you're
8 saying -- can you repeat the question? I apologize.

9 VICE CHAIR JOHN: I'm not sure if the current
10 information we have shows a two-foot setback of the third
11 story.

12 COMMISSIONER MAY: The most recent set of
13 drawings, which is Exhibit 26, does show a setback. It's not
14 dimensioned but it shows the setback. It looks like it's
15 approximately two feet.

16 VICE CHAIR JOHN: Okay. So I would be fine with
17 the application then.

18 CHAIRPERSON HILL: Okay. Well, thank God we had
19 an architect on the Board today. All right. Okay. I'm
20 going to -- I will agree with my fellow colleagues. I think
21 did agree with my fellow colleagues. I'm sorry. And I make
22 a motion to approve Application Number 20646 as captioned and
23 read by the secretary and ask for a second. Ms. John?

24 VICE CHAIR JOHN: Second.

25 CHAIRPERSON HILL: The motion is made and

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1 seconded. Mr. Moy, could you take a roll call?

2 MR. MOY: Yes. Thank you, Mr. Chairman. When I
3 call each of your names, if you would please respond with a
4 yes, no, or abstain to the motion made by Chairman Hill to
5 approve the application for the relief that is being
6 requested. The motion to approve was seconded by Vice Chair
7 John. Zoning Commissioner Peter May?

8 COMMISSIONER MAY: Yes.

9 MR. MOY: Mr. Smith?

10 MEMBER SMITH: Yes.

11 MR. MOY: Mr. Blake?

12 MEMBER BLAKE: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: Staff would record the vote as 5-0-0 and
18 this is on the motion made by Chairman Hill to approve. The
19 motion to approve was seconded by Vice Chair John also in
20 support of the motion to approve, Zoning Commissioner Peter
21 May, Mr. Smith, Mr. Blake, and of course Vice Chair John and
22 Chairman Hill. Motion carries on the vote of 5-0-0.

23 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
24 Mr. Moy, when you do get a chance, feel free to call our next
25 case.

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1 MR. MOY: The next case before the Board is
2 Application Number 20651 of Arie, A-R-I-E, Albright and
3 Shannon Blair. This is the Applicants' request for special
4 exception relief from the rear yard requirements of Subtitle
5 E Section 306.1, which is pursuant to Subtitle E Section 5201
6 and Subtitle X Section 901.2, and for area variance from the
7 lot occupancy requirements of Subtitle E Section 304.1,
8 pursuant to Subtitle X Section 1002. This would construct
9 a two-story rear deck addition to an existing, attached,
10 two-story with basement, principal dwelling unit in the RF-1
11 Zone, property located at 628 9th Street, NE, Square 913, Lot
12 842.

13 CHAIRPERSON HILL: All right. Mr. Campbell, can
14 you hear me?

15 MR. CAMPBELL: Yes, I can. Can you hear me?

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

18 MR. CAMPBELL: Yes. Good afternoon. My name is
19 Jonathan Campbell. I'm the architect representing the owners,
20 Arie Albright and Shannon Blair.

21 CHAIRPERSON HILL: All right, Mr. Campbell. You
22 know that the Office of Planning is in denial of your
23 application, correct?

24 MR. CAMPBELL: Yes. I am aware.

25 CHAIRPERSON HILL: And then also do you have a

1 report from the ANC?

2 MR. CAMPBELL: We did receive a report from the
3 ANC. We thought the ANC would provide that to you all
4 directly.

5 CHAIRPERSON HILL: I haven't seen it.

6 MR. CAMPBELL: I can -- if you allow us to add it
7 to the record, we can add it to the record.

8 CHAIRPERSON HILL: Give me one second. Yes. If
9 you could go ahead and add that into the record. Are you
10 able to do that now?

11 MR. CAMPBELL: Yes. Give me a minute to work on
12 it.

13 CHAIRPERSON HILL: I'll tell you what. Why don't
14 you testify? Why don't you give us your presentation --
15 testify to what you believe the ANC has done? And then I'll
16 let you walk us through your presentation first, okay?

17 MR. CAMPBELL: Thank you.

18 CHAIRPERSON HILL: And again, if you walk us
19 through your presentation and tell us why you believe your
20 client is meeting the standard for us to grant the relief
21 requested. And I've got 15 minutes on the clock and you can
22 begin whenever you like.

23 MR. CAMPBELL: Okay. Is the slide deck being
24 presented?

25 CHAIRPERSON HILL: Do you know which --

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1 MR. CAMPBELL: Okay. Thank you. We could move
2 on to slide 2. So in support of this recommendation of
3 proposing the two-story decks, we received letters of support
4 from the adjacent neighbors as well as the neighbor to the
5 west off the alley that is facing the rear yard of this
6 property. And those letters are provided here on the next
7 three slides.

8 CHAIRPERSON HILL: Yes. We see those.

9 MR. CAMPBELL: So the neighbors that provided
10 support are speaking to the improvement of the property as
11 they would like to see the family home restored and
12 renovated. It will help, you know, reduce loitering and
13 trash and other elements from being thrown onto the site
14 since the property hasn't been lived in for a few years as
15 well as they believe that the proposed two-story deck is
16 consistent with the neighboring properties, some of which
17 have two-story decks and other improvements to their rear
18 units. Next slide, please. Two more slides to the proposed
19 existing plat. Thank you.

20 Here's the existing plat for the property. The
21 RF-1 zoning and the lot area for this property is 1020 square
22 feet. The developing standard for lot area in RF-1 zone is
23 1800 square feet, so this property is significantly smaller
24 than the standards that are currently on the zoning
25 regulations for standard developments. So our existing

1 property in kind is over the lot occupancy by 13.8 percent,
2 so any improvement to this property in the rear yard as well
3 as to increase or decrease will require an area variance due
4 to its existing footprint. So the area highlighted in red
5 on the plan is the existing rear porch. It is an enclosed
6 porch. It does count to lot occupancy. Our proposal is to
7 remove this porch and construct two open-air decks onto the
8 rear of the home. Go to the next slide.

9 We have some photos, context of the property.
10 This is the front of the building. Next slide, please.
11 These are photos of the rear one-store enclosed deck. This
12 existing deck is deteriorating and also does not comply with
13 the current international residential building codes. So it
14 is unsafe and unfit for if the owner has to live or use this
15 space as it currently exists. Go to the next slide.

16 Also, there is a court between the adjacent
17 properties, and you can see here in this photograph how the
18 court's being used for storage at the moment. Next slide,
19 please. And this is part of the contributing non-compliant
20 egress of the porch level and rear exit. The stairway is not
21 compliant with today's building codes, and it's another
22 reason for the renovation. Next slide, please.

23 And then here's photograph of the area that is
24 left for the rear yard. This is approximately 53 square feet
25 of area that is very tight and difficult for the owners to

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1 use and enjoy, and it's for the proposed renovation. Next
2 slide, please. And then here are photos looking north and
3 south to the adjacent property, so you can see the
4 properties. The neighbors have restored their rear porches
5 or rear decks. Next slide, please.

6 And then lastly, here's a photograph of the
7 property at 632 9th Street. You can see a two-story deck is
8 there, and it's an existing precedence, and there are several
9 others on this block, two-story decks. So we are proposing
10 something that is in kind with the character of this
11 alleyway. And next slide.

12 So here's the proposed bonus plan for the two-
13 story deck, and what we are proposing to do is increase the
14 footprint by 1'6" from the existing rear porch, demolishing
15 it. And the area in blue is what is contributing to the lot
16 occupancy. We've had discussions with the Zoning
17 Administrator after receiving the Office of Planning's
18 review, and in those discussions, we were able to clarify
19 what areas were included in the lot occupancy. So we were
20 able to reduce stairway and the stair landing. That provides
21 the compliance to the -- from the main level of this home.
22 So we've since revised our burden of proof and our zoning
23 self-certification to include that reduction of lot occupancy
24 which is now at 78 percent proposed and as well as the rear
25 yard setback of 20 feet, we were able to set that at 5.83

1 feet for relief.

2 CHAIRPERSON HILL: So now I'm sorry, Mr. Campbell.

3 You no longer need the area variance?

4 MR. CAMPBELL: No. We do. The area variance has
5 been reduced by a few percentage points, because we were able
6 to not include the existing stair or the proposed stair.

7 CHAIRPERSON HILL: Okay. And what was the
8 percentage again you said? I'm sorry. Proposed.

9 MR. CAMPBELL: Seventy-eight percent.

10 CHAIRPERSON HILL: Say it again, please?

11 MR. CAMPBELL: Seventy-eight percent is the
12 proposed occupancy. The existing lot occupancy is 73.8.

13 CHAIRPERSON HILL: Okay. Great. And is that
14 73.8, that's with the existing deck?

15 MR. CAMPBELL: The existing enclosed porch.

16 CHAIRPERSON HILL: Okay. Please continue.

17 MR. CAMPBELL: Okay. Additionally, the -- if we
18 go to the next slide? Here are the elevations of the
19 proposed open-air decks so for relief concerning the rear
20 yard, the replacement with the proposed open-air rear decks
21 do not deter the privacy for the open-air or light to the
22 adjacent neighbors, or it does not take away from. And then
23 if you go to the next slide? This is a view looking south.
24 You will see that also the open-air proposed deck again does
25 not deter from light and air as well as privacy to the -- its

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1 neighbors and with their letters of support, you know, that
2 is substantiated. Next slide, please.

3 So in addition to the rear yard relief, we feel
4 as though, you know, again, with the consent of the
5 neighbors, that we meet the burden of proof here. Next
6 slide, please. Now for lot area variance, we have had
7 additional conversations with the Office of Zoning as well
8 as the Zoning Administrator to identify other alternatives
9 for relief, and we've provided documentation in the Exhibits
10 337 and 38. I've discussed reasonable accommodations for the
11 homeowner that are being reviewed by the Zoning Administrator
12 as we speak. Because of the past week, we've gone back and
13 forth. He has not been able to respond with a decision on
14 the reasonable accommodation request, but we thought that it
15 would be appropriate to share it with the Board today the
16 revision in conjunction with the proposed BZA application
17 gives a great weight to understanding how the owners will
18 need this additional space, how it will benefit their
19 enjoyment and use of the home as they plan to live here for
20 the remainder of their lives. That concludes my
21 presentation. Please let me know if you have any questions.

22 CHAIRPERSON HILL: All right, Mr. Campbell. Could
23 you drop the slide deck, Mr. Young? Ms. Nagelhout, can you
24 hear me?

25 MS. NAGELHOUT: I can.

1 CHAIRPERSON HILL: I forget how the reasonable
2 accommodation thing works. How does it work?

3 MS. NAGELHOUT: The Applicant has to make a
4 request to DCRA, which it sounds like they have done already.
5 I think the Board can stop the hearing right now and set it
6 for a continued hearing some point after the ZA has made a
7 determination.

8 CHAIRPERSON HILL: Right. Because if they make
9 the determination for the reasonable accommodations, then
10 this is not before the Board anymore?

11 MS. NAGELHOUT: Correct.

12 CHAIRPERSON HILL: Right. So -- okay. So Mr.
13 Campbell, did you hear that?

14 MR. CAMPBELL: I did hear that. However, if the
15 Board does make a decision today and the decision is to grant
16 the approval, we would pull the reasonable accommodation
17 request, and virtually if the Board does not approve today,
18 we will continue to push the reasonable accommodation
19 request, because it can be used as our next steps in, you
20 know, in moving forward on this particular proposal.

21 CHAIRPERSON HILL: Okay. Ms. Nagelhout, now I'm
22 just curious about this because it doesn't -- usually, the
23 reasonable accommodation thing happens before it gets to us.
24 So if this were to get denied, then the Zoning Administrator
25 approves the reasonable accommodation, then this would get

1 approved, is that correct?

2 MS. NAGELHOUT: I believe that is correct. It
3 would be a -- it would -- the Board would have taken action
4 to deny the running relief, but the Applicant could go ahead
5 with the project under the reasonable accommodation FAR.

6 CHAIRPERSON HILL: Great. And there's like -- I
7 know there's just Commissioner May on this one and not, you
8 know, Chairman Hood or whoever it is, but like sometimes the
9 Zoning Administrator gets to usurp the Board of Zoning
10 Adjustment. They decide the reasonable accommodation. Is
11 that correct, Ms. Nagelhout?

12 MS. NAGELHOUT: Yes. It's not a Zoning process.
13 It's under the Fair Housing Act or ADA. I guess, it's the
14 ZA is the one who makes the call.

15 CHAIRPERSON HILL: And the Zoning Administrator
16 makes the call?

17 MS. NAGELHOUT: Yes.

18 CHAIRPERSON HILL: And do you know the process as
19 to how the Zoning Administrator determines the reasonable
20 accommodation? You do not know, correct?

21 MS. NAGELHOUT: I do not, no.

22 CHAIRPERSON HILL: All right. That's interesting.
23 All right. Mr. Campbell, well, we got to this part already.
24 Let me hear from the Office of Planning real quick.

25 MR. KIRSCHENBAUM: Good afternoon, Chair, members

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1 of the Board of Zoning Adjustment. I am Jonathan
2 Kirschenbaum with the Office of Planning. The Office of
3 Planning recommends denial of the lot occupancy
4 variance request. OP also cannot make recommendation of the
5 rear yard special exception that was requested, because it's
6 based on the existing lot occupancy of the house which
7 variance is needed and cannot support. The Applicant has not
8 demonstrated an extraordinary or exceptional condition
9 resulting in a peculiar or exceptional practical difficulty.
10 The subject property is similar in lot area, lot width, and
11 topography to the adjacent properties to the north and south
12 on the subject square. All lots on the block front are
13 developed as similar two-story row houses constructed around
14 the same time, are relatively level, 1,020 square-foot lots
15 that are all 17 or a majority are 17 feet wide abutting a 6-
16 foot wide public alley.

17 Although the lots on this square are smaller than
18 what is currently typical by the Zone, if the property owner
19 had to undergo a new subdivision, there does not appear to
20 be an extraordinary or exceptional condition impacting the
21 subject property differently than any of the other properties
22 along this lot front. The size of the line of the rear yard
23 is not inconveniently impacted by an extraordinary condition
24 and OP does not find the Applicant's need to provide a two-
25 story deck to allow for a more reasonable rear yard

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1 persuasive for how this would not -- and how this would
2 further reduce usable space the rear yard.

3 This concludes my presentation. Please let me
4 know if you have any questions. Thank you.

5 CHAIRPERSON HILL: Mr. Kirschenbaum, have you
6 talked with the Applicant as to how much smaller you think
7 you'd like the project or how much small the Office of
8 Planning might want to see the project in order for it to be
9 approved or more comfortable?

10 MR. KIRSCHENBAUM: Well, we don't support the
11 variance so. You know, and we don't talk about hypotheticals
12 for a hearing like this.

13 CHAIRPERSON HILL: But -- so I'm sorry, like then
14 Mr. Campbell, do you know how much smaller you have to make
15 it so it's not here for a variance?

16 VICE CHAIR JOHN: So because the existing is at
17 68 percent lot occupancy, it would not be possible to reduce
18 the footprint of the deck or the existing rear porch to meet
19 the need.

20 CHAIRPERSON HILL: Right. Sorry. Commissioner
21 May is so helpful. He's already shaking his head. He was
22 going to tell me also what you just told me. Commissioner
23 May, you don't need to add anything, is that correct?

24 COMMISSIONER MAY: I don't need to add anything
25 but I did want to ask questions for the Applicant --

1 CHAIRPERSON HILL: Yes.

2 (Simultaneously speaking.)

3 CHAIRPERSON HILL: Go ahead, Commissioner.

4 COMMISSIONER MAY: Okay. So, I wrote down my
5 questions but they disappeared. So the Applicant -- I'm
6 sorry -- the application is for a six-foot deep porch, right
7 -- I mean a six-foot deep deck, right?

8 MR. CAMPBELL: Correct, yes. Yes.

9 COMMISSIONER MAY: And there is -- it would
10 replace the existing 4'6" deep porch, right?

11 MR. CAMPBELL: Yes.

12 COMMISSIONER MAY: Did you consider rebuilding the
13 porch essentially as a deck at a depth of 4'6"? Is that
14 something that you considered at all?

15 MR. CAMPBELL: Yes. I considered this with the
16 owners, and it would not be a usable deck at that scale.
17 Also, with my discussions with the Zoning Administrator, we
18 would have to provide proof that that existing rear porch was
19 built by -- you know, by code and by zoning rights. And we
20 would have to provide some documentation so that it would be
21 considered a matter of right, and the building was built in
22 the 1900's and that document doesn't exist. So we weren't
23 able to convince that it was there prior to the zoning
24 regulations being in place.

25 COMMISSIONER MAY: Okay.

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1 MR. CAMPBELL: So --

2 COMMISSIONER MAY: You believe that it was?

3 MR. CAMPBELL: I believe that it was. The
4 additional properties along 9th Street have had and still do
5 have porches like this. However, they have been replaced
6 with two-story decks or one-story decks of they've been
7 enclosed to be conditioned as additional square footage of
8 the house.

9 COMMISSIONER MAY: Did you do research into the
10 building permits for the building over the years?

11 MR. CAMPBELL: Yes. Ad there were no building
12 permits other than the one that we placed for the renovation
13 of the house.

14 COMMISSIONER MAY: No building permits whatsoever?

15 MR. CAMPBELL: And if there are, we would have to
16 ask DCRA to do that research. From my point, I've only had
17 -- I only have access to its management website to obtain
18 that information.

19 COMMISSIONER MAY: Oh, yes -- no. There's a lot
20 more information available on building permits. And I'm
21 telling you these things because in the event that you're
22 denied the variance and you're denied the reasonable
23 accommodation, there may still be a path forward to at least
24 build something that approximates the footprint of what you
25 have right now because, you know, it is possible to go back

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1 and do research, historical research. It may require going
2 to the DC archives or something like that or I forget where
3 they all were but, you know, I've done a ton -- or we've done
4 a -- my wife did it for our own house. And so we have
5 building permits going back to early 20th century, 1910 and
6 stuff like that. You can find these things. So you can find
7 -- it is possible to find it. Some of those records have
8 been lost over the years, but some are there, and I wouldn't
9 be surprised at all if you could find something like that.
10 And once you can demonstrate that it was legally built before
11 the zoning regulations, then you could rebuild it and you
12 could, in fact, have pretty much what you want because you
13 can -- as long as you don't alter the footprint, I would
14 think that you'd be able to replicate the volume as it were.

15 MR. CAMPBELL: Actually, Mr. May, there was
16 another comment I got from the Zoning Administrator about
17 a second level would be an additional lot occupancy, which
18 I couldn't argue with him but I don't think it's true. But
19 he was saying that even the second level would be additional
20 area, and --

21 COMMISSIONER MAY: Yes. If it's a deck without
22 a roof on it, I'm not sure it would be, because rails don't
23 count.

24 MR. CAMPBELL: Right. That was my point.

25 COMMISSIONER MAY: And in fact, your next door

1 neighbor, I can see in their deck, they actually have -- they
2 don't have a roof. They have an opening, right? It's more
3 of a trellis kind of thing, and that may have been done to
4 comply with the zoning regulations because it's -- you know,
5 if you have a trellis of a certain spacing, it's not
6 considered a roof.

7 The -- and I do see -- I mean I guess the other
8 question I have is for those abutting properties, do they
9 have -- are they 6 feet or are they just at like 4, 4-1/2?

10 MR. CAMPBELL: Oh, no. They are six feet. We are
11 matching the adjacent neighbors and to be fair, I don't
12 believe they went the route, the process to obtain a lot area
13 variance. Again, the zoning office has determined that the
14 other lots are the same size and scale as ours --

15 COMMISSIONER MAY: Yes.

16 MR. CAMPBELL: -- so they would have been required
17 to replace their rear porch with an area variance, because
18 they would be over the 70 percent lot rate.

19 COMMISSIONER MAY: Yes. I wouldn't be surprised
20 by any of that. Unfortunately, the fact that there is a non-
21 code-compliant deck next door wouldn't be sufficient grounds
22 for a variance either so. All right. Well, I'm just trying
23 to see what I could do to help out.

24 MR. CAMPBELL: Thank you. I appreciate it.

25 COMMISSIONER MAY: Okay. Good. Okay. That's it

1 for my questions, Mr. Chairman.

2 CHAIRPERSON HILL: Mr. Young, any questions? Mr.
3 Young, is there anyone here who wishes to speak?

4 MR. YOUNG: I do not.

5 CHAIRPERSON HILL: Mr. Campbell, what I would
6 suggest to you is why don't we go ahead and wait and see how
7 the reasonable accommodation thing goes for you because I
8 don't necessarily know if you're going to get approved
9 tonight.

10 I want to take a look at the exhibit from the ANC.
11 Can you tell me a little bit about how that meeting went
12 again?

13 MR. CAMPBELL: Yes, it was a very good meeting,
14 there was a lot of concern about approving due to the lot
15 area variance and setting a precedent of approving something
16 like this that would request 78 to 80 percent lot occupancy.

17 But all of the Board members voted to approve,
18 they did provide some commentary that they would not like to
19 see this property go above the requested 81.3 percent at the
20 time that we presented it to them.

21 So, we were able to reduce that in today's
22 presentation.

23 CHAIRPERSON HILL: Sorry, Mr. Campbell to
24 interrupt, Mr. Kirschenbaum, can you hear me?

25 MR. KIRSCHENBAUM: Yes, I can hear you.

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1 CHAIRPERSON HILL: Did you hear the discussion
2 Commissioner May was having?

3 MR. KIRSCHENBAUM: I did.

4 CHAIRPERSON HILL: And do you have any thoughts
5 on that and how you might be able to help, Mr. Campbell?

6 MR. KIRSCHENBAUM: A lot of what Commissioner May
7 said is what we've already instructed within the first two
8 to try and refocus that existing sleeping portion to deduct
9 it. I don't have much else to add to what Commissioner May
10 said.

11 CHAIRPERSON HILL: Mr. Campbell, if you get
12 denied, you can't come back for a year, just to let you know
13 how it works.

14 So, what I would suggest is go ahead, we'll wait
15 for the reasonable accommodation to pass or if you come back
16 to us with a different kind of design or working with the
17 Office of Planning and the discussions based here on this
18 hearing, you might have a different approach.

19 I'm going to give you a little bit of time to do
20 that. Do you know when you may or may not get something for
21 the reasonable accommodation?

22 MR. CAMPBELL: I do not know, I was promised
23 within a week but we are at a week today.

24 CHAIRPERSON HILL: You might get denied and you
25 might still be back where you are. So, let me see, Mr. Moy,

1 can you hear me? I don't know what I got. So, the 20th we
2 had 10 cases, the 27th we had 9 cases. You look like are
3 about to say something?

4 MR. CAMPBELL: I was being told there's neighbors
5 who would like to testify on behalf of the Applicant.

6 CHAIRPERSON HILL: Mr. Young, did I ask you that?

7 MR. YOUNG: You did, I don't have anyone on my
8 list.

9 CHAIRPERSON HILL: -- in advance, Mr. Campbell,
10 and also, I'm trying to help you out. So, we can move
11 forward with the vote if you want, Mr. Campbell, is that what
12 you'd like to do?

13 MR. CAMPBELL: I would like to consult the
14 Applicant first so they would prefer not to do a vote.

15 CHAIRPERSON HILL: I would prefer not to do a vote
16 if I were the Applicant also. So, let's see, Mr. Campbell,
17 I'm going to try to get you back here on the 27th.

18 MR. CAMPBELL: And may the owners testify? They
19 have signed up to testify on the 27th.

20 CHAIRPERSON HILL: Let's hear from everybody on the
21 27th, Mr. Campbell. We're going to come back for a continued
22 hearing on the 27th and we can hear from everybody.

23 MR. CAMPBELL: I have two other cases on the 27th
24 and so it would be a good day for me as well.

25 CHAIRPERSON HILL: Mr. Campbell, you can work with

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1 the Secretary or call the Secretary and see if we can get
2 your cases scheduled together. Mr. Campbell, I haven't seen
3 you that much, have you been with us before?

4 MR. CAMPBELL: It's been a few years, I try to stay
5 away from you guys.

6 CHAIRPERSON HILL: If it's been a few years, it
7 was before the goatee then, Mr. Campbell. We'll see you here
8 on 4/27/22. See if you can work with the Office of Planning
9 and get this cleaned up, okay, Mr. Campbell?

10 Don't go anywhere.

11 VICE CHAIR JOHN: This is for the Office of
12 Planning, I wanted to some clarification on repurposing the
13 addition into a deck. So, how would that help with the lot
14 occupancy, Mr. Kirschenbaum?

15 MR. KIRSCHENBAUM: To provide a one-story deck so
16 it's not the existing space. There are provisions under the
17 zoning regulations to allow ordinary repairs and alterations
18 to existing things on the building.

19 So, the idea was to alter the porch into a deck
20 but not further increase the size of that, and to see if the
21 Zoning Administrator would allow that.

22 VICE CHAIR JOHN: But because of the height above
23 the ground it would still count to lot occupancy?

24 MR. KIRSCHENBAUM: Yes, it's about four feet.

25 CHAIRPERSON HILL: I'm going to close the hearing

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1 on the record, we'll see you on the 27th, Mr. Campbell.

2 MR. CAMPBELL: Thank you.

3 CHAIRPERSON HILL: Did we only hear one case after
4 the break, or two cases? I'm getting kind of messed up.
5 Let's do one more and then take lunch. Mr. Moy, if you could
6 call our next case?

7 MR. MOY: This would be the application of 20542
8 of Hossein Barekatain and Fardin Foroujan. This is the
9 Applicant's request for relief for the use variance for the
10 maximum number of dwelling unit requirements, Subtitle D
11 Section 201.1, pursuant to Subtitle X Section 1002.

12 And area variances from the lot that mention
13 requirements Subtitle D Section 302.1 presents Subtitle X
14 Section 1002 and from the penthouse maximum area
15 restrictions, Subtitle C, Section 00.3B, which was pursuant
16 to Subtitle X, Section 1002.

17 It would construct three new stories with roof
18 deck and cellar flats in the R3 zone. Property located at
19 2405 37th Street NW, Square 1300, Lot 330 and 329. And today
20 this morning the Applicant has filed a request for
21 postponement, Mr. Chairman.

22 CHAIRPERSON HILL: Mr. duPont, can you hear me?

23 MR. duPONT: I can, thank you very much.

24 CHAIRPERSON HILL: Can you introduce yourself for
25 the record, please?

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1 MR. duPONT: Stephen duPont, I'm the architect for
2 the Project 20542.

3 CHAIRPERSON HILL: And you're requesting a
4 postponement?

5 MR. duPONT: I apologize for not doing it within
6 five days prior, I didn't realize postponements had to be
7 done that early so I apologize.

8 CHAIRPERSON HILL: That's okay, why was there a
9 postponement?

10 MR. duPONT: We have an ANC hearing on the 14th
11 of April, I'd like to go there first.

12 CHAIRPERSON HILL: That's why you want the
13 postponement. Mr. Moy?

14 MR. MOY: Give yourself a little flexibility on
15 this because it's going to take me a while to put this
16 together.

17 CHAIRPERSON HILL: I know we're completely, more
18 and more jammed up but how can we get them back here, when
19 can we get them back here, do you think?

20 MR. MOY: The soonest we could bring them back,
21 Mr. Chairman, would be April 27th where we currently have 10
22 cases. So, this would be the 11th case.

23 CHAIRPERSON HILL: We could push it another week
24 or two if it's better for you.

25 MR. MOY: May 4th we have 11 cases as well as May

1 11th, Mr. Chairman. May 18th, we have 9 cases. So, that's
2 a possibility.

3 MR. duPONT: Mr. Chairman?

4 CHAIRPERSON HILL: Go ahead.

5 MR. duPONT: You said this was going to be
6 difficult and you're right.

7 COMMISSIONER MAY: Mr. Chairman, I'm scheduled to
8 be back on May 25th, which is just one week later, and I have
9 gone to the trouble of reading into the whole case because
10 this is a continued hearing and I'm taking it over for Peter
11 Shapiro.

12 So, maybe if the --

13 CHAIRPERSON HILL: Let's do that. Let's try May
14 25th.

15 COMMISSIONER MAY: Mr. Moy, what does the 25th
16 look like?

17 MR. MOY: This would make the 11th case, what's
18 one more?

19 COMMISSIONER MAY: On the 25th too?

20 MR. MOY: This could work.

21 CHAIRPERSON HILL: I feel a cold coming on May
22 25th, Vice Chair John.

23 VICE CHAIR JOHN: I hope you will feel better,
24 take lots of vitamin C.

25 CHAIRPERSON HILL: I can foresee.

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1 VICE CHAIR JOHN: Lots of vitamin C.

2 CHAIRPERSON HILL: We will see you -- now, can you
3 remind me what happened the last case, Mr. duPont? Did we
4 hear the whole thing?

5 MR. duPONT: You did and because --

6 CHAIRPERSON HILL: I got you, Mr. Smith is going
7 to help me out the next time, I'm just trying to remember
8 what we had heard the last time. I'm good, Mr. duPont, we'll
9 see you on the 25th, okay?

10 MR. duPONT: Yes, sir, thank you very much.

11 CHAIRPERSON HILL: Good luck. Let's do a case,
12 let's actually do a case or do you want to take lunch? What
13 do you want to do?

14 MEMBER SMITH: I've got to go to the restroom.

15 CHAIRPERSON HILL: Let's take lunch. Then it is
16 12:40 p.m., 1:10 p.m.?

17 MEMBER SMITH: That'll be fine for me.

18 CHAIRPERSON HILL: We never make it on time so
19 let's go ahead and put out 1:10 p.m., let's just shoot for
20 1:10 p.m. and it's me who usually doesn't make it. I ain't
21 blaming any of you all. Bye-bye.

22 (Whereupon, the above-entitled matter went off the
23 record at 12:37 p.m. and resumed at 1:22 p.m.)

24 MR. MOY: The Board has returned to the public
25 hearing session after a brief lunch recess and the time is

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1 at or about 1:22 p.m. The next application for the Board is
2 Case Number 20657 of Lori and Adam Sieminski.

3 This is the Applicant's special exception relief
4 request from the vehicle parking space location restrictions
5 of Subtitle C Section 710.2C(ii). This pursuant to Subtitle
6 C Section 710.3 and Subtitle X Section 901.2.

7 This would permit a non-conforming parking space
8 within the front yard of a detached two-story principal
9 dwelling unit in the R8 zone. The property is located at
10 2930 Brandywine Street, N.W., Square 2255, Lot 3.

11 CHAIRPERSON HILL: Mr. Wilson, can you hear me?
12 Go ahead.

13 MS. WILSON: I'm sorry, I don't know what was
14 going on with my computer.

15 CHAIRPERSON HILL: No problem. Could you
16 introduce yourself for the record?

17 MS. WILSON: Yes, Alex Wilson from Sullivan and
18 Barros on behalf of the Applicant.

19 CHAIRPERSON HILL: Ms. Wilson, could you go ahead
20 and walk us through your client's presentation and why you
21 believe that your client is meeting the standard for us to
22 request the relief? I'm going to put 15 minutes on the clock
23 so I know where we are and you can begin whenever you'd like.

24 MS. WILSON: Thank you so much. Mr. Young, could
25 you please pull up the presentation? Could you go to the

1 next slide, please? This is a photo of the house and the
2 existing driveway, which is located in the front yard.

3 The Applicant is requesting relief in order to
4 maintain the existing parking space in the front yard. The
5 driveway has been in that exact location since the house was
6 constructed in 1926 and the parking space has been used by
7 the owner for over 30 years.

8 The owner has applied for permits to improve and
9 slightly enlarge that existing driveway and during
10 permitting, the Zoning Administrator determined that the
11 scope of the driveway update triggered the need for the
12 special exception relief since a parking space is not
13 permitted in the front yard.

14 And this is treated like a new driveway and
15 therefore a new parking space. It also triggered some other
16 public space issues, which are going to go through the public
17 space Committee and it will be resolved under DDOT's scope.

18 Next slide, please. The plot shows where the car
19 space is located at the end of the driveway closest to the
20 house. It is not in public space, there were some comments
21 from DDOT noting that they wanted to see something showing
22 that the spot would not be within the building restriction
23 line.

24 And we updated the plan to show where the parking
25 space is located and that has been submitted to the record,

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1 which will hopefully satisfy their concerns.

2 CHAIRPERSON HILL: You didn't hear anything back
3 from DDOT, though, Ms. Wilson?

4 MS. WILSON: Correct, and I believe the comment
5 stated something to that effect of we have concerns that the
6 parties --

7 CHAIRPERSON HILL: But this is what you submitted,
8 that that parking was inside the building restriction line?

9 MS. WILSON: That it is not within the building
10 restriction line, correct.

11 CHAIRPERSON HILL: Yet?

12 MS. WILSON: Correct. That resolves that issue.
13 Next slide, please. In terms of the general special
14 exception criteria the owners have been parking in this space
15 for over 30 years. We request to allow the owners to just
16 continue to park in the same location.

17 The property will continue to be used as a single
18 family home and this should not have any impact on the
19 adjacent neighbors because there is no change being proposed
20 and this is a common condition in the neighborhood.

21 Next slide, please. This is just a better view
22 of the subject property and adjacent property. Next slide,
23 please. This here on the left is the other adjacent property
24 and the photo on the right just shows another common
25 condition in the neighborhood.

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1 Next slide, please. Again, this photo shows other
2 driveways and front yard and other parking spaces in the
3 front yards of other houses in the area. Next slide, please.
4 This is a photo of the driveway and the properties across the
5 street, if you can see, also have multiple cars parked in
6 their front yard.

7 Next slide, please. In terms of the specific
8 criteria, the Board can grant relief for one of the following
9 reasons.

10 In this case these were the two strongest reasons,
11 the first is because the topography and dimensions of the lot
12 would preclude the space from being located at the rear or
13 even side yards and this would be less disruptive overall to
14 the neighbors.

15 The property has a depth of almost 300 feet and
16 there's a 4-foot height difference between the alley and the
17 rear property line. There are also oak trees, a deck, and
18 a shed in the rear yard.

19 There are gardens and a little bridge so in order
20 to locate a parking space at the rear, they would have to
21 tear up their entire backyard in those improvements and do
22 significant grading.

23 And maintaining the parking space in its current
24 location is the most efficient use of land as the space is
25 already adjacent to the house and relocating the space to the

1 rear would require removal of existing trees and landscape
2 features.

3 Next slide, please. These slides just show the
4 rear from the alley showing the grade change. Next slide,
5 please. This is a better view of the grade change, that's
6 the subject property and that's the alley.

7 There's no huge change in the grade of the rear,
8 which would be difficult to get a parking space up there, to
9 repay for a parking space and driveway. Next slide, please.
10 These are just more photos and a map of the features of the
11 rear that would have to be removed as a result of re-paving
12 and putting a driveway in the parking space at the rear.

13 Next slide, please. And finally, these are photos
14 of the side yard which show they are too narrow to fit a
15 parking space. Next slide. That concludes our presentation
16 and we have the homeowners here.

17 If we have any questions I'm happy to answer any
18 additional questions as well.

19 CHAIRPERSON HILL: Does the Board have any
20 questions of the Applicant? Can I turn to the Office of
21 Planning?

22 MS. MYERS: Good afternoon, Crystal Myers with the
23 Office of Planning. We're recommending approval of this case
24 and we can say on the record the Staff report or go into it,
25 whatever you would prefer.

1 CHAIRPERSON HILL: Does anybody have any questions
2 for the Office of Planning? Does the Applicant have any
3 questions for the Office of Planning?

4 MS. WILSON: No, thank you.

5 CHAIRPERSON HILL: Mr. Young, is there anyone here
6 wishing to speak?

7 MR. YOUNG: We do not.

8 CHAIRPERSON HILL: Ms. Wilson, anything you'd like
9 to add at the end?

10 MS. WILSON: No, thank you.

11 CHAIRPERSON HILL: I'm going to close the hearing
12 and the record. Mr. Young, can you please excuse everyone?
13 I'm comfortable with the application, I believe they are
14 meeting the criteria for us to grant the relief requested.

15 I don't see how they're necessarily going to be
16 able to put the parking space in the rear of the property
17 there. Even if they did use the alley I am comfortable that
18 the parking space is not within the building restriction line
19 that DDOT was concerned about.

20 So, therefore, overall, I think it's pretty
21 straightforward. I would agree with the analysis the Office
22 of Planning has provided to us as well as giving the ANC
23 great weight in support and I will be voting in support of
24 this application.

25 Mr. Smith, can I go to you?

1 MEMBER SMITH: I've agree with your analysis. I
2 do believe they have met the burden of proof to be able to
3 grant the special exception regarding DDOT's report on trying
4 to put it within the alley.

5 I agree with you, I don't see how they can put it
6 in the alley. it looks like there's a topo change in the
7 rear that would make that a little difficult so they're
8 attempting to utilize the existing driveway they have there.

9 And I think request is reasonable. So, I support
10 the application.

11 CHAIRPERSON HILL: Thank you. Mr. Blake? Did I
12 lose Mr. Blake? Mr. Moy, he's on this, correct, I just
13 happened to lose him for a minute, is that correct?

14 MR. MOY: Yes, sir, this is a new case before the
15 Board.

16 CHAIRPERSON HILL: I'll tell you what, let me go
17 to Commissioner May.

18 COMMISSIONER MAY: I have nothing to add, thank
19 you.

20 CHAIRPERSON HILL: Vice Chair John?

21 VICE CHAIR JOHN: I'm in support of the
22 application I think. It's fairly straightforward, the grade
23 change in the back would make it very difficult to locate the
24 parking of the alley.

25 So, I would approve the application.

1 CHAIRPERSON HILL: Thank you, words that every
2 Applicant wants to hear from Commissioner May, I have nothing
3 to add. We'll see if we can get Mr. Blake back on. I'm
4 going to go ahead and make a motion to approve Application
5 20657 as captioned and read by the Secretary and ask for a
6 second.

7 Ms. John?

8 VICE CHAIR JOHN: Second.

9 CHAIRPERSON HILL: Motion has been made and
10 seconded. Mr. Moy, will you do a roll call, please?

11 MR. MOY: Yes, sir.

12 When I call your names if you would please
13 respond, yes, no, or abstain to the motion made by Chairman
14 Hill to remove the application for the relief that's being
15 requested. The motion to approve was seconded by Vice Chair
16 John.

17 Zoning Commissioner, Peter May?

18 COMMISSIONER MAY: Yes.

19 MR. MOY: Mr. Smith? Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. MOY: And we have one Board member not --

24 CHAIRPERSON HILL: It looks like Mr. Blake is
25 back. Mr. Blake, did you hear the case which we just dropped

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1 off? Would you like to vote? We lost Mr. Blake still. Go
2 ahead and continue your thought, Mr. Moy, go ahead and just
3 read it.

4 MR. MOY: I was going to say there was one Board
5 member not participating as far as I can tell. So, in that
6 event Staff would record the vote as 4 to 0 to 1 and this is
7 on the motion made by Chairman Hill to approve.

8 The motion to approve was seconded by Vice Chair
9 John, also in support of the motion to approve, Zoning
10 Commissioner Peter May, Mr. Smith, Vice Chair John, and
11 Chairman Hill. As I said before, one Board member not
12 participating, the motion carries on a vote of 4 to 0 to 1.

13 CHAIRPERSON HILL: Thank you, Mr. Moy. Let's see
14 if we got Mr. Blake back. Mr. Young, Can you hear me?

15 MR. YOUNG: I can hear you.

16 CHAIRPERSON HILL: Do you know if Mr. Blake is on?
17 Does he have a mute thing?

18 MR. YOUNG: He's on, I'm not sure, he must be
19 having some kind of issues.

20 CHAIRPERSON HILL: He just texted me and said his
21 computer crashed. In that case, let me go ahead and move on
22 and see when we get him back. Mr. Moy, can you go ahead and
23 call our next one?

24 The next application before the Board is Case
25 Number 20606 of Christopher Brown and the Applicant is asking

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1 for a special exception relief from the rare yard
2 requirements, Subtitle E, Section 306.1. This is pursuant
3 to Subtitle E, Section 5201 and Subtitle X Section 901.2.

4 And from the lot occupancy requirements Subtitle
5 E Section 304.1 pursuant to Subtitle E Section 5201 and
6 Subtitle X Section 901.2, all of which would construct a
7 rare, one-story addition and deck to an existing attached
8 two-story with cellar principal dwelling unit in the RF-1
9 zone, property located at 905 L Street NE, Square 931, Lot
10 38.

11 Mr. Brown, can you hear me?

12 MR. BROWN: Yes, I can hear you.

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

15 MR. BROWN: Christopher Brown, I'm the owner and
16 Applicant at 905 L Street NE.

17 CHAIRPERSON HILL: If you want to go ahead and
18 tell us about your application and I'm going to put 15
19 minutes on the clock there so I know where we are and you can
20 begin whenever you'd like.

21 MR. BROWN: I have a presentation. I submitted
22 it. Yes. Okay. So, I'm Christopher Brown. I also have
23 Tony Darro (phonetic), my ex-architect, who can provide some
24 testimony if there are any technical questions. I'll just
25 get started.

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1 CHAIRPERSON HILL: Thanks, Mr. Brown. I'm
2 flipping through your slide deck and it looks very good, so
3 I'd go ahead and just keep going through that.

4 MR. BROWN: Okay, next slide. We've already
5 talked about what I'm trying to get relief from, rear yard
6 requirements and the maximum lot occupancy. We can go to the
7 next slide. So I am requesting 70 percent lot occupancy.
8 Right now I'm at 53 percent. And I'm also requesting relief
9 from the minimum yard setback at 15.26 feet from 20 feet.

10 Next slide. These are our letters of support for
11 my immediate neighbors to the east and west, so I have done
12 that. Next slide. And I also work with my ANC to get their
13 approval or support, so I've submitted that. Next slide.

14 These are a few pictures of the existing
15 conditions in the rear. So, if we can go to the next slide.
16 This is the view from the rear. This is an existing porch
17 that I have on my house. So, basically, this would be
18 demolished and the rear addition will replace this, along
19 with the deck.

20 Next slide. This is a view from the alley, it's
21 just to point out it's an upward lot, which, yes, I have to
22 request more of lot occupancy to get more space in my current
23 slot that I have. So, next slide. And I just wanted to
24 point out that my neighbors have an existing two-story
25 addition in mind so that plays into any undue hardships to

1 my neighbor.

2 Next slide. The next couple slides give some
3 views of what we are proposing. Next slide. So, this is a
4 rendering that my architect has drawn up and I've submitted.
5 This just gives a view in relation to my two neighbors.

6 Next slide. This is just pointing out I work with
7 my ANC to redesign the roof so this gets to my lot occupancy
8 and so we came to this agreement with my ANC. So, next
9 slide. I can go through my basis for why I should be granted
10 a special exception in the next two slides.

11 Next slide. So, we should be in harmony with the
12 zoning regulations and zoning maps. I'm in RF-1 zone and I
13 don't plan to do anything outside of how that's defined now.
14 Next slide. I won't adversely affect my neighboring property
15 and the next slide goes through the special conditions.

16 Next slide. Light and air to the neighboring
17 properties, I've submitted some sun studies that are
18 available and I don't believe it cast any shadows or anything
19 that are detrimental to my neighbors.

20 Next slide. So, privacy and use of my neighboring
21 properties. Basically, it's the same situation that exists
22 today, the windows are facing south into my alley so it's
23 basically the same situation as today and the fence will
24 remain to keep the privacy.

25 Next slide. The proposed position won't visually

1 intrude upon the character, scale, and pattern of the houses.
2 This is a typical addition that exists within my block. So,
3 I believe I meet that criteria and for Condition 4, I have
4 submitted all the plans to the Board for their review.

5 So, I think I've met the criteria. I think that's
6 it.

7 CHAIRPERSON HILL: Does the Board have any
8 questions for the Applicant? I'm going to turn to the Office
9 of Planning.

10 MS. ELLIOTT: Good afternoon, Mr. Chair, and
11 members of the Board, I'm Brandice Elliot representing the
12 Office of Planning for BZA Case 20606, the Office of Planning
13 is recommending approval if the release has been requested
14 for lot occupancy and rear yard.

15 And Mr. Brown did such a great job addressing the
16 criteria that I'll go ahead and stand on the record but I'll
17 answer any questions that you have.

18 CHAIRPERSON HILL: Thank you, does anybody have
19 any questions for the Office of Planning? Mr. Young, is
20 there anyone here who wishes to speak?

21 MR. YOUNG: We do not.

22 CHAIRPERSON HILL: Mr. Brown, can you tell me what
23 happened at the ANC meeting and how that went?

24 MR. BROWN: Yes, originally I was requesting a
25 variance to have more lot occupancy than the 70 percent that

1 you're able to give me relief for.

2 They were not supportive in that so I went back
3 to the drawing board with my architect, addressed their
4 issues, came back to the 70 percent, and this is the plan
5 that we came up with, which my ANC was in support of.

6 CHAIRPERSON HILL: Are you an attorney?

7 MR. BROWN: No.

8 CHAIRPERSON HILL: You did a nice job with your
9 presentation. Anybody got any final questions for the
10 Applicant? Mr. Brown, do you have anything to add at the
11 end?

12 MR. BROWN: No, sir.

13 CHAIRPERSON HILL: We'll close the hearing and the
14 record, please excuse Mr. Brown.

15 I did mean that in that for someone who is a
16 layperson who is not an attorney I thought Mr. Brown did a
17 lovely job going through the points in terms of regulations
18 and how his application is meeting the regulations.

19 I also thought the presentation was really good
20 and how the slide deck was put together, and it made it very
21 easy with which to understand, again, how he's meeting the
22 standard for us to grant the relief requested.

23 I would agree with the argument that he has put
24 forward as well as the support of the ANC giving them great
25 weight as well as the analysis of the Office of Planning and

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1 I would agree with the Office of Planning. And also DDOT
2 doesn't have this approved, so I have nothing to add other
3 than that.

4 Mr. Smith, do you have anything and can you hear
5 me?

6 MEMBER SMITH: I can hear you. There we go, I was
7 having an issue with the camera. I have nothing to add, I
8 agree with your analysis and I will support the application.
9 We give great weight to the Staff's words.

10 CHAIRPERSON HILL: Commissioner May?

11 COMMISSIONER MAY: That was a very dramatic, I
12 have nothing to add, and I blew it. I support the
13 application.

14 CHAIRPERSON HILL: Words from heaven to the
15 Applicant. Vice Chair John?

16 VICE CHAIR JOHN: I have nothing to add, Mr.
17 Chairman.

18 CHAIRPERSON HILL: Thank you very much. I'm going
19 to make a motion to approve application 20606 as captioned
20 and read by the Secretary and ask for a second. Ms. John?

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: Mr. Moy, the motion has been
23 made and seconded. Would you please take a roll call?

24 MR. MOY: When I call each of your names, if you
25 would please reply with a yes, no, or abstain to the motion

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1 made by Chairman Hill to approve the application for the
2 relief that's being requested. The motion to approve was
3 seconded by Vice Chair John.

4 Zoning Commissioner Peter May?

5 COMMISSIONER MAY: Yes.

6 MR. MOY: Mr. Smith?

7 MEMBER SMITH: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: It appears Mr. Blake is still not on
13 board yet. So, Staff would record the vote as 4 to 0 to 1.
14 And this is on the motion made by Chairman Hill to approve,
15 a motion made to approve was seconded by Vice Chair John.

16 Also in support of the motion to approve, Zoning
17 Commissioner Peter May, Mr. Smith, and of course Vice Chair
18 John and Chairman Hill, the motion carries on a vote of 4-0-
19 1.

20 CHAIRPERSON HILL: Thanks, Mr. Moy. Maybe you can
21 give Mr. Blake a call during this next case after you call
22 in this next case because he can also just call in if he'd
23 like for the appeal portion. But if you wouldn't mind please
24 calling our next case?

25 MR. MOY: I'll take care that. The next case

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1 before the Board is Application Number 20592, John and Linda
2 Reveal is the Applicant as amended, the certified application
3 for special exception on the side garden requirements of
4 Subtitle D, Section 206.2.

5 Pursuant to Subtitle D, Section 5201 and Subtitle
6 X Section 901.2, the relief for variances from the lot
7 occupancy requirements of Subtitle D Section 304.1 pursuant
8 to Subtitle X Section 1002 and the minimum line area
9 requirements of Subtitle D Section 302.1, pursuant to
10 Subtitle X Section 1002.

11 This would construct a side addition to an
12 existing detached two-story with basement, principal dwelling
13 unit in the R1B zone, and the property is located at 4701
14 Fessenden Street NW, Square 1541, Lot 800.

15 And the only thing I'll add is, Ms. Wilson, it
16 would be nice to verify, confirm the relief that I've just
17 cited.

18 CHAIRPERSON HILL: Ms. Wilson, can you hear me?

19 MS. WILSON: I can, yes. Can you hear me?

20 CHAIRPERSON HILL: Yes, could you introduce
21 yourself for the record?

22 MS. WILSON: Hi, I'm Alex Wilson from Sullivan &
23 Barros, on behalf of the Applicant in this case.

24 CHAIRPERSON HILL: Mr. Blake, can you hear us?

25 MEMBER BLAKE: Yes, I can.

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1 CHAIRPERSON HILL: Wonderful, I'm going to need
2 you for this. Ms. Wilson, I know there are some things
3 you're going to have to really take us through with this in
4 terms of your burden of proof with regards to how it's going
5 in the opposite of what the Office of Planning had thought.

6 And so we are going to listen closely as to your
7 argument and then we're going to look at the Office of
8 Planning. Is this the property owner?

9 MS. WILSON: Yes, Linda and John Reveal are the
10 property owners, and we should have Cooper Jones, the
11 architect, on. He said he just got kicked out for some
12 reason.

13 CHAIRPERSON HILL: Let's go ahead and try to get
14 the architects on there, let's go ahead, Ms. Wilson, and let
15 you walk us through this. I have this first picture on the
16 slide deck, how accurate is it, lovely, what a wonderful
17 home, congratulations if it eventually looks like that.

18 Go ahead, Ms. Wilson.

19 MS. WILSON: Mr. Young, if you could please pull
20 up the presentation? This is the proposed rendering. If you
21 could please go to the next slide? This is showing the
22 existing deck and den. In this case we are acting for three
23 areas of relief. I will touch on those in the next slide.

24 OP is recommending approval for some of that
25 relief, the main point of disagreement with OP is whether we

1 meet the practical difficulty prong of the area variance for
2 lot occupancy. So, that's going to be the primary focus on
3 of our presentation.

4 And I think the argument and circumstances are
5 relatively straightforward in this case.

6 This homeowners, Linda and John Reveal, have an
7 old deck beneath to be removed for safety reasons and instead
8 of losing that square footage, they're seeking to incorporate
9 it into the interior living space and increasing the size of
10 this narrow unused den and renovating the adjacent bathroom.

11 And we'll show in more detail that because of the
12 layout of the house and many other unique circumstances
13 surrounding this property they are seeking an additional 4
14 percent lot occupancy for only 86 square feet because their
15 house is already non-conforming with respect to that
16 property.

17 Next slide. So, we are seeking three areas of
18 relief in total, one for the lot occupancy area variance, the
19 other is for the land area variance and OP is recommending
20 approval for that. And that would just allow us to turn the
21 tax lot into the record lot.

22 So, there could be improvements made on the
23 property. And without that relief, no addition or further
24 improvements would ever be possible.

25 And then the third area of relief is for the side

1 yard special exception and it would allow them to essentially
2 maintain the status quo of the yard but still requires relief
3 in assessing the yard in front of the house.

4 The ANC is supporting this application and before
5 I turn to the variance argument I'd like to first turn it
6 over to Linda Reveal to get some testimony and then the
7 architect to briefly walk through the plans.

8 MS. REVEAL: Hi, everyone, I'm Linda ReVeal, and
9 as Alex said, my husband, John, and I are the homeowners at
10 4701 Fessenden. We purchased the house in 2010 when the
11 property was subject to a short sale and was tied up as an
12 asset in the bankruptcy proceeding.

13 It had been on the market for 18 months and had
14 been shown over 1300 times. The reason for the lack of
15 interest was that it was in a state of considerable
16 disrepair. Most of the windows were broken and there were
17 literally holes through which you could see outside.

18 The house was built in 1897 and nothing has been
19 updated in decades. It needed a new roof, new kitchen, new
20 bathrooms, new siting, a new HVAC system, a new boiler,
21 everything.

22 But he saw such great bones that all he could see
23 was potential and so, poor John, he's done a lot of this
24 himself, we have spent the last 11 years painstakingly
25 attempting to return her to her former glory. For example,

1 we ordered rippled glass made by processes they used in the
2 1800s to replace the windows in the bay to preserve the
3 period look.

4 We were able to salvage part-time flooring from
5 another old house to restore the original part-time floors.
6 We drove to Pennsylvania to salvage an authentic Victorian
7 mantelpiece. And it's been a real labor of love.

8 We're here today because our original plan long
9 term included expanding an awkwardly narrow first-floor
10 office by removing an outdoor deck and using the space to
11 construct the first floor bedroom and bath.

12 As you'll see from the photos, the deck is in very
13 bad shape and reminiscent of the state of the rest of the
14 house when we first purchased it.

15 When we began to research the process for an
16 addition, we learned that because our building is over lot
17 occupancy, we would need an area variance for any sort of
18 addition. We were told that much would depend on the opinion
19 of the ANC who would look to our neighbors for their views.

20 So, we prepared detailed packages of information
21 and sat down with each neighbor individually to explain our
22 plan. Every single one of them signed a letter in support.
23 The ANC then approved our request unanimously. We also knew
24 that the Office of Planning would be part of the
25 decision-making process and so we submitted our plans to them

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1 and asked for guidance.

2 And ultimately, we altered our initial design
3 slightly at their suggestion. In fact, they were quite
4 complimentary of our attempt to maintain the integrity of the
5 original house. When we learned that another part of the
6 Office of Planning was inclined to the NIAR request, we were
7 completely taken by surprise.

8 It's our understanding that the lot occupancy
9 regulations are designed to promote a proper balance of built
10 upon to green space, and to ensure that no one unduly imposes
11 upon their neighbors.

12 Given that our neighbors support the proposal and
13 if we were to be granted our request, we're barely increasing
14 the lot occupancy and ultimately utilizing only a very small
15 portion of the land. We're not sure who or what would be
16 served or protected by the denial of our request.

17 And it seems that our very unique circumstances
18 would severely limit any precedent established. Our proposal
19 would render the interior space more usable and the exterior
20 more attractive, an opinion shared by all of our neighbors.

21 We're asking for a modest amount of additional
22 space, only 86 square feet, to replace a derelict deck and
23 narrow bend with a more functional room. It's our hope to
24 address these issues today and answer any further questions
25 the Board might have.

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1 Thank you so much.

2 MS. WILSON: Mr. Young, if you could go to the
3 next slide, that would be the architect's presentation.

4 MR. JONES: Yes, I'm Cooper Jones, I'm part of the
5 architecture team that was working on this project. So, the
6 idea was to utilize, as Linda said, areas of the house that
7 are in disrepair or areas that were really proportioned so
8 they're fairly unusable.

9 And to create an addition that really works with
10 the proportions and the style of the pre-owned house that's
11 quite a beautiful house. So, we are using the deck that
12 you've seen in disrepair as well as this addition that was
13 put on.

14 We don't know exactly when but it's not really in
15 keeping with the style of the house. Next slide, please.
16 This is the lot, you can see it's quite a bit smaller than
17 all the neighboring lots. The minimum required lot area is
18 5000 square feet and their lot, unfortunately because of all
19 the setbacks from the street is significantly less than that.

20 Next slide. This is showing the existing
21 additional and the deck with the side setback and the
22 existing footprint and then onto the right is the proposed
23 addition with a small porch extension.

24 Next slide. This is the proposed bedroom with a
25 bathroom and a closet and a vestibule to enter separately.

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1 We wanted really to use the proportions of the house and the
2 bays that are already so much a part of this house already
3 as a way to make it really feel like it was always a part of
4 it.

5 Next slide. This is just the roof structure,
6 again just using the some kind of roofing materials so it
7 really blends in with what's there. Next slide.

8 As you can see, the elevation, we're trying to use
9 the syncopation of the historic deck that's on the porch
10 that's there and use that to create a mapping that really
11 makes sense with the house and works with what's already
12 there.

13 Next slide. There's just another elevational view
14 showing the addition as well as the porch extension, again
15 trying to utilize, as Linda was saying, the care with which
16 they've restored this house, we want to put that same kind
17 of care into this addition.

18 CHAIRPERSON HILL: Ms. Wilson, Mr. Jones, I
19 appreciate this a lot, but we have some stuff, an appeal,
20 coming. Do you want to try to make your argument in Slide
21 12?

22 MS. WILSON: Absolutely.

23 CHAIRPERSON HILL: Mr. Jones, is your dog trying
24 to get in?

25 MR. JONES: He is, sorry.

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1 CHAIRPERSON HILL: Just let him in.

2 MS. WILSON: Next slide, please. I'll dive right
3 into the variance argument for the lot occupancy. So,
4 regarding the first prong, it was the only property in the
5 square. It is a taxed lot with less than half of the
6 required square footage for a lot of the --

7 MEMBER SMITH: Can I interrupt? You're very
8 choppy on our end.

9 MS. WILSON: Me?

10 MEMBER SMITH: Yes.

11 MS. WILSON: Let me take my AirPods out. Is that
12 better? I've had a lot of technical issues today, so thank
13 you for bearing with me.

14 Regarding the first prong of the variance
15 argument, the property is the only property in the square and
16 lot. It is a tax lot with less than half of the required
17 square footage to create a new lot in this zone. It is
18 surrounded by a public park space on all sides. We showed
19 some of that in the plant but there is between 30 to 40C of
20 green space on either side of this lot. It's essentially not
21 an island by itself.

22 Next slide, please. As I noted, it's the only
23 taxed lot in this area and the Applicant has to have a record
24 lot in order to do the addition. But record lot in this zone
25 requires 5000 square feet and the lot has less than half of

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1 that.

2 We are seeking land area relief as well as the lot
3 occupancy relief to turn the taxed lot into a record lot.
4 And OP is recommending approval of the land area relief from
5 the tax lot to record lot conversion that not be left off the
6 relief. I just wanted to note that. Next slide, please.
7 The property is unique relative to other properties in both
8 its location, tax lot status and size.

9 And I'll also note that there are no adjacent
10 neighbors so the Applicant couldn't even theoretically
11 purchase adjacent land to increase the size of the lot unlike
12 the other lots to the south. Those owners could
13 theoretically purchase land from a next door neighbor if
14 there was an issue with respect to lot occupancy.

15 Next slide, please. The prong in contention is
16 the practical difficulty prong of the lot expectancy
17 variance. As I noted at the beginning, the idea for the
18 renovation to about as a result of multiple factors, one of
19 which is the fact that there is an existing deck on the side
20 of the house that needs to be removed.

21 It's quite old, derelict, unsafe, and it is also
22 next to the den space that is unused because it's not
23 functional due to its size. So, the idea is to incorporate
24 some of that lost deck square footage into the interior and
25 create a functional space for a larger office or mislabeled

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1 bedroom, where that deck and den needs to be.

2 Replacing the deck isn't the best option because
3 they don't need that outdoor space, they have an existing
4 porch and deck. So, rather than lose the lot occupancy, the
5 thought was to incorporate it into the interior, make a full
6 bed and bath, and have additional usable space since they do
7 not use that den space.

8 It's quite narrow. This is the most logical
9 option as to what is proposed to put that addition in the
10 side yard and maintain roughly the same location of that
11 existing bathroom inside the pipes and plumbing that exist
12 there.

13 And the request for relief is the bare minimum
14 necessary to make that possible. Next slide, please. So,
15 we provided one out of rate option. There are many, you
16 could imagine, that would require a full gut of the interior.

17 In this case, that deck would be eliminated and
18 you can see the study there is long and relatively shallow.
19 So, in this case, the Applicant would still have to say
20 within the existing 72 percent lot occupancy and without the
21 additional 4 percent, they would have issues making that
22 space functional given the layout.

23 As you can see from the slide, the best use of the
24 square footage from that lost deck would be to make that
25 study more functional since it needs more depth, not more

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1 length. That would require eliminating a bathroom and
2 possibly opening their study into the dining room.

3 This imagine doesn't show the entire picture of
4 that but what it does show is how any matter of right project
5 would impact the existing layout on the other side of the
6 building.

7 So, if the Applicant were to try to add some of
8 that deck space into the study they would essentially have
9 to eliminate that bathroom and they could possibly bump out
10 that wall, but then that's the only bathroom on the first
11 floor so it needs to be relocated.

12 And it would essentially shift the entire floor
13 plan. So, the point is the matter of right options include
14 studying the interior or shifting the floor plan and instead
15 of a slightly expanded bathroom and study as is proposed with
16 the relief, this would turn into a major first-floor
17 renovation.

18 There are a number of matter of right options to
19 reconfigure the existing space within the 72 percent lot
20 occupancy but given the history of this house and the
21 Reveal's effort to restore and preserve the integrity of the
22 interior and exterior of the home, coupled with the obvious
23 increase in cost between a small site addition and deck
24 replacement to the entire gut of the first floor, the ReVeals
25 would not pursue such a renovation.

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1 So, then they are back to square one where they
2 still have to remove this deck and they contemplated
3 rebuilding a kind but it makes no sense to spend money
4 building a deck of this size in the area of the yard they'll
5 never use and have never used next to Western avenue when
6 they have a nice front porch and second story deck with more
7 privacy.

8 And of course, they can't just eliminate this deck
9 entirely because the den has a door that leads out to the
10 deck. So, if you eliminate the deck then there's the door
11 in the study that leads to nowhere.

12 So, regardless of the release, it still has to
13 pursue some sort of project here because of the state of that
14 deck, whether it's a small landing of some kind or removed
15 the door in this end.

16 There has to be something done here and again, the
17 idea was to use that lost space and just move it internally
18 with an additional four percent.

19 So, accordingly to the internal layout coupled
20 with the existing non-conforming lot occupancy small lots
21 size and taxed lot status, without the relief the Applicants
22 will lose existing square footage because they have to remove
23 the deck but cannot usably relocate or replace the removed
24 square footage.

Therefore, the matter of right options are

1 unnecessarily burdensome, resulting in a practical difficulty
2 for the Applicant. Next slide, please. If you wouldn't
3 mind, Mr. Young, to just slowly scroll through these? These
4 are just some photos of the existing spaces, the dining room,
5 living room and kitchen, the staircase.

6 This is the den and the deck, next slide, please.
7 That's the deck that's proposed to be removed, next slide,
8 please. Thank you. So, I added a number of cases here,
9 previous BZA cases.

10 I'm not sure if you had a chance to read through
11 but some of these are similar to our case in that the
12 Applicant is seeking a modernization of their home.

13 And there have been other cases where OP has
14 recommended approval of area variances, noting that absent
15 the request for relief, no addition, not even a small one
16 proposed would be passed along this lot.

17 And this would present practical difficulty to the
18 owner in maintaining the ability of upgrading it to more
19 current standards.

20 Next slide, please. Could you skip to Slide 22?
21 Can you just go to the next slide? Thank you. In one of the
22 cases, the Applicant wanted to add a deck for outdoor space
23 and the Applicant cited lot size as an exceptional condition.

24 The lot was under-sized for the zone. It argued
25 that without the relief it couldn't fit in the charging

1 station and outdoor space.

2 And an OP report stated because the house already
3 occupies 74 percent of the site, even a modest platform and
4 step leading from the existing kitchen's rear door to the
5 backyard would require a variance.

6 I could substitute our case in that exact
7 sentence. Because the house occupies 72 percent of the site,
8 even a modest addition can make the existing den a useful
9 room would require a variance. And of course I understand
10 that each case is decided on its own merits.

11 I am bringing up these other cases to evidence but
12 the Board can consider a wide range of factors for the Court
13 of Appeals as to what satisfies the practical difficulty
14 prongs and these are just some samples of the types of
15 difficulties that have previously met the standard for BZA
16 approval and they're quite similar to the practical
17 difficulties the Applicant will face in this case.

18 Next slide, please. So, to summarize, OP is
19 recommending approval for the land area so that we can create
20 a taxed lot under the same justification for which we have
21 provided for the lot occupancy variance. Essentially,
22 nothing can be done without the relief.

23 OP's report states that the argument that the
24 shape of the lot results in a small building footprint of
25 approximately 1000 square feet of useful living space on the

1 first floor is not unusually small and is not an exceptional
2 practical difficulty.

3 This is the only argument thus far against the
4 practical difficulty that has been provided by OP. And I
5 understand that OP was going from the information on hand at
6 the time. We have submitted additional information since
7 that in the form of this presentation, which was actually
8 submitted in January.

9 That's when we were supposed to have the original
10 hearing. This presentation provided more detail, it's very
11 similar to the one today, I just moved around a few slides.
12 And we were told by OP that none of the additional
13 information was persuasive.

14 Of course we've added some more oral argument
15 today during the presentation so if after the hearing, you'd
16 like us to submit these arguments or if OP would like this
17 information in the record, we'd be happy to do so.

18 At this point now I also want to touch on the
19 other area of relief, the special exception for the side
20 yard. As there are no surrounding properties, the request
21 will not unduly affect the light, air, privacy, or character
22 of the surrounding properties.

23 And I believe OP cannot recommend approval on that
24 for the report because it would conflict with its denial of
25 the lot occupancy relief. But if it were approved, obviously

1 the special exception would not impact neighbors.

2 There aren't any neighbors and the proposed
3 addition has been designed to match the character of the
4 existing house and it wouldn't be visible.

5 With respect to the third prong of the variances,
6 granting relief will not encourage a purpose or intent of
7 this zoning regulation, nor will granting relief result in
8 a substantial detriment to the public good as the request is
9 only for 4 percent for 86 square feet of additional lot
10 occupancy and there are no adjacent neighbors.

11 I'll also note the purpose and intent of this
12 zoning regulation governing lot occupancy in NER are to
13 protect open spaces and avoid the overbuilding and
14 overcrowding. In this case, the property is suspended by
15 30 to 40 feet of green space on each side.

16 The zoning regulations specifically permit
17 variances for properties facing unique circumstances such as
18 this, where you'll have a 100-plus-year-old building on a lot
19 already over lot occupancy and the owner cannot make
20 improvements with their building without the relief.

21 And you have interior space that is
22 compartmentalized, which is typically of older homes. There
23 is also this deck that needs to be removed, which could allow
24 the Applicant to utilize some of that space that would
25 otherwise be lost in the interior.

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1 This is conceivably the type of circumstance the
2 variance was put in place to address. The ReVeals have lived
3 here for many years and it would makes sense to allow
4 homeowners to make improvements to have basis modernization
5 sent to their homes such as putting a larger office or
6 bedroom on the first floor.

7 And of course, this lot is on an island by itself
8 and the circumstances are exceptional and unique, and there
9 are no surrounding properties and it has that public park
10 space, which helps preserve the integrity of the regulation.

11 Next slide, please. That concludes our
12 presentation and we did happy to answer any questions.

13 CHAIRPERSON HILL: Does the Board have any
14 questions of the Applicant? Commissioner May?

15 COMMISSIONER MAY: Yes, I do. I guess I'll start
16 out with this is Reveal, and if we could bring up the
17 photographs that start on Page 18.

18 CHAIRPERSON HILL: Is that the most recent exhibit
19 we just had?

20 COMMISSIONER MAY: Yes. I want everybody to take
21 a good look at this and then we can flip to the next page.
22 Go ahead and switch to the next page and we'll stop here for
23 a second.

24 Ms. Reveal, you told us about your efforts to
25 renovate this house, that it was in terrible condition and

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1 you did a lot of work to fix it up. What I'm wondering is
2 to what extent is what we are seeing here original to the
3 building or original to what you moved into?

4 Was it a gut renovation or these new floors, new
5 molding? Was it all restored, painted, patched?

6 MS. REVEAL: It's a combination. The house was
7 completely carpeted, if you can believe it. When we pulled
8 up the carpet, it had hard kind floor but it looked like trap
9 doors were cut into it.

10 So, we had out contractor, as I said, we salvaged
11 hard kind flooring from another old house and we pieced it
12 back together.

13 So, these are the original floors. The kitchen
14 we did basically have to gut and it's the same space but we
15 did basically start over. It is the original floor. We used
16 the hard kind to fill out the floor.

17 You can see we tried to for the kitchen do a --

18 COMMISSIONER MAY: I'm least interested in the
19 kitchen.

20 MS. REVEAL: The crown molding we added to, we
21 kept the original casing on all the windows. Actually, my
22 husband is a real stickler for this, we placed casing so it
23 all matched and we had to learn how to mill casing ourselves
24 to match the old slab which you couldn't build it.

25 That's the original casing that we matched in

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1 places where it was missing. What other questions do you
2 have?

3 COMMISSIONER MAY: I think that's kind of it. Now
4 if we could bring up the floor plan and I'd like to get the
5 architect up. If we could look at the one that shows the
6 alternative, it's going to be a couple before that. There
7 we go.

8 So, I have to say this is not very compelling in
9 terms of a demonstration that this wouldn't work.

10 I understand what you're trying to do but implying
11 that the only way to make this work is to put a bathroom in
12 what was clearly an eating area or is an eating area
13 currently and then leaving the leftover living on the map,
14 that was not a great demonstration.

15 Let's go back to the plan of the proposed
16 improvements, which is a couple slides forward. Can we go
17 a slide forward to 19 I think? No, I'm sorry, backward. I
18 want to go backward. There we go, that one, 60.

19 So, in putting aside the proposed addition for the
20 moment, based on what has already been testified to, it seems
21 that the like gray walls throughout the interior, the wall
22 that separates the stairway from the proposed bathroom, the
23 wall that separates the stair hall from the living room, the
24 walls around the dining room, the walls between the dining
25 room and the little seated dining area and the kitchen, those

1 all appear to be original walls.

2 Is that right?

3 MR. JONES: Yes, that's correct, the non-grayed-in
4 walls are existing as well as part of the gray wall where the
5 dining room is.

6 COMMISSIONER MAY: Got it. I assume that given
7 a plan of the house and the size of the spaces, all of those
8 walls would be bearing walls pretty much? Is that maybe like
9 the closet walls?

10 MR. JONES: Yes, that's the closet walls. Where
11 the existing, original exterior wall would be a bearing wall,
12 yes.

13 COMMISSIONER MAY: But some of those interior
14 walls --

15 MR. JONES: When we're not touching, yes, a lot
16 of them would be bearing walls.

17 MR. REVEAL: May I add to that? Because of the
18 work I've done I can add a little bit more insights to this.
19 The original house, there's actually a sister house to it
20 down the street. Essentially, between the blue and the red
21 line and even during -- between the blue and the red line
22 where that stair goes,

23 So, all of that was added at some point many, many
24 years ago and partly we can tell by the fact that they had
25 a clearly different style of molding from the new house, some

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1 of it had oak floor in the dining room. So, you could tell
2 by the foundation of the house.

3 The old foundation is essentially a river rock
4 whereas everything starts at about that blue and red line is
5 single block. So, the bearing wall of course is going to be
6 the whole exterior of the house anyway.

7 The walls by the stairway would have been the
8 originate barrier wall. The one that's now a dotted blue
9 line is an exterior barrier wall but it's not as germane to
10 the whole structure.

11 In other words, since it's part of a 70-year-old
12 addition it's probably easier to move? But everything else
13 inside there, these old-age walls, everything comes through
14 the windows, you can't get through the hallways.

15 COMMISSIONER MAY: The point I'm trying to get to
16 is that given this is a historic house that has been very
17 carefully -- and I say historic in the generic term, not in
18 terms of being listed on a national register or anything like
19 that, or the D.C. register.

20 But because it's a historic house, the areas where
21 it is most right for any kind of changes is the area where
22 you are proposing to make the changes. Is that reasonable
23 to say?

24 MS. REVEAL: Right.

25 COMMISSIONER MAY: I can hear that from the

1 architect too.

2 MR. JONES: Yes, absolutely. We wanted to do the
3 least amount of damage to the existing character and
4 interior.

5 COMMISSIONER MAY: I think that answers my
6 questions. Thank you.

7 CHAIRPERSON HILL: Do any other Board members have
8 some questions at this point? I'm going to turn to the
9 Office of Planning, please.

10 MR. KIRSCHENBAUM: Good afternoon again, Chair
11 Hill, members of the Board of Zoning Adjustment. I am
12 Jonathan Kirschenbaum with the Office of Planning.

13 The Office of Planning recommends approval of the
14 lot area variance requested and recommends denial of the lot
15 occupancy variance requested.

16 OP also cannot make a recommendation of the five-
17 yard special exception relief because it is based on
18 increasing and decreasing lot occupancy of the house through
19 which a variance is requested and which OP does not support.

20 Regarding the lot area variance, the exceptional
21 condition affecting this other property is a house that is
22 located on the taxed lot with no underlying record lot. OP
23 analysis determines the house was built in 1897 and the
24 plotted land was never subdivided into a record lot.

25 The zoning regulation require new building permits

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1 to be issued only if a principal building is located on its
2 own lot of record pursuant to Subtitle A, Section 301.3.

3 An exceptional practical difficulty arises from
4 such a property because the building permit could never be
5 issued for any construction for the current house or for the
6 erection of a new building on the property.

7 This would excessively prohibit any future
8 construction or alteration of the property without the record
9 lot subdivision.

10 Regarding the lot occupancy variance, we do find
11 the shape and size of the lot is an exceptional condition to
12 parts of the other lot in the neighboring area, which tends
13 to be more rectangular in shape, larger in lot area.

14 However, we just don't feel the Applicant has
15 demonstrated the shape of the lot leads to a practical
16 difficulty to the property owner with respect to the
17 requested relief. Due to the size of the lot and inability
18 to purchase adjacent property, there is no practical way to
19 increase the land area of the lot to construct an addition.

20 We don't find that compelling and we also find
21 that because the subject property is already approved for a
22 three-story detached house, the occupied 72 percent of the
23 lot, while over its maximum lot, has a vacancy of 40 percent
24 and a previous addition to the house currently.

25 The Applicant's size and shape of the lot resulted

1 in a small building footprint across the square feet of the
2 living space on the first floor, however, we do not find that
3 argument persuasive or that it requires that the first floor
4 is particularly small that would result in exceptional
5 practical difficulty.

6 We'd be happy to answer questions. Thank you.

7 CHAIRPERSON HILL: Does the Board have questions
8 of the Office of Planning? I was hoping.

9 MEMBER BLAKE: I have a question. The Applicant
10 indicated that they had made some revisions and showed them
11 to you but none of the revisions would be sufficient to
12 change your view on that.

13 Can you explain a little bit of your thought
14 process there and what we saw?

15 MR. KIRSCHENBAUM: A lot of the additional
16 information provided was during the oral presentation. One
17 thing that stood out was removing a deck and having a door
18 is not necessarily practical difficulty. A staircase could
19 be provided from that door down to the yard as a matter of
20 right.

21 So, there's not really a nexus between moving a
22 deck and then providing a new addition to the house.

23 MEMBER BLAKE: Thank you.

24 CHAIRPERSON HILL: Ms. Wilson, you guys have been
25 working with the Office of Planning.

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1 Obviously, at this point you've made your argument
2 for how you believe you're meeting the criteria and the
3 Office of Planning has made their argument as to why they
4 believe they're not meeting the criteria.

5 Were you guys close at any point but you don't
6 have to be helpful at all to speak with the Office of
7 Planning again? I don't know where my Board is right now to
8 be quite honest so I couldn't tell you.

9 I just wondered whether or not you had other
10 thoughts on alternatives for your client?

11 MS. WILSON: At this point I think there would be
12 a question for the Office of Planning, has anything we've
13 said today during this presentation possibly, and I know you
14 can't say things necessarily on record, if we put it into the
15 record in a written format, would you all be willing to
16 review that again or you think you're at the same place?

17 And if that's the case I do have a full closing
18 I'd like to do before the end of the hearing.

19 CHAIRPERSON HILL: I'm going to restate the
20 question just a little bit which is to say do you think there
21 might be some -- I can't think of the word -- import, reason
22 to go ahead and meet with the Applicant again?

23 MR. KIRSCHENBAUM: Again, I don't think too much
24 has been added that would change our opinion. The Applicant
25 is more than welcome to put more of this into writing and we

1 can certainly evaluate it. I can't comment too much more
2 about that.

3 CHAIRPERSON HILL: Let me do this --

4 VICE CHAIR JOHN: Mr. Chairman? I just have a
5 question for Ms. Wilson. Was there any thought to trying to
6 get to 72 percent with the removal of the deck? Maintaining
7 existing lot occupancy at 72 percent to removing the deck,
8 what was the option that would get you there?

9 MS. WILSON: This would probably be more of a
10 question for the architect as to what that additional square
11 footage is. But the idea is that we would want to incorporate
12 it into the interior on that same side.

13 And maybe we could pull the slide back up if
14 necessary but if we see how narrow and long that den is, we
15 don't need any additional lengths on that side. We would
16 need additional depth and adding 70 square feet or 90
17 additional square feet from that desk next to that bathroom
18 wouldn't get you anything.

19 So, that's why they needed the additional 4
20 percent. It just wouldn't make sense to do an addition that
21 small to take that 90 square feet of deck space and knock
22 down a wall and put it up. I don't think that would make
23 sense from a financial perspective either.

24 VICE CHAIR JOHN: If I could go to the architect
25 and maybe he could explain to me what's the size of the deck

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1 and how many feet you would gain from the size of the deck?

2 MR. JONES: I can give you that information. I
3 think the issue was that we looked at as you can see, the
4 existing addition up there is a dimension and so I can give
5 you the deck area. The deck area is roughly 96 square feet.

6 The issue would be you would have to use that area
7 to go up the page with the plan doing the same thing to make
8 that room more proportional to actually fit a bed, all that.

9 So, you wouldn't really gain that much space and
10 I think the calculus was that the amount of space that they
11 would gain would not necessarily be worth the cost of making
12 that addition. Additionally, we were also trying to work
13 with the syncopation of the existing porch and use that as
14 a design element.

15 So, we're trying to make the massing work with the
16 existing house and make the porch make sense with the
17 addition. So, that's how we arrived at that area.

18 VICE CHAIR JOHN: The design is beautiful, no
19 question, but we have a lot occupancy problem.

20 MR. REVEAL: If I can add a couple more
21 dimensions.

22 You can see from the picture there's a futon and
23 it's essentially eight feet wide and so our real goal is to
24 use that for the disappearance because if we added a deck,
25 if we just took the deck space that was being suggested, it's

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1 going to not end up being a very functional space.

2 So, aside from the cost of a modest improvement
3 like that, our idea was to go, and I realize we've got a lot
4 occupancy question, wider towards the backyard, essentially,
5 where it's completely invisible to everybody and pick up the
6 space that way.

7 I'm struggling with what Cooper and his partner
8 had to deal with but how close can we get to that dining room
9 bay without releasing the integrity of the house? So, that's
10 what's going on, very narrow space and adding more spaces
11 makes it more of a hallway.

12 VICE CHAIR JOHN: What's the dimension of the
13 existing study?

14 MR. REVEAL: It has it on one of the print-outs
15 but I believe it's about 8 by 20. 8 by 18, something like
16 that.

17 VICE CHAIR JOHN: That's a pretty decent size.

18 MR. REVEAL: Yes, it's just narrow. If it were
19 a square it would be great.

20 VICE CHAIR JOHN: And the dimension of the
21 bathroom is how much? It looks like a pretty decent bathroom,
22 is it a walk-in?

23 MR. REVEAL: It's got a tub and a shower, it's
24 about 8 by 8. Those figures I believe are on 6.

25 VICE CHAIR JOHN: I think if you had 84 square

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1 feet to add to that low section there, in my view you could
2 meet your needs that way but those are just my thoughts.

3 It might not be feasible economically to do that
4 and it would change how the -- well, I don't know, let's just
5 leave it there.

6 CHAIRPERSON HILL: Let me do this before I get to
7 another question. Mr. Kirschenbaum, can you hear me?

8 MR. KIRSCHENBAUM: Yes, I can hear you.

9 CHAIRPERSON HILL: I don't know where we are and
10 we may actually be to where we are disagreeing with the
11 Office of Planning, I really don't know yet. If we are,
12 however, in disagreement with the Office of Planning and can
13 speak to that, the Office of Planning was not opposed to the
14 side yard relief, correct?

15 MR. KIRSCHENBAUM: Correct, the term is just going
16 over that 521 criteria. We don't find there is any sort of
17 undue adverse impact regarding that criteria. It's totally
18 okay for the Board to disagree with you all.

19 CHAIRPERSON HILL: Thank you, that's kind of you
20 to say. Let's see, Commissioner Blake?

21 MEMBER BLAKE: Just for clarification, the entire
22 square is approximately how many square feet?

23 MS. REVEAL: The actual whole lot, the piece of
24 land?

25 MEMBER BLAKE: Yes.

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1 MS. REVEAL: The triangle is 19,900 square feet
2 and our lot is 2148 square feet of it. Because it's a new
3 shape we thought the public park space on all three sides.
4 So it's a decent-sized lot.

5 MEMBER BLAKE: In the rear section of that
6 triangle that you refer to as your rear yard, you said there
7 is no room to expand in that direction?

8 MS. REVEAL: We can't because of the lot
9 occupancy. It doesn't matter, the house takes up 140 percent
10 of the lot. So, any expansion needs a variance, it doesn't
11 matter what direction we go.

12 MEMBER BLAKE: I think it's inside of the park
13 land or the public space. Is that your backyard? How is
14 that utilized?

15 MS. REVEAL: That's the backyard and all of that
16 pre-dated us, some of that is not technically our lot either
17 because of the public park space. But, yes, that's the
18 backyard.

19 MEMBER BLAKE: The fence was there when you
20 acquired the property?

21 MS. REVEAL: We added some fence to it but, yes,
22 there was a fence there and we added the wrought iron fence
23 just because we have dogs.

24 MR. REVEAL: We put that booth by the way through
25 the tree line rather than on the outside of the tree line so

1 it would be not clearly in public space. And if we go inside
2 of it then it's not so we went to the tree line.

3 The tree is a fence-builder so you're going to
4 have trouble with that in a few years.

5 So far it has worked.

6 COMMISSIONER MAY: Can I follow up on that one?

7 CHAIRPERSON HILL: Sure, go ahead.

8 COMMISSIONER MAY: Just to be clear, the fence on
9 Western Avenue, the wood fence, was there?

10 MS. REVEAL: Correct.

11 COMMISSIONER MAY: Do you have plans to take that
12 down because it's not a legal fence in public parking to have
13 a six-foot wooden fence?

14 MS. REVEAL: We just left it up because it blocks
15 Western Avenue.

16 COMMISSIONER MAY: I appreciate that, I'm just
17 wondering about in the future because my understanding of
18 public space regulations is you can't have a six-foot, or
19 what looks to be a six-foot, wooden fence in the public space
20 like that.

21 You can do an iron fence of that size that I think
22 you did on your side.

23 MS. REVEAL: We did get a permit. I guess we
24 would take it down if we had to.

25 PARTICIPANT: It's about five feet.

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1 COMMISSIONER MAY: I'm just curious about that,
2 it stood out to me.

3 MS. REVEAL: It would have stood out a lot more.
4 When we bought it it was painted cobalt blue if you can
5 believe it, seriously, it was crazy. This house was crazy
6 when we bought it.

7 COMMISSIONER MAY: I believe it.

8 MS. REVEAL: You've seen a lot, I know.

11 CHAIRPERSON HILL: Oh, the house has been fun.

12 MS. REVEAL: So much fun. I can say that because
13 John has done most of the work.

14 CHAIRPERSON HILL: Hopefully it will continue to
15 be fun. Let's see, Mr. Young, is there anyone else here
16 wishing to speak?

17 MR. YOUNG: I do not.

18 CHAIRPERSON HILL: Ms. Wilson, do you want to take
19 a final crack at it before we go into deliberations?

20 MS. WILSON: I do.

21 From closing I'd like to take a step back and
22 touch on the legal framework in which this is reviewed. The
23 Board is tasked with determining whether the Applicant has
24 met its burden of proof while balancing the fact that it also
25 gives great weight to OP and the ANC.

1 In this case, the ANC is supporting, we've given
2 an oral presentation supported by a Court of Appeals case law
3 and to support our arguments as well as a substantial amount
4 of BZA case law to support the arguments that the types of
5 difficulties described today have previously been considered
6 practical difficulties by this Board and by the Office of
7 Planning.

8 As part of this case we review Court of Appeals
9 case law which is the framework in which the variance
10 procedures are tested and shaped.

11 The Court of Appeals consistently refers to the
12 area variance test as the lower threshold for variance relief
13 compared to a use variance.

14 If the test for a use variance is impossibility,
15 the area variance has to have a lower bar than impossible,
16 which is typically the Board will compare not a right option
17 to the proposed option to see whether the matter of right
18 option would be unnecessarily burdensome.

19 As part of this, we look at what types of cases
20 could be appealable in the event of the vote to deny. For
21 example, in the Court of Appeals case ALW, Inc., versus BZA,
22 the Board denied a variance and the Court of Appeals reversed
23 and remanded the case, finding there was insufficient
24 findings in the order to deny the variance.

25 The Court of Appeals has also upheld granting area

1 variance cases, noting that the Board has discretion and can
2 consider a wide variety of factors in determining what is a
3 practical difficulty.

4 This Board has decades worth of decisions in which
5 it states what is to be considered a practical difficulty.
6 So, in that sense the Applicant has put forth today things
7 for the Court of Appeals legal framework for something that
8 could be reasonably approved and upheld on appeal.

9 OP's report and testimony does not fully address
10 the Applicant's arguments both in the record and made today
11 in oral testimony.

12 And it's artfully conflicting as the argument for
13 the lot occupancy and land area variances are the same. OP
14 is recommending approval for one and denial of the other.

15 It's given great weight as part of the basis for
16 the denial of the variance and may not sit within the
17 framework for those cases that were held on ATL. This is at
18 the end of the day a legal proceeding and breaking with
19 established law is the definition of arbitrary capricious.

20 It would be mentioned today that in reviewing the
21 possible matter of right options here, they might not even
22 be economically feasible, which is certainly a practical
23 difficulty.

24 The property is undeniably unique and the
25 practical difficulty described today are the types of that

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1 have been accepted by the Board previously.

2 And again, the large amount of public space
3 surrounding the property helps keep the integrity and purpose
4 of the zoning regulations by protecting open spaces while
5 allowing a minor amount of additional square footage to allow
6 homeowners to improve their interior space and maintain
7 integrity of their home in the area that makes the most sense
8 on this property.

9 Accordingly, we respectfully request the Board to
10 consider these factors when making its decision. Thank you.

11 CHAIRPERSON HILL: Does anybody have any final
12 questions for the Applicant before I dismiss, or close the
13 hearing I should say?

14 I'm going to close the hearing and the record.
15 Bye, everybody.

16 Since I get to be the Chair, it's got its pluses
17 and minuses, the plus at this moment is I get to choose who
18 goes first and I'm going to say Mr. May.

19 COMMISSIONER MAY: Thank you very much. I've been
20 thinking about this one a lot, this is one case where as I
21 was reading the materials in advance my heart was in favor
22 of it but my zoning mind was fighting against that.

23 And it was difficult to think about it, to get to
24 that point of approving it because, again, it looks like it
25 would be a good project and it wouldn't really hurt.

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1 However, that's not the different design.

2 As we listen to the hearing and I thought again
3 about all the arguments, I am convinced that we should
4 approve it and I'll explain why.

5 First of all, I appreciate that the Office of
6 Planning's argument that we should not approve the area
7 variance, I understand their arguments and reasoning,
8 however, I don't think they're necessarily considering the
9 right things.

10 I appreciate the Applicant's argument, the
11 excessively legal argument that Ms. Wilson just gave us but
12 it was excessively legal and citing all the Court of Appeals
13 cases doesn't really mean that much in this circumstance I
14 don't think.

15 I don't really agree with any of it but I did my
16 argument for it, which is the lot is clearly exceptional in
17 many ways.

18 It is a triangular lot, it's smaller than
19 everything else in that zone, it is triangular, which makes
20 it difficult to lay out a building in a reasonable way, and
21 it's also surrounded by all that public parking space.

22 They have wide avenues and wide streets all around
23 it that separate this house from everything else. So, that
24 doesn't argue necessarily for an exceptional site that leads
25 to a practical difficulty.

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1 But it is an exceptional characteristic that I
2 think forces one to think about the whole site a little bit
3 differently. The real argument for this is that I don't
4 believe that the interior space in this house is entirely
5 fungible. And you can't just swap out one piece for another,
6 you can't move things around.

7 It is an existing, historic home that has bearing
8 walls in the middle of it that makes it difficult to move
9 things around. We are used to seeing a lot of projects where
10 they just come in and you've got four brick walls and they're
11 not far away from each other.

12 You just blow everything out and you can push
13 things around and move things and make changes. So much of
14 what we do is about row houses. This is not like that. This
15 is a building that is constructed on interior bearing walls
16 and it's not easy to move things around and make changes.

17 Not to mention the fact that doing so really
18 damages the character of the home.

19 So, I do think that there's an argument to be made
20 that it is not possible to achieve what I think is a pretty
21 reasonable objective of having a decent-sized room in that
22 location on the first floor without having a variance.

23 I think the variance is the only way this can be
24 accomplished and what they are asking for if they just pretty
25 much -- they're not asking to build all the way to the

1 property line, which wouldn't have any greater visual effect
2 on the neighbors.

3 They're just asking for enough space to have a
4 decent room, a decent bathroom and I think it's a pretty
5 reasonable request to make use of the property to go beyond
6 that 7 percent and get this variance.

7 I think you all know that I'm pretty stingy when
8 it comes to variances and I also don't vary from the Office
9 of Planning very often.

10 But in the circumstances I do think it's
11 appropriate because in order to accomplish what I think was
12 a reasonable objective for the future use of the property,
13 I think this is a reasonable approach to it and the variance
14 is appropriate.

15 I know often people want to hear I don't have
16 anything to add but hopefully the Applicant wanted to hear
17 that. You're muted or you're mumbling, I can't tell.

18 CHAIRPERSON HILL: I was speaking relatively
19 clearly, I can't remember what I said but basically I said,
20 yes, you're on the good list for Santa Claus in terms of that
21 Applicant. Mr. Smith?

22 MEMBER SMITH: Like Mr. May, I'm very stringent
23 when it comes down to granting variances, especially in
24 general. And like him, before coming to this case my heart
25 was -- I completely understood from a homeowner's standpoint

1 where they were trying to go with this addition.

2 But my zone was at war with that prior to
3 analyzing the case. In hearing testimony today I agree with
4 Mr. May.

5 The two zonings today are in agreement and the
6 reason why I'm in agreement, I'll say, Mr. May, thank you for
7 that thorough architectural explanation on some of the
8 hardships with this property.

9 Unfortunately, I'm not an architect, I didn't
10 arrive at my recommendation to go against the Office of
11 Planning. From that line it was more so looking at the size
12 of this lot. This lot has the misfortune of having these
13 large avenues running along their property line on all sides.

14 So, they would lose a fair amount of developable
15 lot area for them to do any type of reasonable addition on
16 the lot.

17 And I do believe that the proposed addition is
18 fairly reasonable and given the age of this house, just as
19 Mr. May said, given the topography and the site constraints,
20 I believe this is the only reasonable way where they can do
21 some level of a small addition that they're proposing to do
22 here.

23 So, I do believe the Applicant has met the
24 exceptional practical difficulty standard for us to be able
25 to grant this area variance. I think that was the main issue

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1 when analyzing the area variance criteria.

2 I believe given the size and shape of the lot and
3 the loss of the large amount of park land that abuts these
4 roads, they need extraordinary or exceptional situation or
5 condition as well as the exceptional or practical difficulty.

6 I don't believe granting the variance would be a
7 detriment to the public good. And I don't believe it would
8 substantially the intent, purpose, and integrity of the
9 zoning regulations in this particular instance.

10 So, I would support the area variance, all of the
11 area variances for this Applicant.

12 CHAIRPERSON HILL: Just to be clear, you're also
13 fine with the side yard?

14 MEMBER SMITH: Yes.

15 CHAIRPERSON HILL: I will go to Vice Chair John
16 then.

17 VICE CHAIR JOHN: My heart and my zoning mind are
18 still at war. I believe my zoning mind has won out and here
19 is why. The questions I ask were to help me decide whether
20 the space that intrudes the bathroom and the study could be
21 reconfigured.

22 The Applicant has burden of proof and if the study
23 is there by 20 and they could gain another 84 feet, we see
24 people adding bathroom additions to houses every day.

25 So, to me, if you have 84 square feet to add a

1 bathroom and reconfigure the existing bathroom and study into
2 a livable space, then I don't see any exceptional or
3 practical difficulty there. I would agree with the Office
4 of Planning but for different reasons.

5 And I'm fine with the side yard requirements and
6 the conversion to the record lots. I would not be in support
7 of the application and it's not because I don't think it's
8 beautiful and stunning.

9 CHAIRPERSON HILL: Thank you, Vice Chair John.
10 Mr. Blake?

11 MEMBER BLAKE: This is a very challenging
12 situation for me because what I saw was a very attractive
13 situation, a gorgeous renovation on a very attractive lot and
14 when we talk about lot occupancy, when I see a 19,000 square
15 feet lot which is exactly what this is because there's no one
16 else on it, it's fenced into a large extent.

17 It's basically a 19,000 square foot lot and it has
18 a 1500 square feet footprint for a house on it that you want
19 to expand a little bit which makes it attractive.

20 If you look at 1500 square foot lot, that's only
21 8 percent of the lot because you originally look at it from
22 the existing thing and it is 72 percent plus with the
23 renovation.

24 So, I think from the perspective, it's odd because
25 it makes all the sense in the world to have this be done this

1 way but at the same time, I think to claim its size is -- the
2 lot size is unique, it's small and the effective line
3 multiple times over the area is how you hear that.

4 That said, I do think, it's funny, Commissioner
5 May's argument about the load bearing walls is a very good
6 argument because I do think there are a number of potential
7 alternatives that the Applicant could use to renovate the
8 interior of the building.

9 You have the one they proposed and the one they
10 proposed prior which did in fact have the bathroom. And I
11 suspect that there are other ones. So, there are a number
12 of options that they could try that may or may not be that
13 difficult to accomplish.

14 But I would say this is the best one of the ones
15 they look at.

16 So, all that said, I do think that on the side
17 yard variance I do think it makes all the sense in the world
18 because it meets the criteria for the practical difficulty
19 in that case being the fact that they can't do any
20 renovations, major renovations.

21 I think they've accomplished certain things that
22 I suspect that somehow fell within a range that they could
23 do but major renovations let's say they cannot do without
24 that side yard variance to be a record lot to get permitting
25 and so forth.

1 And so that does pass muster in my mind and it has
2 no implications for the general communities because it's an
3 isolated unit. I think about all the people that responded
4 with their concerns and they live way down the street.

5 You couldn't potentially have light and air impact
6 and things like that with most anybody because of where it's
7 located.

8 So, that said, I like Ms. John, do have an issue
9 with the area that the lot occupancy variance, even though
10 I know it makes all the sense in the world. As I read the
11 letter of the law I just do have an awkwardness with that so
12 I will not be prepared to support that request for relief.

13 CHAIRPERSON HILL: This hasn't happened in a few
14 years. So, I don't disagree with the argument that any of
15 my colleagues are making. I won't disagree also with the
16 analysis that the Office of Planning has provided and I do
17 understand why Vice Chair John and Mr. Blake are struggling
18 with it and landing where they are.

19 I, however, am going to vote with Commissioner May
20 and Mr. Smith because I do think that in this particular case
21 they are meeting the criteria for us to approve the variance.
22 And rather than go too much over it, I'm going to rest with
23 the discussion that Mr. May just put forward.

24 So, I'm going to go ahead and vote in favor, it
25 looks as though I'm going to get a couple of nos. I can

1 split it up if you all want me to but I don't think I need
2 to split up the motion unless you all care. And if you all
3 care you can raise your hand so it doesn't look like nobody's
4 making me split up the motion because we've got another thing
5 to do next.

6 I'm going to go ahead and make a motion to approve
7 the application. I do believe that we have articulated
8 enough into the record how we are disagreeing with the Office
9 of Planning's recommendation and I also believe that my
10 colleagues, thankfully have also helped me with the
11 discussion, all of this.

12 So, I will make a motion to approve Application
13 20592 as captioned and read by the Secretary and ask for a
14 second from Commissioner May.

15 COMMISSIONER MAY: Second.

16 CHAIRPERSON HILL: Commissioner May has seconded.
17 Can we take a roll call vote, please, Mr. Moy?

18 MR. MOY: When I call your names, if you would
19 please respond with a yes, no, or abstain to the motion made
20 by Chairman Hill to approve the application for the relief
21 being requested. The motion to approve was seconded by
22 Zoning Commissioner Peter May.

23 Zoning Commissioner Peter May?

24 COMMISSIONER MAY: Yes.

25 MR. MOY: Mr. Smith?

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1 COMMISSIONER MAY: Mr. Blake?

2 MEMBER BLAKE: No.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: No.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Staff would record the vote as three to
8 two to zero, and this is on the motion made by Chairman Hill
9 to approve. The motion was seconded by Zoning Commissioner
10 Peter May to approve. Also in support of the motion to
11 approve is Mr. Smith and Chairman Hill.

12 Opposed to the motion is Mr. Blake and Vice Chair
13 John. The motion carries and a vote of 3 to 0 to 2.

14 CHAIRPERSON HILL: Thank you. We have now the
15 appeal going on next and so can we just take a five-minute
16 break and come back? Let's take a five-minute break and come
17 back. Once again, I really appreciate all of the time and
18 effort that everybody puts into this and I appreciate what
19 you all did within the deliberation on the last case.

20 Thanks so much, and also it's very hard to vote
21 no so the people that gave in there -- because everybody
22 thought it was a review and so I appreciate, I really do
23 appreciate the difficult decisions that my colleagues put
24 forward.

25 We'll see you all in five minutes, okay?

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1 (Whereupon, the above-entitled matter went off the
2 record at 3:07 p.m. and resumed at 3:24 p.m.)

3 MR. MOY: The Board has returned to the public
4 hearing session and the time is about 3:25 p.m. The next and
5 last application before the Board is Appeal Number 20656 of
6 Dupont East Civic Action Association.

7 The caption is advertised as an appeal from the
8 decision made on October 27, 2021, by the Zoning
9 Administrator, Department of Consumer and Regulatory Affairs
10 to issue building permit B1907507, property located at 1732
11 15th Street NW, Square 192, Lots 108, 110 and 111.

12 And what I was going to say was preliminary
13 matters, Mr. Chairman, there are two motions filed on the
14 record. The motion is to dismiss the appeal as moot followed
15 by the RCS representing the property owner and DCRA under
16 Exhibits 21 and 26 respectively. There is a filing from the
17 Appellants opposed to the motion to dismiss under Exhibit 22.

18 And a response by the property owner under Exhibit
19 24 and that's it from me, Mr. Chairman.

20 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr.
21 Hanlon, can you hear me?

22 MR. HANLON: Yes.

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

25 MR. HANLON: Edward Hanlon representing the Dupont

1 East Civic Action Association.

2 CHAIRPERSON HILL: Thank you. Is it Ms. Roddy?

3 MS. RODDY: Yes, Ms. Roddy is close to the stores
4 with my office should be in attendance as well and he'll be
5 handling the arguments on our behalf.

6 CHAIRPERSON HILL: I don't see Mr. Ferris yet.

7 Mr. White, can you hear me?

8 MR. WHITE: Assistant General Counsel on behalf
9 of DCRA.

10 CHAIRPERSON HILL: Mr. LeGrant, can you hear me?

11 MR. LeGRANT: Yes, I'm Matthew LeGrant, Zoning
12 Administrator DCRA.

13 CHAIRPERSON HILL: Thanks, Mr. LeGrant. We're
14 waiting Mr. Ferris, is that correct? Let's just wait a
15 second from Mr. Ferris.

16 MS. RODDY: He might be in the audience if he's
17 being made a panelist.

18 CHAIRPERSON HILL: Mr. Young are you trying to
19 find him?

20 MR. YOUNG: I do not see him unless he's under a
21 different name.

22 CHAIRPERSON HILL: We'll give him a minute.

23 MS. RODDY: He might be in Angie's group.

24 MR. YOUNG: I see that one.

25 CHAIRPERSON HILL: Mr. Ferris, Can you hear me?

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1 MR. FERRIS: I can.

2 CHAIRPERSON HILL: Can you introduce yourself for
3 the record, please?

4 MR. FERRIS: Laurence Ferris with the law firm of
5 Goulston here for the CDC, the permit holder.

6 CHAIRPERSON HILL: I'm looking at my fellow Board
7 members, we have a couple of motions before us as preliminary
8 matters and what I would like to go ahead and do is hear the
9 arguments about those, the we'll probably deliberate on the
10 motion and then we'll see where we get.

11 Mr. White, can you hear me?

12 MR. WHITE: Yes.

13 MR. HANLON: Chairman hill, there is a preliminary
14 matter if I may. I filed an opposition to DCRA's motion to
15 dismiss. The motion to dismiss was filed on the 23rd. I
16 filed an opposition on the 29th and I was told that it could
17 not be lodged on the docket because it was filed less than
18 24 hours before the hearing.

19 I received an email from Keara Mehlert saying we
20 are unable to add your filing to the record since it was
21 submitted after the 24 hours before the pre-hearing deadline.
22 We will be able to add it once approved by the Board as a
23 preliminary matter at the hearing tomorrow.

24 CHAIRPERSON HILL: Sorry about that, I already
25 thought we had your reply but if not...I thought for some

1 reason we had it already.

2 MR. MOY: We'll get that in the record if it's not
3 in there now.

4 CHAIRPERSON HILL: In that case, I'd like to be
5 able to look at it while we're listening to Mr. White. Why
6 don't you go ahead and ask Staff, please, unless the Board
7 has any issues? I'd like to go ahead and put that into the
8 record.

9 And so just go ahead and put that into the record,
10 Mr. Moy, if you wouldn't mind.

11 MR. MOY: The number two to this is the DCRA filed
12 their presentation, which is late, so you may want to
13 entertain whether to include that in the record as well.

14 CHAIRPERSON HILL: Go ahead and put everything
15 into the record unless my colleagues have something. Again,
16 what normally happens is if this were live people would be
17 coming before us with their slide deck and I'd just be
18 looking at it as it is.

19 I don't know if we're in the pandemic anymore,
20 we're in an endemic, whatever word I'm supposed to use. I'd
21 like to go ahead and see what we can see while we're trying
22 to do our job. So, go ahead and please drop that into the
23 record, Mr. Moy.

24 MR. HANLON: Chairman Hill, I informed Mr. White
25 that I objected to the PowerPoint presentation being entered

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1 in the record because it was filed less than 24 hours before
2 the hearing. I note that an opposition to a motion under the
3 rules one has seven days to reply to the motion under Rule
4 47.4.

5 But I know under the notice for this meeting all
6 written testimony and exhibits had to be submitted 24 hours
7 before the hearing and that would include a PowerPoint
8 presentation. Now, Mr. White submitted his PowerPoint
9 presentation less than 24 hours before the hearing and it
10 pulls documents from 20452 and 20453, which are not presently
11 in the record of this case.

12 Now, I don't think it is fair to have a PowerPoint
13 presentation less than 24 hours --

14 CHAIRPERSON HILL: Let me stop you there a second.
15 First of all, we're letting your thing into the record for
16 the 24 hours, so we're allowed you to do what you're now
17 saying someone else isn't supposed to be able to do. It's
18 now the end of the day and I'm supposed to hear an appeal and
19 you're telling me that you don't want me to allow the
20 PowerPoint in so that people can take a look at it while I'm
21 trying to do my job.

22 I understand what you're saying, give me a second
23 to digest it. We have now allowed your information into the
24 record. So, I'm going to go ahead and allow Mr. White's
25 slide deck into the record. If we in fact get to your

1 appeal, then you can go ahead and make any objections you
2 have to anything you see into the PowerPoint.

3 I need to be able to look at the PowerPoint in
4 order to do my job. So, that's why I need to be able to see
5 the PowerPoint. Again, as I have mentioned before, if this
6 were live, people would be here live in person showing us
7 their PowerPoint presentation, therefore, I'd be able to see
8 it.

9 But in order for me to be able to see it and I
10 want to go on the record, if this were the other way around,
11 I would want to be able to see your PowerPoint presentation
12 so that I would be able to follow along as well so, again,
13 I can do my job.

14 I hope I made that somewhat clear. Please go
15 ahead and drop those into the record, Mr. Moy. Now at least
16 I see the opposition to the motion to dismiss. So, I'm
17 looking at my fellow Board members, and you can raise your
18 hand. Does anybody have any problem with anything I just
19 said? And if so, raise your hand.

20 So, now I see the opposition's motion to dismiss.
21 Now I'm going to walk through this and now Mr. Hanlon and Mr.
22 White and Mr. Ferris, what I'd like to do is I'd like to hear
23 the motion, give the Appellant and opportunity to respond to
24 the motion, and then I'm going to have my Board members let
25 me know what they think.

1 Mr. White, if you can go ahead and tell me about
2 your motion, please?

3 MR. WHITE: Thank you. Our motion is based on the
4 fact that this appeal is essentially a derivative of the
5 previous appeals of the subdivision of Square 192, Lot 108
6 into two lots, Lot 110 and Lot 111. And that was the subject
7 of cases 20452 and 20453. And the reason is because the
8 entirety of Appellant's argument in this appeal is that the
9 subdivision is invalid and, therefore, the building permit
10 issued for Lot 111 was issued in error.

11 So, the Board heard Appellant's appeal on the
12 subdivision on February 23, 2022 and upheld the Zoning
13 Administrator's determination approving the subdivision on
14 March 2, 2022 by a vote of 5 to 0 to 0.

15 So, the Board has decided in the regulations and
16 precedent support all of the issues in this appeal which,
17 just to bullet point them, are locating the rear yard south
18 of the temple, locating the measuring points on 16th Street,
19 excluding the dome from building height, including the area
20 way in the depth of the rear yard, and allowing the retaining
21 wall.

22 Essentially, it's DCRA's position that because the
23 issues on appeal have been previously decided by the Board,
24 an evidentiary hearing is unnecessary and beyond that, the
25 appeal is essentially moot because all of the issues on

1 appeal have been decided by the Board and a ruling has been
2 issued.

3 So, in addition to the doctrine of the issue
4 preclusion prevents the same parties from re-litigating an
5 issue or issues actually decided in a previous final
6 adjudication, whether on the same or different claim.

7 So, it's well-settled law in the District that the
8 adopted issue preclusion would prevent these matters from
9 being re-litigated in the appeal today.

10 CHAIRPERSON HILL: Mr. Ferris, do you want to tell
11 me about your motion?

12 MR. FERRIS: I can give a brief summary but in
13 short, it's essentially the same argument as Mr. White just
14 explained, that the appeal is based entirely on the
15 subdivision appeals to 20452 and 20453, and the Board has
16 already decided all the issues and affirmed that subdivision.

17 So, there's nothing left to address in this appeal
18 and so it's moot. That's the shortest version of that but
19 it's essentially consistent with DCRA's motion.

20 CHAIRPERSON HILL: Mr. Hanlon, do you have a
21 response to the motion?

22 MR. FERRIS: Yes. Thank you. Mootness does not
23 apply to this particular situation. Mootness is a legal
24 doctrine. Mootness is a doctrine in which the adjudicating
25 authority, which would be you in this case, declines to rule

1 on the facts in controversy between the parties.

2 This case is not moot. The Supreme Court has
3 said, in general, a case becomes moot when the issues
4 presented are no longer live or the parties lack a legally
5 recognizable interest in the outcome. A matter is moot when,
6 by virtue of an intervening event, a court of appeals -- in
7 this case, you, the court of appeals -- cannot grant any
8 effectual release whatsoever. Or, as the Fourth Circuit has
9 said, when it would be impossible for you to grant effective
10 relief.

11 Now, that's not what we have here. It is true
12 that you've made a decision, a final decision, in 20452 and
13 20453, but mootness is a legal doctrine that doesn't apply,
14 because if you dismiss on grounds of mootness, you are not
15 deciding the issues. You are not affirming or reversing.
16 Once an appeal hearing has begun, I submit you can affirm or
17 you can reverse. You can certainly vote to affirm the Zoning
18 Administrator's approval of the building permit in question.
19 But you cannot say DECA don't have a legally cognizable
20 interest in the outcome.

21 DECA is the 5013C center of the organization and
22 this matter lies within its boundary. That was founded to
23 preserve the historic preservation, open space, green space,
24 and for other reasons articulated in 20452. It has a legally
25 cognizable interest, it has standing to bring this appeal.

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1 With respect to a live issue, obviously, it is a
2 live issue because it's going to go to the Court of Appeals
3 and may come back here, I believe it will come back here for
4 remand. So, the issue is live, the interest is real, and so
5 I submit you don't dismiss on mootness, you either affirm or
6 reverse.

7 And you may decide to affirm based on the record
8 in 20452, you may decide to affirm based on your vote on
9 20452, but you cannot legally dismiss on grounds of mootness
10 or make no decision.

11 CHAIRPERSON HILL: Thankfully, it's not just me,
12 it's all the other people that are on this board. It's not
13 just me making the decisions but really, all I'm trying to
14 do is determine the motions that are currently in front of
15 us and whether or not we agree with the motion.

16 So, before I get to my fellow Board members, I
17 guess I will ask my fellow Board members do you have any
18 questions from the people that have made the motion or the
19 people that are against the motion?

24 Please ask your question, Commissioner May.

25 COMMISSIONER MAY: I can't tell you what a

1 pleasure it is for me to be here today to continue on this.
2 You should listen carefully to what I just said. Anyway, I
3 am interested in hearing from DCRA, firstly to see their
4 rebuttal to this notion that mootness is not relevant for 30
5 years from the first, Commissioner.

6 I guess, Mr. White, you're probably the first
7 person.

8 MR. WHITE: Our position with respect to mootness
9 is there's no case or controversy before the Board because
10 although DECA filed an appeal of the building permit, the
11 basis for their appeal was the Zoning Administrator's
12 determination relating to the subdivision of the lot.

13 And so when this board made its determination
14 approving the Zoning Administrator's approval of the
15 subdivision, it essentially exhausted all the issues on
16 appeal in this matter as well.

17 So, there's no argument to make or issues on
18 appeal before the Board today. They've already been decided
19 and so that's why we're saying that essentially, the
20 Appellant should be precluded from bringing the same issues
21 again.

22 And that essentially, the matter is moot because
23 there is nothing for the Board to decide today. All the
24 issues were decided in the previous appeals and so that's our
25 response and that's our position. I think I'm not sure I

1 totally understand the Appellant's argument in opposition.

2 MR. WHITE: That's reassuring because I'm not a
3 lawyer and I don't understand it necessarily either. That's
4 kind of why I'm asking for questions. Mr. Ferris, do you
5 want to take it up as well?

6 COMMISSIONER MAY: I think what Mr. White said is
7 all correct. There are no independent claims in this appeal
8 aside the arguments from the arguments against the
9 subdivision. And with those issues having been resolved,
10 there's kind of no there there.

11 The lights are there but nobody's home a little
12 bit. It's hard to imagine what the arguments or evidence
13 would even be if we were to have a full evidentiary hearing
14 because the Board has already decided the issues which this
15 appeal of the permanent building or building permit is based.
16 Thank you, that's it for my questions.

17 CHAIRPERSON HILL: Ms. John?

18 VICE CHAIR JOHN: So, Mr. Hanlon, what issues of
19 fact are there that are not related to the subdivision that
20 you would like the Board to conduct an evidentiary hearing
21 on?

22 MR. HANLON: Thank you, Ms. John. The Board has
23 already made a final decision on 20452 and 20453 regarding
24 the subdivision. The appeal in this case is premised on the
25 invalidity of the subdivision approved by the Zoning

1 Administrator.

2 My point about mootness was mootness is a
3 dismissal without a decision on the issue. This board, I
4 suppose, could adopt its holding in 20452 and 20453 and then
5 affirm the issuance of the building permit based on its
6 earlier decision.

7 But I submit it cannot simply dismiss it as moot
8 because it's certainly a live issue underlying the litigation
9 that's going to Court of Appeals. So, if the Board decided
10 there are no other evidentiary issues that it has not already
11 heard, then the Board may choose to adopt its prior decision
12 as the evidence in this case.

13 And then affirm or reverse.

14 VICE CHAIR JOHN: You're not disputing -- you're
15 agreeing that there are no further evidentiary issues the
16 Board needs to decide today? So, apart from the subdivision,
17 which has already decided. So, what would be the purpose of
18 an evidentiary hearing?

19 MR. HANLON: I do not have any further evidence
20 to offer today but again, I would say mootness is not the
21 right way to adjudicate this matter. We accept you've done
22 before perhaps and you admit or you approve or you reverse.

23 You don't dismiss as moot. It's a legal argument.
24 I hope, Ms. John, you --

25 VICE CHAIR JOHN: We can move on, I think I hear

1 what you're saying but how I would phrase it is if the appeal
2 does not stage any contested issue, if there is nothing for
3 the Board to hold an evidentiary hearing on, then the Board
4 certainly need not hold a hearing.

5 And I believe that validated that Court of
6 Appeals, whether you call it moot or not, an evidentiary
7 hearing is not required if there are no facts at issue. We
8 can move on. With respect to your claim that this Board
9 cannot dismiss the case because there's an appeal before the
10 Court of Appeals, what is your rationale for that?

11 MR. HANLON: Once the hearing begins and we have
12 a hearing here today, the Board under Rule 507.4, under Rule
13 500.5, unless the Board has dismissed the appeal before the
14 hearing, a public hearing will be held. And under 507.4, the
15 Board may close the record at the end of the hearing and a
16 bench decision vote that takes time to affirm or reverse the
17 decision.

18 And that I believe is the proper procedure of
19 course. I do not know whether -- all parties have asked that
20 the record of 20452 and 20453 be incorporated in their
21 entirety in this record and once you do that, there are no
22 further evidentiary issues.

23 And then you can move under 507.4 to vote up or
24 down on the appeal.

25 VICE CHAIR JOHN: Thank you.

1 CHAIRPERSON HILL: I am going to ask legal just
2 to pontificate on this a little bit. This has been before
3 us several times before, I just want to make sure that we're
4 able to do this and talk about this.

5 I'm going to ask that the Board have an
6 opportunity to discuss these two preliminary issues, which
7 is again whether or not to dismiss this case. And I've been
8 here for seven years now and we have dismissed cases as moot
9 many times before if we believe there was nothing that was
10 before the Board to hear.

11 And before I ask you this question, I just want
12 to make sure I'm clearly stating what seems to be the
13 discussion, is that it seems to me that we haven't
14 necessarily started this hearing yet. I don't know how this
15 exactly works but we haven't necessarily started the hearing
16 yet.

17 We're actually speaking about the preliminary
18 matters to the hearing, which is whether or not we're going
19 to have a hearing, whether or not this hearing is moot. And
20 that's what I understand is before us right now.

21 And so I guess what I'm trying to find out from
22 you is are we in the right place right now, which is
23 determine whether or not we the Board think this motion
24 should be approved, which is that the issues are moot.

25 That's the question, Ms. Nagelhout.

1 MS. NAGELHOUT: You are in the right place because
2 you have two motions pending before you that say the issue
3 is moot, that there are no issues, new decisions to take up
4 in this appeal so there is no need for an evidentiary
5 hearing.

6 It's something the Board does routinely, whether
7 it's for timeliness or lack of jurisdiction or mootness.
8 It's often that you have a motion to dismiss before you get
9 to the marriage of the appeal. And in any appeal if you
10 grant the motion then you don't do the hearing.

11 CHAIRPERSON HILL: I'm going to go around and look
12 at my Board members here. Basically, what I'm going to do
13 now is ask everyone to leave the hearing rooms so that we the
14 Board can deliberate on these two motions.

15 And then if we do have a hearing we'll bring
16 everybody back and if we think these motions should be
17 approved and that this is actually moot, this is not before
18 us, then everybody will get to hear that decision as well.

19 Do my fellow Board members have any questions?

20 What I'm going to do is I'm going to excuse
21 everyone. Mr. Young, if you could excuse everyone from the
22 hearing, please? I'm going to close this portion of the
23 hearing.

24 I have the motions pulled up and I think we heard
25 from both DCRA and Perseus and the Appellant on all of the

1 items concerning the motion.

2 I'm going to rely on my Board members for further
3 clarification of this, I'll give you my first reaction which
4 is it does seem that there is nothing new before us, that
5 everything that is in the argument is based upon the
6 subdivision and all of those issues were resolved.

7 And so, therefore, the subdivision is legal, has
8 been approved, is something that has been put to rest. And
9 so there's nothing that's before us in order to have a
10 hearing about. And so that is my initial path.

11 And so if you all voted against Ms. John on the
12 previous case, Ms. John, if you would be willing to give me
13 your thoughts because I value them, it would be helpful.

14 VICE CHAIR JOHN: Every case is a different case
15 and we start over. So, I'll have an opportunity to vote yes
16 in another case. Yes, I think the case law is pretty clear
17 that if there are no issues or facts left to decide, then the
18 Board need not have an evidentiary hearing, which is what we
19 have here now.

20 The permit didn't change anything that was decided
21 in the subdivision and for the more, I'm not even sure how
22 the permit would be the first writing because it seems to me
23 that the subdivision was the first writing. The appeal would
24 not even be timely in this case as well.

25 But for me the most important thing is that there

1 is nothing new to this side, there are no factual issues in
2 dispute. I would dismiss the appeal as moot and as not
3 timely.

4 CHAIRPERSON HILL: Even the timeliness issue, I
5 would agree with you that it's not timely. But I would again
6 in this case be more in line with that the issues before us
7 have already been determined and, therefore, there was
8 nothing to appeal.

9 So, Mr. Smith, you have thoughts and I'm going to
10 go to Mr. Blake and then we'll end it with Commissioner May.

11 MEMBER SMITH: I've read through the documents
12 within the record that the Applicant is attempting to speak
13 on and looking at it, I agree with Ms. John, it's mostly
14 about the subdivision which we've already ruled on
15 previously.

16 So, I agree with Ms. John, I do believe that we
17 can dismiss this as moot because it's totally regarding
18 something that we decided previously at the first writing.
19 So, I agree that we can dismiss it based on Y302.5.

20 CHAIRPERSON HILL: Mr. Blake?

21 MEMBER BLAKE: In this case I agree as well with
22 Vice Chair John's assessment. This is definitely obviously
23 predicated on subdivisions, all the issues and concerns are
24 there and it does seem that if it is based on all that, this
25 would not be the first writing, as she said.

1 And so, therefore, I think from both issues I
2 would be inclined to not recommend that we hear the case and
3 dismiss it as moot.

4 CHAIRPERSON HILL: Commissioner May?

5 COMMISSIONER MAY: I get to say this a third time.
6 I do not have anything to add.

7 CHAIRPERSON HILL: Give me one second, please.
8 I got a little confused. Can somebody walk through the time
9 limits thing for me a little bit?

10 VICE CHAIR JOHN: So, the issue is what was the
11 first writing and so the first writing can't be -- the permit
12 didn't change anything that was not raised in the
13 subdivision. So, by appealing the permit it would not be
14 timely.

15 CHAIRPERSON HILL: Right, because the subdivision
16 already happened?

17 VICE CHAIR JOHN: Yes.

18 CHAIRPERSON HILL: Thank you, I just needed a
19 little bit of clarity for that. I'm going to make a motion
20 to approve the motion that DCRA has put forward and that
21 Perseus has put forward and supported, that the issues before
22 brought forward are moot.

23 And I'll ask for a second and dismiss the appeal
24 based on the motion and the fact that all of these issues are
25 moot and ask for a second, Ms. John.

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1 VICE CHAIR JOHN: Just for clarification, we would
2 be addressing both motions, the motion on DCRA and the motion
3 of Perseus.

4 CHAIRPERSON HILL: I probably didn't do that well.
5 I would go ahead and make a motion to approve the motion by
6 DCRA and Perseus to dismiss the appeal as moot because the
7 issues have already been addressed and are therefore moot.

8 I'll ask for a second, Ms. John?

9 VICE CHAIR JOHN: Second.

10 CHAIRPERSON HILL: The motion has been made and
11 seconded, Mr. Moy. If you could take a roll call, please?

12 MR. MOY: When I call each of your name's if you
13 would please respond with a yes, no, or abstain to the motion
14 made by Chairman Hill to grant the motion to dismiss the
15 appeal as moot. The motion was seconded by Vice Chair John.

16 Zoning Commissioner Peter May?

17 COMMISSIONER MAY: Yes.

18 MR. MOY: Mr. Smith?

19 MEMBER SMITH: Yes.

20 MR. MOY: Mr. Blake

21 MEMBER BLAKE: Yes.

22 MR. MOY: Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. MOY: Staff would record the vote as 5 to 0
2 to 0 and this is on the motion made by Chairman Hill. The
3 motion was seconded by Vice Chair John, also in support of
4 the motion is Zoning Commissioner Peter May. Mr. Smith, Mr.
5 Blake, Vice Chair John and Chairman Hill, I think I counted
6 off five people.

7 So, it's five to zero to zero, the motion carries.

8 CHAIRPERSON HILL: Mr. Blake did not join us
9 yesterday, so he didn't actually put in as long a time as we
10 did.

11 I would like to thank all of the people, my other
12 two colleagues, I'd like to thank you, Mr. Blake, for the
13 long day that you put in today but my colleagues to have gone
14 back to back for the first time in forever and thank you for
15 that.

16 I wish I actually had some kind of authority to
17 thank people but I'm just like you. I'm thinking me too and
18 that's it. Anybody got anything they want to talk about
19 before we leave?

20 MEMBER BLAKE: Thank you for getting us through
21 the day.

22 CHAIRPERSON HILL: Mr. Blake?

23 MEMBER BLAKE: I just want you to know and I did
24 listen to all of yesterday so I did hear it all.

25 CHAIRPERSON HILL: That's good, we'll give you

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1 half a point. You all have a good evening, see you next
2 time, we're being adjourned. Thank you, Mr. Moy.

3 (Whereupon, the above-entitled matter went off the
4 record at 4:04 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 03-30-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R. Gross
Court Reporter

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