

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 15, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:39 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

JOSEPH S. IMAMURA, Architect of the Capitol Designee  
ROB MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

SARAH BAJAJ, Attorney Advisor  
CLIFFORD MOY, Secretary  
RYAN NICHOLAS, Attorney Advisor  
PAUL YOUNG, Zoning Data Specialist

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT  
MATT JESICK  
JONATHAN KIRSCHENBAUM  
STEPHEN MORDFIN  
CRYSTAL MYERS  
KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on June 15, 2022.

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

	<u>PAGE</u>
Application No. 20449 of PD 236 Properties, LLC . . . .	8
Application No. 20735 of Matthew Radomski and Erin Radomski . . . . .	16
Application No. 20732 of NY Avenue Titleholder, LLC . .	26
Application No. 20737 of Dr. Charles Samenow . . . . .	41
Application No. 20734 of 1009 Bryant NE DC, LLC . . . .	56
Application No. 20636 of Penguin, LLC . . . . .	63
Application No. 20718 of 9 Tree, LLC . . . . .	173

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

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

9:38 a.m.

CHAIRPERSON HILL: Good morning, ladies and gentleman, the Board of Zoning Adjustment. Today's date is 6-15-2022. This public hearing will please come to order.

My name is Fred Hill, Chairperson of District of Columbia Board of Zoning Adjustment. Joining me today is Board Members Carl Blake and Chrishaun Smith and Zoning Commissioners Joe Imamura and Rob Miller. Today's meeting and hearing agenda are available on the Office of Zoning's website.

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

Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised that we do not take any public testimony during decision meeting sessions. If you're experiencing difficulty accessing Webex or with your telephone call, then please call the OZ hotline number at 202-727-5471 to receive Webex login or call instructions. It's also listed on the screen.

At the conclusion of each decision meeting

1 session, I shall in consultation with the Office of Zoning  
2 determine whether a full or summary order may be issued. A  
3 full order is required when the decision it contains is  
4 adverse to a party, including an affected ANC. A full order  
5 may also be needed if the Board's decision differs from the  
6 Office of Planning's recommendation.

7           Although the Board favors the use of summary  
8 orders whenever possible, an applicant may not request the  
9 Board to issue such an order. In today's hearing session,  
10 everyone who's listening on Webex or the telephone will be  
11 muted during the hearing and only persons who have signed up  
12 to participate or testify will be unmuted at the appropriate  
13 time. Excuse me.

14           Please state your name and home address before  
15 providing oral testimony or presentation. Oral presentations  
16 should be limited to the summary of your most important  
17 points. When you're finished speaking, please mute your  
18 audio so that your audio is no longer picking up sound our  
19 background noise.

20           Once again, if you're experiencing difficulty,  
21 please call -- in accessing anything, please call the hotline  
22 number 202-727-5471. All persons planning to testify in  
23 either favor or in opposition should've signed up by name.  
24 They'll be called by name to testify.

25           If this is an appeal, only parties are allowed to

1 testify by signing up to testify. All participants completed  
2 the oath, the affirmation as required by Subtitle Y, 408.7.  
3 Request to enter evidence on time at an online virtual  
4 hearing such as written testimony or additional supporting  
5 documents other than live video, which may not be used as a  
6 part of testimony, may be allowed pursuant to Subtitle Y,  
7 103.13 provided that the person may request to enter an  
8 exhibit and explain, A, how the proposed exhibit is relevant,  
9 B, the good cause that justifies logging the exhibit into the  
10 record, including an explanation of why the requester did not  
11 file the exhibit prior to the hearing pursuant to Y 206, and  
12 see how the proposed exhibit would not unreasonably prejudice  
13 any parties.

14           The procedures for special exceptions and  
15 variances are in Subtitle Y, 409. At the conclusion of each  
16 case, an individual who is unable to testify because of  
17 technical issues may file a request for leave to file a  
18 written version of the planned testified to the record within  
19 24 hours following the conclusion of public testimony in the  
20 hearing. If additional written testimony is accepted, then  
21 the parties will be allowed a reasonable time to respond as  
22 determined by the Board.

23           The Board will then make its decision at its next  
24 meeting session but no earlier than 48 hours after the  
25 meeting. Moreover, the Board may request additional specific

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

6 Finally, District of Columbia Administrative  
7 Procedures Act requires that the public hearing on each case  
8 be held in the open before the public. However, pursuant to  
9 Section 405(b) and 406 of that Act, the Board may, consistent  
10 with its rules and procedures and the Act, enter in closed  
11 meeting on a case for purposes of seeking legal counsel on  
12 a case pursuant to D.C. Official Code Section 2-575(b)(4)  
13 and/or deliberate on a case pursuant to D.C. Official Code  
14 Section 2-575(b)(13) but only after providing the necessary  
15 public notice in the case of an emergency closed meeting  
16 after taking a roll call vote. Mr. Secretary, do we have any  
17 preliminary matters?

18 MR. MOY: Good morning, Mr. Chairman and Members  
19 of the Board. I do have a couple of announcements related  
20 to today's docket. First, Case Application No. 20733, this  
21 is the application of Euclid Flats LLC, has been postponed  
22 and rescheduled to July 27, 2022.

23 I also have preliminary matters, Mr. Chairman, on  
24 two case applications that are in today's hearing session  
25 docket. The first goes to Application No. 20449 of PD 236

1 Properties, LLC. There is a preliminary matter here where  
2 the applicant has filed a motion for a continuance, and  
3 that's number one.

4 And the second preliminary matter, Mr. Chairman,  
5 goes to Case Application No. 20636 of Penguin, LLC. There  
6 is a request for a party status to a Gene and Patricia Godley  
7 and Phoebe and Robert Sharkey under Exhibit 56. And there  
8 are two subsequent filings based on that request.

9 And let's see. I think those are the two cases.  
10 I think that's what I have for now. Thank you, sir.

11 CHAIRPERSON HILL: Okay. If we can do the  
12 postponement first of 20449. Okay. And I don't know, Mr.  
13 Moy. I forget whether you have to call -- I guess you have  
14 to call it and then we'll discuss the request for  
15 postponement.

16 MR. MOY: Yeah, I can do that for the transcript.  
17 I think that would be helpful. So this would be Case  
18 Application No. 20449 of PD 236 Properties, LLC. This  
19 application is filed as an amendment self-certified  
20 application for a special exception from the rear yard  
21 requirements, Subtitle E, Section 306.1, pursuant to Subtitle  
22 E, Section 5201, Subtitle X, Section 901.2.

23 And this is a bifurcated request because there's  
24 a filing for a special exception from the lot occupancy  
25 requirements of Subtitle E, Section 304.1, pursuant to



1 Subtitle E, Section 5201, Subtitle X, Section 901.2 or an  
2 area variance from the lot occupancy requirements, Subtitle  
3 E, Section 304.1, pursuant to Subtitle X, Section 1002. Once  
4 again, Mr. Chair, there's a motion from the applicant for a  
5 continuance. And as you all have noted in the record, there  
6 is an opposition to that motion from ANC 6C.

7 CHAIRPERSON HILL: Got it. Okay. Thanks, Mr.  
8 Moy. Okay. So you guys, I have reviewed the motion for a  
9 postponement. This case was actually one that Vice Chair  
10 John chaired. And I was not here for the original  
11 discussion.

12 However, I have reviewed the case in terms of the  
13 filings. And I'm really just completely up to speed on the  
14 request for postponement. So I'm looking at my Board  
15 Members.

16 I mean, this is what I kind of propose. I mean,  
17 this particular application has been around for a very long  
18 time. And I think that the applicant has had sufficient  
19 amount of time to get their process organized.

20 If you will note again the ANC 6C wrote a letter  
21 in opposition that I think was pretty clear in what they feel  
22 the applicant has been doing in terms of the process that  
23 they've been working with the ANC. So I would have probably  
24 just going ahead and asked the applicant to present their  
25 case today. But since I was not on the original case and

1 Vice Chair John was, I think that we'll go ahead and just  
2 postpone this one week is what I propose and that when Vic  
3 Chair comes back, you guys can hear it next week.

4 And just so the applicant who's listening, there  
5 won't be another postponement. Like, this is going to get  
6 heard probably -- unless my fellow Board Members disagree and  
7 you guys can tell me what you think, this is going to get  
8 heard next week. So whatever -- and I won't be on it.

9 So Vice Chair John will be back. But it'll get  
10 heard next week. So that's my proposition. I'm going to  
11 start with Mr. Board Member Smith to see what your thoughts  
12 are on that.

13 MEMBER SMITH: Chairman, I completely agree with  
14 your assessment of this. You hadn't participated on this  
15 particular case in the past, and Board Member Vice Chair John  
16 will be back next week. I think we should be able to and we  
17 will hear this case, like you stated.

18 We've postponed this a couple of times. It's been  
19 about eight months since the last time we talked about this  
20 particular case. And I'm ready to move forward with a  
21 deliberation on this. So I agree with your approach.

22 CHAIRPERSON HILL: Okay. Mr. Blake? Okay. And  
23 Dr. Imamura, you're actually not on this. I mean, I think  
24 we'll just have the next commissioner do it next week. Okay.  
25 All right. So Mr. Moy, we're going to go ahead and move this

1 to next week.

2 And probably we'll just go ahead and put it on  
3 first on the docket because Vice Chair John will be here.  
4 I know she's ill today, and so we're sorry that she's ill and  
5 will not be with us. And so we'll go ahead and put that on  
6 the docket for next week. All right, Mr. Moy?

7 MR. MOY: Yes, sir. So for the record, that would  
8 be the Board's hearing next Wednesday, June the 22nd.

9 CHAIRPERSON HILL: Exactly. And if you want to  
10 reach out to the applicant and let them know, I would imagine  
11 the applicant is watching and listening. But just let them  
12 know and then also the ANC that we're going to do this next  
13 week. Okay?

14 MR. MOY: Yes, sir.

15 CHAIRPERSON HILL: All right. Thanks, Mr. Moy.  
16 All right. What's the next preliminary matter?

17 MR. MOY: This is the preliminary matters that go  
18 to Case Application No. 20636 of Penguin, LLC once again.  
19 And that is -- well, let me read the case for the record.  
20 This case application was submitted as a self-certified  
21 application for a special exception pursuant to Subtitle C,  
22 Section 305.1 and Subtitle X, Section 901.2. This is from  
23 the subdivision regulations of Subtitle C, Section 302.1 as  
24 well as area variance pursuant to Subtitle X, Section 1002  
25 from the vehicular ingress and egress requirements of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Subtitle C, Section 305.3(b).

2           Once again, Mr. Chairman, this is a motion for a  
3 request for a party status from a Gene and Patricia Godly and  
4 Phoebe and Robert Sharkey on their Exhibit 56. Subsequent  
5 to that filing, there was a filing from the applicant in  
6 opposition to that request for party status under Exhibit 62.  
7 And subsequent to that filing, the request for party status  
8 filed a response under Exhibit 71. And that's it for me, Mr.  
9 Chairman.

10           CHAIRPERSON HILL: Okay. I'm going to move a  
11 little backwards with this. So because of Section Y, 404.9,  
12 replies to any opposition by the person requesting party  
13 status will not be accepted into the record. So if the staff  
14 will go ahead and strike that opposition from the person  
15 requesting party status.

16           And Mr. Young, just so you know and everybody else  
17 knows that's listening we're just doing preliminary matters.  
18 This is just us, the Board. It's not anybody else. So okay,  
19 Dr. Imamura, you are with us today, and this case is  
20 scheduled for the end of the day today.

21           The reason why I wanted to do this as a  
22 preliminary matter, you guys, is that so the applicant -- the  
23 party status people and the applicant would all know where  
24 they stand before we get to this application at the end of  
25 the day. We haven't heard any of the merits of this. You

1 guys did discuss party status.

2 I think there was some preliminary matters that  
3 you all did a couple of weeks ago. And so what I recall is  
4 that there was a request for party status which also I think  
5 was kind of untimely. But it really wasn't untimely because  
6 it was -- I wasn't there for this deliberation, I'm just kind  
7 of sharing my thoughts on it -- was that they were kind of  
8 switching out the name of the president of an association  
9 that was already given party status. Okay.

10 So I didn't have a problem with that. This  
11 particular request for party status from the Godleys and the  
12 Sharkeys I think is untimely. And so I'm looking to see real  
13 quick. Hold on one second.

14 Yeah, I mean, originally party status was supposed  
15 to happen 14 days prior to the hearing date. And the  
16 original hearing date was March 2nd, I think. And Mr. Moy,  
17 correct me if I'm wrong. But regardless, it has passed.

18 And so I'm not in favor of party status for this  
19 particular individual because they're late. I mean, I don't  
20 think it's fair to the applicant. There are timelines as far  
21 as party status requests.

22 It's something that the Board has always adhered  
23 to very firmly, unless it's been like a day off or there's  
24 been, like, some reason that's been given. But this is, I  
25 think, way too far late in terms of their timing. I do

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 think, however, that given the proximity to this property or  
2 this application, I mean, I'd be interested in hearing more  
3 from the applicant.

4 I mean, as a member of the public, they'd be given  
5 three minutes each, right? And I guess if you broke up the  
6 Godleys and the Sharkeys, that would be, like, six minutes.  
7 And I do see that they've already put a PowerPoint  
8 presentation into the exhibit.

9 So I'm interested in them being able to go through  
10 that PowerPoint as quickly as possible adhering to the six  
11 minutes that they would be given as members of the public and  
12 then asking questions because we, as the Board, have an  
13 opportunity to ask as many questions as we want of whomever  
14 is coming to testify. So my motion would be to deny the  
15 party status request. And before I make the motion, I'm  
16 going to just hear from my other fellow Board Members if  
17 that's all right starting with you, Mr. Smith.

18 MEMBER SMITH: I agree with your approach,  
19 Chairman Hill.

20 CHAIRPERSON HILL: Okay. Dr. Imamura?

21 COMMISSIONER IMAMURA: I'll will you, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. Mr. Blake?

23 MEMBER BLAKE: Yes, I agree as well.

24 CHAIRPERSON HILL: Okay. Then I'm going to go  
25 ahead and make a motion to deny the party status request

1 which is in Exhibit 56 of the Godleys and Sharkeys and ask  
2 for a second, Mr. Blake.

3 MEMBER BLAKE: Second.

4 CHAIRPERSON HILL: Motion made and second. Mr.  
5 Moy, can you take a roll call?

6 MR. MOY: When I call your name, if you would  
7 please respond with a yes, no, or abstain to the motion made  
8 by Chairman Hill to deny the request for a party status to  
9 Gene and Patricia Godley and Phoebe and Robert Sharkey. The  
10 motion to deny was second by Mr. Blake. Zoning Commissioner  
11 Dr. Imamura?

12 COMMISSIONER IMAMURA: Yes to deny.

13 MR. MOY: Mr. Smith?

14 MEMBER SMITH: --

15 MR. MOY: Mr. Blake?

16 MEMBER BLAKE: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. MOY: And we have no other Board Member with  
20 us today. Staff would record the vote as 4 to 0 to 1. And  
21 this is on the motion to deny party status. And this is on  
22 the motion to deny party status made by the Chairman.

23 The motion to deny was second by Mr. Blake. Also  
24 in support of the motion to deny, Mr. Smith, Zoning  
25 Commissioner Dr. Imamura, Mr. Blake, and Chairman Hill.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Motion carries, sir, on a vote of 4 to 0 to 1.

2 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. And  
3 if you could ask staff please to reach out to the people that  
4 requested party status as well as the applicant so that they  
5 know what has happened. I would imagine they're watching.  
6 But since it's not until the end of the day, they might not  
7 be. So if that would be okay, Mr. Moy.

8 MR. MOY: Yes, sir. We'll take care of that.  
9 Thank you, sir.

10 CHAIRPERSON HILL: Okay, great. All right. Is  
11 that all the preliminary matters, Mr. Moy?

12 MR. MOY: Yes, except for case specific matters  
13 that may come when I call the case.

14 CHAIRPERSON HILL: Okay, great. So then now we're  
15 going to have our decision meeting session, I believe. And  
16 Dr. Imamura, you're out of the one that we have, correct?  
17 Okay. So we'll see you in a little bit.

18 (Whereupon, the above-entitled matter went off the  
19 record at 9:57 a.m. and resumed at 10:16 a.m.)

20 CHAIRPERSON HILL: All right. Do we got Dr.  
21 Imamura back? We do. Okay, wonderful. All right, Mr. Moy.  
22 You can call our first hearing case if you like.

23 MR. MOY: Okay. I believe it's 20735, Mr.  
24 Chairman.

25 CHAIRPERSON HILL: Yes.



1           ZC VICE CHAIR MILLER: Okay, great. All right.  
2 Application No. 20735 of Matthew Radomski, R-A-D-O-M-S-K-I,  
3 and Erin Radomski. This is a self-certified application for  
4 special exception pursuant to Subtitle E, Section 5201 and  
5 Subtitle X, Section 901.2. From the lot occupancy  
6 requirements of Subtitle E, Section 304.1 and the rear yard  
7 requirements of Subtitle E, Section 306.1, the property is  
8 located in the RF-1 zone at 2920 18th Street, Northwest,  
9 Square 2537, Lot 490.

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

12           MR. DEBEAR: Good morning, Board Members. My name  
13 is Eric DeBear, land use counsel from Cozen O'Connor on  
14 behalf of the applicants.

15           CHAIRPERSON HILL: Okay. The applicants, could  
16 you introduce yourself for the record, please?

17           MR. RADOMSKI: -- Radomski and this is my wife.

18           MS. RADOMSKI: Erin.

19           MR. RADOMSKI: Nice to meet you.

20           CHAIRPERSON HILL: Nice to meet you. Mr. and Mrs.  
21 Radomski, I'm sorry. It's early in the morning and I just --  
22 how can I say this? You guys look very fresh and awake. And  
23 I suddenly feel really old. I don't know why.

24           MS. RADOMSKI: We've been up for quite some time.

25           CHAIRPERSON HILL: Right, okay. Just letting you

1 know. Mr. DeBear, if you want to go ahead and walk us  
2 through your client's application. I think it's relatively  
3 clear as to what you're trying to do. I see your slide deck.  
4 I'm going to put 15 minutes on the clock, and you can begin  
5 whenever you like.

6 MR. DEBEAR: Great. Thank you, Chair. Yeah, if  
7 we can pull up the slide deck, that would be great, Mr.  
8 Young. Thank you. You can move to the next slide.

9 So this application is requesting special  
10 exception relief to construct a deck on the back of the  
11 Radomski's home. The property is located in the Adams Morgan  
12 neighborhood at 2920 18th Street, Northwest. It's within the  
13 RF-1 zone between Quarry Road and Summit Place. Next slide,  
14 please.

15 The existing home is actually a semidetached flat  
16 with an alley that runs to the side and the rear of the  
17 property. And what you see on the right-hand picture there  
18 is the back of the property. The Radomskis actually own the  
19 bottom unit, so it would be the cellar level and the ground  
20 floor level.

21 And I would also note that there's two existing  
22 parking spaces that we'll discuss later that will remain.  
23 Next slide, please. And I'll just turn it over to my client  
24 to just talk briefly about the project and their community  
25 outreach.

1 MS. RADOMSKI: So we're just requesting a special  
2 exception to build the one-story deck on the rear of our  
3 house. As Eric's photo showed, it was the first level with  
4 the windows. It's 12 by 18.75 feet to be 225 square feet  
5 total. It'll be accessed from our living room to give us  
6 more livable space.

7 Like I mentioned earlier, we have a one-year old  
8 now. And with COVID, we wanted to have some safe outdoor  
9 space for her as a lot of things that we had planned to do  
10 with her kind of got changed over the last year. And Eric  
11 already mentioned, we're not impeding any of the parking  
12 that's already there. Next slide, please.

13 MR. RADOMSKI: Yes, so during this process, we've  
14 done some outreach in our neighborhood and obviously went  
15 through the ANC protocols. So our ANC 1C wrote a letter of  
16 support. We also have a recommendation for approval from the  
17 Office of Planning. And lastly, we reached out to all of our  
18 neighbors, direct neighbors. And then we have three exhibits  
19 of letters of support from them.

20 MS. RADOMSKI: Back to you, Eric.

21 MR. DEBEAR: Thank you. Next slide, please. So  
22 this is the general site plan. You can see the new deck  
23 that's being proposed to the rear. As Erin mentioned, it  
24 will be for the width of the lot.

25 There will still be eight feet of rear yard beyond

1 the deck. But other than that, the deck will cover the  
2 already kind of narrow rear yard. Next slide, please. And  
3 these are just the dimensions of the deck, a view from above.  
4 Next slide, please.

5 And then we have the northern elevation which is  
6 looking from the alley that runs east-west. You can see kind  
7 of I would just note as we've mentioned the deck will remain  
8 open to the air. And because of kind of the change in grade,  
9 the deck itself is not very tall and the elevation actually  
10 along the alley running south goes up.

11 So the deck will actually be below many of the  
12 decks on this alley to the rear. And you can see on the  
13 right side, that's the western elevation that's looking from  
14 the alley to the back of the home. And again, the cars will  
15 be able to park underneath the deck. Next slide, please.

16 And here's just a rendering. Next slid, please.  
17 And so the relief we're seeking, two forms of special  
18 exception relief, one from lot occupancy. The existing home  
19 has a lot occupancy of 57.3 percent. What's being proposed  
20 is 70 percent.

21 And as the Board Members are aware, you're allowed  
22 to have 60 percent in the RF-1 zone will go up to 70 percent  
23 by special exception. The concordant reduction of the rear  
24 yard existing is 20 feet which is the requirement. And the  
25 rear yard would be reduced to eight feet. Next slide,

1 please.

2           The request is harmonious with the purpose and  
3 intent of the regulations. Further, it's a single family  
4 residential use. As Matt and Erin briefly spoke about, this  
5 is really to increase the usable space on the lot.

6           Currently, the rear is only used for parking. And  
7 this accomplishes the goal of creating an area where they can  
8 be with their family, grill, whatever, host people without  
9 losing those two parking spaces. Nonetheless, the open air  
10 deck will maintain the feeling of this low density RF-1 zone  
11 block.

12           And several of the neighboring homes along this  
13 kind of portion of 18th Street have rear decks. So it would  
14 be a very similar condition to what other neighbors have.  
15 Next slide, please. In terms of light and air, we've talked  
16 about this being open at the ground level.

17           So it really will not impact light and air too  
18 much of an extend, if at all. There's no exterior stair.  
19 It's only accessed from inside the home. So no visual  
20 obstructions other than the one-story decking.

21           The property remains open at the rear due to the  
22 alley. And there's also a large kind of landscape open green  
23 space associated with the neighboring apartment buildings.  
24 So there will be plenty of -- there will not be kind of an  
25 infringement on the alley because there's plenty of open

1 space to the rear of the home.

2           And in terms of privacy, there's no abutting  
3 neighbor to the north which is just where the alley is  
4 located. The neighbor to the south is at a higher elevation.  
5 So it limits any viewsheds.

6           And these are shallow rear yards that are used for  
7 parking and not socializing. So there will be no issues with  
8 peering into kind of neighbors backyards where they might  
9 want or need privacy. Next slide, please. And finally, the  
10 special conditions of this relief in the RF zone.

11           We talked about light and air and privacy and that  
12 there'd be no undo impact. But the Subsection C, I did want  
13 to note that the deck will not substantially visually intrude  
14 upon the character, scale, and pattern of the neighborhood.  
15 We are obviously not altering the street frontage on 18th  
16 Street.

17           Several of the neighboring homes have decks. And  
18 the deck does not read as a structure. So you're really not  
19 impacting to any sign extent the kind of visual aesthetics  
20 of the rear alley. And with that, we're going to try to keep  
21 this brief and open it up to any questions from the Board.

22           CHAIRPERSON HILL: Okay. Thanks, Mr. DeBear. Does  
23 the Board have any questions for the applicant?

24           All right. We're going to turn to the Office of  
25 Planning.

1 MS. THOMAS: Yes. Good morning, Mr. Chair. Karen  
2 Thomas with the Office of Planning. We rest on the record  
3 in support of the addition of this deck to the rear of this  
4 home.

5 As the applicant clearly showed, it had no --  
6 there would be no serious impact to light and air to any  
7 neighbors. And as an open structure, it will provide  
8 basically elevated access to the rear yard. As you can see,  
9 there was no access to the rear of the home.

10 And this just gives them some passive recreation  
11 space. And with that, I'll stand on the record. Thank you.

12 CHAIRPERSON HILL: Okay, great. All right. Mr.  
13 Young, is there anyone here wishing to speak? Mr. DeBear,  
14 do you want to add anything in the end?

15 MR. DEBEAR: No, thank you. Thank you for your  
16 time this morning.

17 CHAIRPERSON HILL: Okay. Mr. and Mrs. Radomski,  
18 you guys have a nice day. All right. Mr. Young, go ahead  
19 and close the hearing on the record and excuse everyone. Mr.  
20 Smith, do you want to start us off?

21 MEMBER SMITH: Sure. I think this is a fairly  
22 straightforward application. I do believe that the applicant  
23 has met the burden of proof for us to be able to grant a  
24 special exceptions from lot occupancy and the rear yard  
25 requirements. As stated by the applicant, this is -- I do

1 believe the deck would be non-obtrusive.

2           And so far, that is a -- it's a deck coming off  
3 the ground floor of the existing home. And given the  
4 topography of the rear, it wouldn't be so high up from the  
5 rear of the property to affect the neighbors light and air.  
6 I do not believe that the proposal would adversely affect.

7           So therefore, I don't believe that the proposal  
8 would personally affect the neighboring properties. I do  
9 believe given the size of the deck, this is a special  
10 exception, not a variance. And the zoning regulations do  
11 allow these sized decks with a special exception as long as  
12 they meet certain criteria.

13           I believe that the applicant has met the standards  
14 of Subtitle X, 901(a). And we do not need to impose any  
15 special conditions on this particular type of deck. Again,  
16 as the applicant stated, they have the support of the ANC,  
17 also their adjacent neighbors. And I stand on OP's staff  
18 report, giving that great weight in support of the  
19 application.

20           CHAIRPERSON HILL: Great. Thank you. Dr.  
21 Imamura?

22           COMMISSIONER IMAMURA: I align my comments with  
23 Board members' comments and ready to support.

24           CHAIRPERSON HILL: Thank you. Mr. Blake? You're  
25 on mute, Mr. Blake, I think, if you're trying to speak.



1 MEMBER BLAKE: Can you hear me now?

2 CHAIRPERSON HILL: Yes.

3 MEMBER BLAKE: Yeah, sure. I'll be voting in  
4 favor of the requested relief. The applicant has obviously  
5 met the burden of proof as discussed clearly by Board Member  
6 Smith. So I'll be voting in favor of the application.

7 CHAIRPERSON HILL: Thank you. All right. I'm  
8 going to make a motion to approve Application 20735 as  
9 captioned and read by the Secretary and ask for a second.  
10 Mr. Blake?

11 MEMBER BLAKE: Second.

12 CHAIRPERSON HILL: The motion was made and second,  
13 Mr. Moy. Could you take a roll call, please?

14 MR. MOY: When I call your name, if you would  
15 please respond with a yes, no, or abstain to the motion made  
16 by Chairman Hill to approve the application for the relief  
17 requested. The motion to approve was second by Mr. Blake.  
18 Zoning Commissioner Dr. Imamura?

19 COMMISSIONER IMAMURA: Yes.

20 MR. MOY: Mr. Smith?

21 MEMBER SMITH: --

22 MR. MOY: Mr. Blake?

23 MEMBER BLAKE: Yes.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: --

1 MR. MOY: Staff -- and we have no other Board  
2 Member participating. Staff would record the vote as 4 to  
3 0 to 1. And this is on the motion made by Chairman Hill to  
4 approve -- motion to approve, second by Mr. Blake. Also in  
5 support of the motion, Zoning Commissioner Dr. Imamura, Mr.  
6 Smith, and of course Mr. Blake and Chairman Hill. Motion  
7 carries on the vote of 4 to 0 to 1.

8 CHAIRPERSON HILL: Thank you, Mr. Moy. You can  
9 call our next one, Mr. Moy, when you get a chance. And then  
10 you guys, we might take a break after the next one. I don't  
11 know if you guys are okay. But if there's a problem, let me  
12 know. Just raise your hand.

13 MR. MOY: All right. The next case is Application  
14 No. 20732 of NY Avenue Titleholder, LLC. This is a self-  
15 certified application for a special exception pursuant to  
16 Subtitle X, Section 901.2 under the Subtitle C, Section  
17 1501.1(e) which would allow a penthouse habitable space and  
18 pursuant to Subtitle C, Section 1506.1 from the penthouse  
19 setback requirements of Subtitle C, Section 1504.1(d),  
20 property located in the D-6 zone at 1425 New York Avenue,  
21 Northwest, Square 222, Lot 27.

22 And I believe that's it. If I can ask -- no. Oh,  
23 I believe there may be a motion from the applicant, Mr.  
24 Chairman, for expert status in architecture to a Mr. Siti  
25 Abdul Rahman under Exhibit 17(b).

1 CHAIRPERSON HILL: Okay, great. Ms. Hottel-Cox,  
2 can you hear me?

3 MS. HOTTEL-COX: Yes.

4 CHAIRPERSON HILL: Are you presenting today to us  
5 for us?

6 MS. HOTTEL-COX: Yes, I am.

7 CHAIRPERSON HILL: Okay. Can you introduce  
8 yourself for the record, please?

9 MS. HOTTEL-COX: Sure. For the record, Meghan  
10 Hottel-Cox with Glouston & Storrs, land use counsel for the  
11 applicant.

12 CHAIRPERSON HILL: Great. Thank you. Welcome.  
13 Ms. Hottel-Cox, I'm trying to -- do you know which exhibit  
14 is the resume for your expert witness?

15 MS. HOTTEL-COX: Yes, the expert witness resume  
16 is at 17(b).

17 CHAIRPERSON HILL: Thank you. Okay.

18 MS. HOTTEL-COX: And Siti Abdul Rahman has  
19 testified before the Board as an expert --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: Yeah, I was going to say I  
22 thought I recognized -- okay. So this person is already in  
23 our book.

24 MS. HOTTEL-COX: Yes, she is.

25 CHAIRPERSON HILL: I guess we'll go ahead and

1 admit her as an expert unless the Board has any questions.  
2 Ms. Hottel-Cox, I don't have a lot of questions for this one.  
3 I mean, I think the record is relatively straightforward.

4 I mean, it is a big project obviously, and I think  
5 we would like to hear about it. And I do see that you have  
6 a relatively significant slide deck which is good. But if  
7 you wouldn't mind just kind of moving through it relatively  
8 smoothly, particularly highlighting again just the standards  
9 with which we need to focus on in terms of approving your  
10 application or your client's application, that would be  
11 helpful. And you can begin whenever you like.

12 MS. HOTTEL-COX: Excellent. Thank you. So good  
13 morning again for the record. My name is Meghan Hottel-Cox,  
14 and I along with my colleague, Jeff Utz, are with Glouston  
15 & Storrs representing the applicant in this case.

16 We're excited to be here today to discuss the  
17 repositioning of 1425 New York Avenue, Northwest, currently  
18 a 13-story office building to a new residential building with  
19 penthouse amenity space. Due to the property's location  
20 within a few blocks of the White House, the habitable  
21 penthouse requires special exception approval under Subtitle  
22 C, Section 1501.1(e). Additionally, the project requires  
23 penthouse setback relief from an open court under Subtitle  
24 C, Section 1504.1(d).

25 Both of these approvals are allowed by special

1 exception from the Board. We are pleased to be here today  
2 with support from the Secret Service, the Office of Planning,  
3 DDOT, and the ANC. DDOT did include several transportation  
4 demand management conditions in their report, and we have  
5 agreed to all of those conditions.

6 We appreciate the time the agency staff members,  
7 the ANC Commissioners, and the Secret Service officers took  
8 to work with us on this project. And we will continue to  
9 work with them moving forward. As detailed in our initial  
10 application and the overall record and thoroughly explained  
11 in OP's report, we believe the application meets the special  
12 exception standards for both penthouse approvals we're  
13 seeking today.

14 First, the approval of habitable penthouse space  
15 within the secured area near the White House is subject to  
16 the general special exception requirements upon consultation  
17 with the Secret Service. As I noted, the Secret Service has  
18 no objection to the provision of habitable space on the roof  
19 of the building. Additionally, as the applicant will detail  
20 further, having tenant amenity space to create a successful  
21 residential experience furthers the overall purpose and  
22 intent of the zoning regulations for residential use.

23 Finally, as the architect will explain, the  
24 habitable penthouse space will not have a negative impact on  
25 the surrounding area. Second, the penthouse setback relief

1 we are requesting results from removing the existing atrium  
2 ceiling in the building to create a large open court that  
3 allows light and air to get to these new residential units.  
4 Said another way, if the glass roof of the atrium were not  
5 removed, the roof structure setback relief wouldn't be  
6 required.

7           But creating that open court, the existing  
8 building core that is being preserved isn't able to comply  
9 with the one-to-one setback requirement. The regulations  
10 require the applicant to demonstrate that it has made a  
11 reasonable effort to comply with the setbacks that strict  
12 application of the setback requirements would be unduly  
13 restrictive and that the overall design of the penthouse  
14 meets the intent of the regulations and building code.

15           As the applicant will detail, reuse of the  
16 existing building core makes the project economically  
17 achievable and to relocate the core wouldn't be feasible.  
18 Our architect will also explain how reuse of the core results  
19 in the best penthouse design for the project. And because  
20 the structure is existing, it will not have a negative impact  
21 on the adjacent properties.

22           With that, we have two witnesses today. Cassie  
23 Schupp will testify on behalf of the applicant and Siti Abdul  
24 Rahman with WDG Architecture will provide an overview of the  
25 project plans and detail the penthouse spaces. Mr. Young,

1 can you pull up the presentation that we submitted? Thank  
2 you. And with that, I will turn it over to Cassie Schupp  
3 with Foulger Pratt.

4 MS. SCHUPP: Good morning, everybody. My name is  
5 Cassie Schupp, Director of Development with Foulger Pratt.  
6 Myself along with my colleagues, Sara and Bob Abt, both on  
7 this meeting. We are excited to sit here and present with  
8 you all our personal favorite project, 1425 New York Avenue.

9 It sits mid-block on New York Avenue between 14th  
10 and 15th Street. And this is a good representation of the  
11 current existing structure. As I present this to you, we are  
12 constructing a multi-family building through a reposition of  
13 an existing office into a residential building.

14 Office to residential is exciting in nature but  
15 complicated in execution. People often find it surprising  
16 to learn that this type of construction is actually more  
17 expensive than typical new build, even a type 1. Given the  
18 complicated nature, we are optimistic about this job, though,  
19 for a number of reasons.

20 Primarily, the reuse of the core as well as our  
21 proximity to the downtown features that this great area has  
22 to offer. And it's because of those reasons that we're here  
23 today. Said differently is the way that Meghan eloquently  
24 framed it asking for the setback related to our court as well  
25 as habitable penthouse space.

1           And it's with the use of those for the reuse of  
2 the core that we are able to economically make this work as  
3 well as provide open air and sunlight to the residents on the  
4 interior of the space. And it's through the habitable space  
5 on the penthouse that we are able to really create a new and  
6 unique community for our renters. Something that you'll be  
7 able to take away later, though, is that the use of the  
8 penthouse space is actually a reformat of what is already  
9 existing there.

10           Unfortunately, what is there right now is really  
11 just mechanical equipment. We'd like to take the same  
12 structure, the same massing and make that a space for our  
13 tenants to use and enjoy. And with that, I'll turn it over  
14 to Meghan or Siti.

15           MS. ABDUL RAHMAN: I think can we jump to slide  
16 number 4? Good morning, everyone. My name is Siti Abdul  
17 Rahman. I'm with WDG Architecture.

18           And WDG Architecture is a local architecture firm.  
19 And we have been practicing in Washington, D.C. for more than  
20 a decade. We are pleased to be here today to share 1425 New  
21 York Avenue design with the Board. So the slide on the  
22 screen right now is showing the aerial of the existing office  
23 building.

24           It is a through block connection -- a through  
25 block building actually located in between New York Avenue



1 and H Street Northwest. On this image, please note that the  
2 mechanical -- the location of the mechanical penthouse  
3 enclosure under roof and also the skylight that is covering  
4 the building atrium space. Next slide, please. And on this  
5 slide here, it's showing the view of the existing office  
6 building today from New York Avenue.

7           And you can see the main entrance to the building  
8 and also the entrance to the parking garage to the building  
9 is located on the street. And these two access point will  
10 be maintained for the building repositioning. And 1425 New  
11 York Avenue currently is a 13-story office building, 130 feet  
12 tall with approximately 300,039 square feet of office  
13 building. Next slide, please.

14           And this slide is showing the office building  
15 facade from H Street with loading and service access on the  
16 street. And for the repositioning, the loading area will be  
17 maintained at the same position. Next slide, please. On  
18 this slide here, this is showing the existing penthouse plan.

19           And please note the area in blue. And that is the  
20 mechanical penthouse enclosure that's housing the mechanical  
21 equipment servicing the office building currently. The total  
22 square footage of the mechanical enclosure currently is  
23 10,600 square feet.

24           And in addition to this, please also note the  
25 location of the elevators on this plan. Next slide, please.

1 This plan is showing the new penthouse level for the multi-  
2 purpose building. The new square footage for the penthouse  
3 enclosure is 7,600 square feet which is significantly smaller  
4 than the existing penthouse enclosure.

5 We will be providing about 1,900 square feet of  
6 indoor amenity and also outdoor amenity spaces for the  
7 residential -- residents' use. And the remainder of the area  
8 will be housing the mechanical equipment servicing the new  
9 building function. Next slide, please. Slide number 9 is  
10 showing a section cut of the building.

11 You know what? Can you go back? I'm sorry. I  
12 apologize. Can you go back to the previous slide? Okay.  
13 I'm sorry. I mean, what I'm trying to explain here is also  
14 we are repurposing the existing elevator on this plan here.

15 And then we are removing the skylight and also  
16 demolishing some of the floor area to enlarge the courtyard  
17 area to allow for natural daylight and ventilation for the  
18 residential use facing the court area. In order to do this,  
19 we are seeking the zoning relief which is the one-to-one  
20 penthouse setback facing the open court. Next, please.  
21 Thank you for doing that.

22 Slide number 9 is showing the building section  
23 from east to west, showing the 15-foot setback that we are  
24 providing, facing the open court in relation to the 30-feet  
25 high elevator enclosure that we're providing on the penthouse

1 level. As this slide has illustrated, we do not believe that  
2 the setback relief will have a negative impact on adjacent  
3 property because this penthouse idea is existing and also  
4 because the open courtyard is interior to the square. And  
5 next slide, please. This slide is the aerial view of the  
6 penthouse enclosure from southwest showing the extent of the  
7 new penthouse enclosure and the court area from an angle.

8           We also are including a perspective view on the  
9 right-hand side of the slide that shows the amenity, the  
10 indoor and outdoor amenity area for the residents which is  
11 rooftop with some water feature and some seating area. Next  
12 slide, please. And the next slide is showing another aerial  
13 view from southeast showing the extended penthouse and also  
14 you can see, the location of the court area in relation to  
15 the penthouse and the adjacent building. We're also showing  
16 a perspective view of the residential amenity on the roof  
17 level. Next slide, please.

18           So this is our final slide. This slide here is  
19 showing the improvement that we are doing for the building  
20 facade on New York Avenue. We are defining the building base  
21 with two story expression with larger window wall to allow  
22 for more activated pedestrian experience.

23           In addition to this, we also are going to do --  
24 adding rich building material, adding multiple texture to the  
25 building, and incorporating a warmer color palette to the

1 rest of the building facade to reflect the family residential  
2 nature of the building. With that, thank you for listening  
3 to our case today. And I'll give it back to you, Meghan and  
4 Cassie.

5 MS. HOTTEL-COX: Thank you. That concludes our  
6 presentation. We are happy, of course, to answer any  
7 questions from the Board.

8 CHAIRPERSON HILL: Thank you. I have a couple  
9 questions. Ms. Hottel-Cox, I forget -- like, I know now  
10 because the pandemic and everything they -- whatever they  
11 means -- are trying to, like, put more residential downtown.

12 And so it is difficult because of the office  
13 buildings and everything. I forget. Was there city  
14 incentives connected with all of this? Or is this just  
15 strictly you guys are trying to figure out how to do it?

16 MS. HOTTEL-COX: So in general, I know that the  
17 District is very focused and the Mayor is very focused on  
18 additional housing, including downtown. But there's not any  
19 specific program. And Cassie, of course, please correct me  
20 if I'm wrong. But there's not any specific program beyond  
21 just the general overall District efforts to have residential  
22 use downtown.

23 CHAIRPERSON HILL: Okay. And just for the record,  
24 this is my SMD, number 1. And Mr. Utz, congratulations on  
25 your DCBIA award. Yeah, whatever. I guess that was all my

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 questions. Does the Board have any questions?

2 COMMISSIONER IMAMURA: Chairman, just a general  
3 comment that it's a really nice project. The modifications  
4 that they made architecturally just are nice.

5 CHAIRPERSON HILL: Yeah. I mean, I'm really  
6 surprised. Like, I shouldn't say surprised. It's a great  
7 area to be there, and that building is kind of old looking.  
8 Like, no offense to whoever owns the building.  
9 And they've got more money than I do, so they shouldn't be  
10 offended. Let's see. Okay. Oh, sure. Mr. Blake?

11 MEMBER BLAKE: Are there any affordable housing  
12 elements to this?

13 MS. HOTTEL-COX: So the project is located in the  
14 D-6 zone. And because it's the D-6 zone, an adaptive reuse  
15 of an existing building, no, it is not subject to the  
16 affordable housing requirements.

17 CHAIRPERSON HILL: Okay. All right. I'm going  
18 to turn to the Office of Planning.

19 MR. KIRSCHENBAUM: Good morning, Chair Hill and  
20 Members of the Board of Zoning Adjustment. I'm Jonathan  
21 Kirschenbaum with the Office of Planning. We recommend  
22 approval of the special exception to permit habitable space  
23 in a defined area near the White House and also penthouse  
24 open court back relief. Please let me know if you have any  
25 further questions. Thank you.

1 CHAIRPERSON HILL: Okay, great. Does anybody have  
2 any questions for the Office of Planning? Mr. Young, is  
3 there anyone here wishing to speak? Okay. Ms. Hottel-Cox,  
4 is there anything you'd like to add at the end?

5 MS. HOTTEL-COX: No, thank you.

6 CHAIRPERSON HILL: Okay. I'm going to go ahead  
7 and close the hearing and the record. Thank you all very  
8 much.

9 Okay. Yeah, I mean, I think the project is just  
10 wild. Like, there's more of this stuff kind of happening.  
11 I mean, it's a big office building. And again, like, turning  
12 it into residential is very problematic.

13 And as they had said or as I understand the  
14 market, it's very difficult to turn this stuff into  
15 residential after it's been office just because of the way  
16 it gets set up when they're doing the office building. So  
17 it's amazing -- I shouldn't say amazing. I think the design  
18 to Dr. Imamura's point is really well done in terms of the  
19 conversion they're doing.

20 And I think the outdoor space is actually a nice  
21 amenity for that building. I didn't have any concern about  
22 the penthouse habitable space. And also with connection that  
23 also the Secret Service didn't have any issues with it.

24 And I didn't have any problems with the penthouse  
25 setback requirements. And I think that it'll be something

1 that'll be an asset down in that area that is getting --  
2 trying to get as much revitalization down in the downtown  
3 area now that the pandemic has kind of, like, killed a lot  
4 of the traffic -- foot traffic. Also, the ANC is in support.

5 And the applicant had agreed to DDOT's TDM plan  
6 measures. So I don't think that's something that we  
7 necessarily need to put in as a requirement. And so I  
8 thought it was a well done presentation, and I'm going to be  
9 voting in favor. Let's see. Mr. Smith?

10 MEMBER SMITH: I don't have anything add beyond  
11 what you just stated, Chairman Hill. I do approve your  
12 assessment. It's very straightforward just to note from the  
13 standpoint that the Secret Service has written a letter  
14 stating that they are comfortable with the project as  
15 designed. So I give OP's staff report great weight, noticing  
16 that the ANC is also in support with no issues or concerns.  
17 And I will vote to support it.

18 CHAIRPERSON HILL: Great. Thank you. Dr.  
19 Imamura?

20 COMMISSIONER IMAMURA: I have nothing more to add,  
21 Mr. Chairman. I align myself with your comments.

22 CHAIRPERSON HILL: Thank you. Mr. Blake?

23 MEMBER BLAKE: I will be voting in support of the  
24 application. The applicant has clearly demonstrated that  
25 they met the burden of proof to be granted relief and also

1 give great weight to the Office of Planning report and  
2 recommendation.

3 CHAIRPERSON HILL: Thank you, Mr. Blake. All  
4 right. I'm going to go ahead and make a motion to approve  
5 Application No. 20732 as captioned and read by the Secretary  
6 and ask for a second. Mr. Blake?

7 MEMBER BLAKE: Second.

8 CHAIRPERSON HILL: Motion made and second. Can  
9 you make a roll call vote, Mr. Moy?

10 MR. MOY: Yes. When I call your name, if you  
11 would please respond with a yes, no, abstain to the motion  
12 made by Chairman Hill to approve the application for the  
13 relief requested. A motion to approve was second by Mr.  
14 Black. Zoning Commissioner Dr. Imamura?

15 COMMISSIONER IMAMURA: Yes.

16 MR. MOY: Mr. Smith?

17 MEMBER SMITH: --

18 MR. MOY: Mr. Blake?

19 MEMBER BLAKE: --

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: We have no other Board Member  
23 participating. Staff would record the vote as 4 to 0 to 1.  
24 And this is on the motion made by Chairman Hill to approve.  
25 The motion was second by Mr. Blake. Also in support, Zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1 Commissioner Dr. Imamura, Mr. Smith, of course Mr. Blake and  
2 Chairman Hill. Motion carries on a vote of 4 to 0 to 1.

3 CHAIRPERSON HILL: All right, great. Thank you,  
4 Mr. Moy. Okay. Do you guys want to take a quick break?  
5 It's 10:52, so maybe try to come back around 11:02, 11:05,  
6 take ten minutes. Okay. Thank you, all.

7 (Whereupon, the above-entitled matter went off the  
8 record at 10:53 a.m. and resumed at 11:09 a.m.)

9 MR. MOY: Yes, thank you, sir. The Board has  
10 returned to its public hearing session after a very quick  
11 recess, and the time is at or about 11:09 in the morning.  
12 The next case is Application No. 20737 of Dr. Charles  
13 Samenow.

14 This is an amended self-certified application for  
15 special exception pursuant to Subtitle F, Section 5201 and  
16 Subtitle X, Section 901.2. This is from the lot occupancy  
17 requirements, Subtitle F, Section 304.1 and the rear yard  
18 requirements, Subtitle F, Section 305.1. The property is  
19 located in the RA-2 zone at 1736 Swann Street, Northwest,  
20 Square 152, Lot 56.

21 CHAIRPERSON HILL: All right, great. Thank you.  
22 Mr. DeBear, can you hear me?

23 MR. DEBEAR: I can.

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

1 MR. DEBEAR: My name is Eric DeBear, land use  
2 counsel from Cozen O'Connor on behalf of the applicant.

3 CHAIRPERSON HILL: Great. Okay, Mr. DeBear. I've  
4 looked through your application. There's a couple of  
5 questions that I guess maybe if you can kind of talk to some  
6 of the concerns that the ANC raised about the alley being  
7 blocked during construction and such.

8 Other than that, if you want to go ahead and walk  
9 us through your presentation. I'll throw 15 minutes on the  
10 clock so I know where we are. And you can begin whenever you  
11 like.

12 MR. DEBEAR: Great. Thank you. If Mr. Young can  
13 pull up our PowerPoint presentation, that would be great.  
14 Thank you. As mentioned, this is the application of Dr.  
15 Charles Samenow for this house at 1736 Swann Street,  
16 Northwest. Next slide.

17 The property is located in the RA-2 zone in the  
18 Dupont Circle neighborhood. It's between 18th Street and New  
19 Hampshire, Northwest. Next slide, please. These are some  
20 photos of the existing property.

21 You can see on the left that it is a classic  
22 attached row home. It does have a one-story existing  
23 accessory garage. And as we'll talk about with the project,  
24 there will be a roof deck added to that.

25 I would also like to note that this is a small

1 lot. The existing nonconforming lot occupancy is 70.7  
2 percent. And again, as we'll discuss, this project is  
3 actually reducing that lot occupancy, albeit we still require  
4 relief.

5 And lastly, it is in the Dupont Circle Historic  
6 District. And as we will talk about, my client has conversed  
7 with HPO staff about this proposal. Next slide, please. And  
8 here's just to give the Board a bird's eye view of the  
9 property.

10 I do want to note just the kind of three smaller  
11 homes there, Dr. Samenow's property is in the middle.  
12 There's kind of a variety of massings on this block, many of  
13 which are an extra story above his and extend significantly  
14 further. What you'll see is that even with the addition, it  
15 will less deep than the property on the right there, the  
16 directly abutting neighbor. Next slide, please. And with  
17 that, I'll turn it over to my client who will talk about what  
18 he's proposing.

19 MR. SAMENOW: For the record, Charles Samenow.  
20 I'm the applicant living at 1736 Swann Street. And our  
21 project is rather simple. We're looking to demolish the rear  
22 deck which is a nonconforming structure. It was there prior  
23 to me building the property, but we didn't have any evidence  
24 of its prior construction or permitting.

25 And the goal is then to use that footprint to bump

1 out the back of the house. And you'll see from the plans how  
2 we plan to do that to extend the kitchen, add a new stair,  
3 and then on the second floor bump out the bathroom again and  
4 add a spiral staircase to a garage deck that we plan to  
5 build. The deck does not require relief. It's by right.

6 But because of the special exception for lot  
7 occupancy and the yard requirement, the spiral staircase does  
8 need to be considered. Next slide. As part of the process,  
9 I worked with our ANC Commissioner Meg Roggensack who put  
10 together a meeting of my neighbors. So we were able to  
11 discuss the plans.

12 I also provided flyers and copies of the plans to  
13 both my neighbors to the east, to the west, and across the  
14 alley from me which is a condominium structure. So I gave  
15 the president of the board there a copy to distribute to all  
16 of his folks. We met with the land use committee and then  
17 the full ANC committee who I believe -- who I know provided  
18 a letter of support. And then the Office of Planning also  
19 recommended approval which Mr. DeBear will talk about later  
20 in his presentation. So I'll turn it back over.

21 MR. DEBEAR: Thank you, Dr. Samenow. Next slide,  
22 please. Just to walk through briefly the plans for the  
23 project. As Dr. Samenow mentioned, this is a fairly modest  
24 addition.

25 What you're looking at right now is the first

1 floor plan. You can see the bump out in darker gray there  
2 that will expand the kitchen by 35.3 square feet. It extends  
3 only 4 feet beyond the existing home.

4 And I did just want the Board to note you can see  
5 the existing rear of the two adjacent properties that we  
6 looked at, at the bird's eye. We'll extend -- even with the  
7 addition, we'll extend beyond Dr. Samenow's property. And  
8 then the spiral stair which he just noted, we'll provide  
9 access to that rooftop deck. Next slide, please.

10 And then on the second floor, the addition does  
11 expand beyond the first floor addition. And we have included  
12 that in the lot occupancy calculation. This second floor  
13 addition extends 5 feet 8 inches beyond the rear of the  
14 existing home after the deck has been removed.

15 But it is still less deep than the two neighboring  
16 properties. And you can see the roof deck which again is not  
17 part of the request. But we did want to include just for  
18 consistency sake. Next slide, please.

19 There's a side elevation from the west and gives  
20 you a good idea of kind of the conditions in the rear of the  
21 property. You can see we are requesting the rear yard relief  
22 for the 10 foot 9 inch rear yard. And I did want to note  
23 that because of the spiral stair, that is why the relief is  
24 needed and the second floor overhang.

25 But actually, the rear yard and other portion of

1 the property is larger which you could see from the site  
2 plan. And so you can see that actually the distance from the  
3 back of the first floor addition to the rear of the -- or I  
4 should say the front of the accessory garage is actually  
5 closer to 17 and a half feet. But nonetheless, we do require  
6 rear yard relief.

7           And I did just want to note that because I think  
8 it is a rather unique condition that this slide kind of  
9 depicts fairly well. Next slide, please. And here is just  
10 the rear elevation of the proposal. Next slide, please. So  
11 now we get into just a brief discussion of the relief that's  
12 needed.

13           It is lot occupancy and rear yard in the RA-2  
14 zone. The maximum lot occupancy is 60 percent. As I  
15 mentioned a little earlier, the existing property with the  
16 deck actually has a lot occupancy of 70.7 percent.

17           So this will be reducing that to 69.9 percent.  
18 We actually spoke with the zoning administrator about  
19 potentially utilizing the existing nonconformity and being  
20 able to rebuild it. But unfortunately we were not able to  
21 locate a permit that would indicate the existing  
22 nonconformity was illegally built.

23           It was built likely before or definitely before  
24 Dr. Samenow purchased the property, but we're not entirely  
25 sure when. The other thing I did want to note about lot

1 occupancy is that the second level, as we know, the zoning  
2 looks at lot occupancy by level. The second level is  
3 actually only 41 percent lot occupancy because there's no  
4 second story to that accessory garage.

5 And I only note that because it is important for  
6 maintaining light and air. It is a small lot. But again,  
7 there won't be any kind of towering second story of the  
8 accessory garage over Dr. Samenow's rear yard or the  
9 neighboring rear yard.

10 So we do actually have a compliant second level.  
11 But relief is still needed for the first level. And then the  
12 rear yard, I briefly talked about with the elevation drawing  
13 or the section drawing I should say.

14 The existing rear yard is approximately 18 feet  
15 and a portion of that is being reduced because of the spiral  
16 stair to 10 feet 9 inches where a minimum of 15 feet is  
17 required. Next slide, please. The relief is harmonious with  
18 the purpose and intent of the regulations. What Dr. Samenow  
19 described as the addition is really to increase the  
20 functionality and useable space in this home.

21 He moved in recently. And as we see I think  
22 throughout this city is kind of retrofitting the property to  
23 meet the needs of kind of modern living. It's a very small  
24 lot and a very small amount of useable space.

25 So this will really increase the functionality

1 immensely, even though it is a relatively small addition.  
2 We are decreasing the lot occupancy even though we are  
3 seeking relief. And again, as I've mentioned, a portion of  
4 the rear yard is compliant and actually exceeds the minimum  
5 requirement of 15 feet.

6 But the portion adjacent to the spiral stair is  
7 less than the 15 feet. Next slide, please. In terms of  
8 impacts to light and air, the two adjoining properties extend  
9 beyond the proposed rear addition. There's no second level  
10 to the garage. I've already spoken about that.

11 The spiral stair which was actually preferred by  
12 the Historic Preservation Office as a means to access the  
13 roof deck over the garage is unenclosed and open to the air.  
14 So it will not present as a block of structure. And then  
15 we're, again, decreasing the existing lot occupancy.

16 In terms of privacy, there are no windows facing  
17 either abutting neighbor. And again, what you saw from the  
18 overhead view is that really the properties beyond the two  
19 abutting neighbors are significantly larger and would not be  
20 impacted anyway. But even so, Dr. Samenow has designed it  
21 to limit any impacts of privacy to his neighbor and property  
22 owners.

23 There is an existing fence that you saw in two of  
24 the images earlier on that will remain closer to the  
25 property. That fence is actually almost a story tall. So



1 it provides significant privacy protection for those two  
2 adjoining properties.

3 And finally, the rear facing windows are similar  
4 to existing conditions at the property. Next slide, please.  
5 And finally moving through the special conditions, I've  
6 already spoken about light, air, and privacy under  
7 Subsections A and B. Subsection C, the proposed addition  
8 will not visually intrude on the character, scale, and  
9 pattern of houses.

10 We are not altering the street frontage on Swann  
11 Street. It's a historic district. It's remaining as it is  
12 currently and as it has been. There's a variety of massing  
13 on the southern side of Swann Street, many of which are both  
14 taller and extend farther than the project.

15 And then the property with the new addition will  
16 not extend beyond the rear adjoining neighbors and actually  
17 will more or less align with them to make more of a  
18 consistent pattern. And as I alluded to, Dr. Samenow has had  
19 direct conversations with HPO staff. The addition as you are  
20 seeing today can be approved at the staff level as has been  
21 indicated by staff.

22 And again, the initial proposal actually had an  
23 internal stair in the accessory garage. And that was swapped  
24 to the spiral stair which then triggered the rear yard  
25 relief. But that is why you are seeing that spiral stair

1 because of comments from HPO staff.

2 And with that, that concludes our presentation in  
3 chief. I know the chair had requested an understanding of  
4 the ANC's resolution and its comments on the construction  
5 issues. I will let my client speak to that.

6 But I would note as I'm sure the Board is aware,  
7 obviously issues of construction. While Dr. Samenow will be  
8 happy to work with the community or outside the purview of  
9 this Board. But with that, I will turn it over to Dr.  
10 Samenow to just speak about that a little bit.

11 MR. SAMENOW: Sure, very briefly. If I could show  
12 you my view, I'm looking out at a construction project across  
13 the alley. I have another construction project going on at  
14 1722 Swann. So there's a lot going on in this neighborhood.

15 So of course, even myself, we're concerned about  
16 the impact for being able to get trash trucks through,  
17 parking, et cetera. The beauty of having a garage and a rear  
18 yard is that my contractor is able to use that space. I'm  
19 going to get my car out of there so it doesn't get damaged.

20 So we have a lot of space to have construction  
21 vehicle parking, store materials, et cetera, so as not to  
22 block the alley like some of the other projects are doing.  
23 And certainly I have been working with my neighbors as part  
24 of the process of this proposal. And we'll do so ongoing.

25 CHAIRPERSON HILL: Okay, great. And Mr. DeBear,

1 I know that, like, we don't have necessarily construction  
2 things that are in our purview. But you'd be surprised, Mr.  
3 DeBear, what does fall within our purview at times just to  
4 let you know.

5 So okay, Dr. Samenow, so your plan is what? So  
6 you've talked to the ANC. You're trying to get your  
7 construction, if this is approved, to park in your spot. Is  
8 that correct?

9 MR. SAMENOW: Yeah, I would have my construction  
10 folks park in the garage. And we would use my backyard for  
11 storage of materials. My contractor says because there's not  
12 an extensive demolition, there won't be the need as we know  
13 it now for a large dumpster anywhere.

14 So hopefully, the site will be very contained.  
15 We're not going to need a variety of trucks and dumpsters and  
16 stuff blocking the alley or sticking out into the alley. So  
17 that's the plan.

18 CHAIRPERSON HILL: Okay. So you're going to do  
19 your best to work with your neighbors in terms of the  
20 construction management?

21 MR. SAMENOW: Correct.

22 CHAIRPERSON HILL: Okay. All right. Does the  
23 Board have any questions of the applicant? Sure. Go ahead,  
24 Dr. Imamura.

25 COMMISSIONER IMAMURA: Dr. Samenow, what is the

1 duration of your construction project?

2 MR. SAMENOW: That's hard to anticipate due to the  
3 supply chain issues. And of course, we haven't even gone for  
4 permitting yet. It's a relatively modest addition.

5 We're working with a structural engineer right now  
6 in anticipation of the permitting to make sure that the  
7 garage can support the deck. So there's sort of a lot of  
8 unknowns here. But there's, again, very minimal demolition  
9 and a pretty small square footage.

10 So I'm hoping that we're looking at a few months  
11 max. This should not be an ongoing project. The project  
12 across the way from me that I'm looking at right now has been  
13 going on since I moved in for a year and a half.

14 I don't anticipate that we're going to be like  
15 that. I have a pretty good contractor. But of course,  
16 there's things in the world going on that I can't predict.

17 COMMISSIONER IMAMURA: Sure. I just wanted that  
18 for the record. It is a modest addition. And so I wouldn't  
19 anticipate it would take very long. All right. Thank you.

20 CHAIRPERSON HILL: Okay. Thank you. Anyone else?  
21 All right. I'm going to turn to the Office of Planning.

22 MS. ELLIOTT: Good morning, Members of the Board.  
23 I'm Brandice Elliott representing the Office of Planning for  
24 BZA Case 20737. The Office of Planning is recommending  
25 approval of the relief that's been requested for lot

1 occupancy and rear yard. We're happy to stand on the record  
2 of our report. But I will answer any questions that you  
3 have.

4 CHAIRPERSON HILL: Okay, great. Thank you. Thank  
5 you, Ms. Elliott, for your report. Does the Board have any  
6 questions for the Office of Planning? Okay. Mr. Young, is  
7 there anyone here wishing to speak?

8 MR. YOUNG: We do not.

9 CHAIRPERSON HILL: Okay, great. Mr. DeBear, is  
10 there anything you'd like to add at the end?

11 MR. DEBEAR: Thank you for your time today.

12 CHAIRPERSON HILL: Okay, great, wonderful. All  
13 right. Dr. Samenow, again, just trying to help out with your  
14 construction management in terms of, like, your neighbors and  
15 everything there. And I know it's a modest project and I  
16 know it's small.

17 But the ANC, they did approve it, so it's great.  
18 You're fortunate that you don't have to go through a lot of  
19 hoops with them. But be cognizant that they mentioned it to  
20 us. So just be aware of it. Okay?

21 MR. SAMENOW: Absolutely.

22 CHAIRPERSON HILL: Okay, great. Thank you. All  
23 right. I'm going to go ahead and close the hearing and the  
24 record. Okay. I didn't particularly have any issues with  
25 this. I thought that -- excuse me. I thought that applicant

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 has made a good argument, excuse me, as to why we should not  
2 be concerned with this particular project and why they're  
3 meeting the requirements for us to grant the relief  
4 requested.

5 I do think that it is fortunate that -- and I'm  
6 just kind of mentioning this -- to have legal counsel even  
7 though some of these things seem to be somewhat  
8 straightforward. It's always nice to be able to -- it tends  
9 to run more smoothly if sometimes the applicants are thinking  
10 that it's better to try to go and do it on their own. It's  
11 definitely better to have counsel.

12 So I didn't have a particular issue with it. I  
13 was also pleased to see that the ANC is in support and that  
14 the applicant is aware of some of the ANC's concern is going  
15 to work with the neighbors about the construction management,  
16 just making sure that alley is not necessarily blocked while  
17 they are doing the work that they are doing. Also, I would  
18 rely on the Office of Planning's report and the record in  
19 which they have -- the Office of Planning's report which is  
20 in the record. Does anyone have anything else they'd like  
21 to add? Mr. Smith?

22 MEMBER SMITH: Chairman Hill, I agree with your  
23 assessment and will vote to support the application.

24 CHAIRPERSON HILL: Thank you. Dr. Imamura?

25 COMMISSIONER IMAMURA: Nothing more to add, sir.

1 CHAIRPERSON HILL: Thank you. Mr. Blake?

2 MEMBER BLAKE: I agree as well.

3 CHAIRPERSON HILL: All right. I'm going to make  
4 a motion to approve Application No. 20737 as captioned and  
5 read by the Secretary and ask for a second. Mr. Blake?

6 MEMBER BLAKE: Second.

7 CHAIRPERSON HILL: Motion made and second. Mr.  
8 Moy, if you could take a roll call. You are mute, Mr. Moy.

9 MR. MOY: Oh, man. I have to repeat myself? No,  
10 that's okay. So when I call your name if you'll please  
11 respond with a yes, no, or abstain to the motion made by  
12 Chairman Hill to approve the application for the relief  
13 requested. The motion was second by Mr. Blake. Zoning  
14 Commissioner Dr. Imamura?

15 COMMISSIONER IMAMURA: Yes.

16 MR. MOY: Mr. Smith?

17 MEMBER SMITH: --

18 MR. MOY: Mr. Blake?

19 MEMBER BLAKE: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: We have a Board Member not present.  
23 Staff would record the vote as 4 to 0 to 1. And this is on  
24 the motion made by Chairman Hill to approve. The motion to  
25 approve was second by Mr. Blake. Also in support of the

1 motion to approve Zoning Commissioner Dr. Imamura, Mr. Smith,  
2 Mr. Blake, and Chairman Hill. Motion carries, sir, on the  
3 vote of 4 to 0 to 1.

4 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.  
5 You can, Mr. Moy -- I think there's a request for a  
6 postponement that we're going to have to work through on a  
7 20734 if you want to call the case, please.

8 MR. MOY: Yes, sir. Thank you. This case is  
9 Application No. 20734 of 1009 Bryant NE DC, LLC. This is as  
10 amended for self -- it's a self-certified application for  
11 special exception under Subtitle U, Section 421 pursuant to  
12 Subtitle X, Section 901.2.

13 This is for a new residential development. I  
14 believe a 10-unit apartment house. Property located in the  
15 RA-1 zone at 1009 Bryant Street, Northeast, Square 3869, Lot  
16 29.

17 As you mentioned, Mr. Chairman, there's  
18 preliminary matters here. There's a request for a  
19 postponement filed by ANC 5C. Subsequent to that request is  
20 the applicant's opposition to that postponement with regards  
21 to the rescheduled date that ANC 5 was seeking. And I  
22 believe that's the most of it, Mr. Chairman.

23 CHAIRPERSON HILL: Okay, great. Mr. Sullivan, can  
24 you hear me? Could you introduce yourself for the record,  
25 please?



1 MR. SULLIVAN: Yes. Thank you, Mr. Chair, Members  
2 of the Board. Marty Sullivan with Sullivan & Barros on  
3 behalf of the applicant.

4 CHAIRPERSON HILL: Great. Thank you.  
5 Commissioner Montague, can you hear me?

6 ANC COMMISSIONER MONTAGUE: I can hear you. I  
7 don't see me showing up on the screen.

8 CHAIRPERSON HILL: That's all right. If you can  
9 go ahead and introduce yourself for the record, Commissioner.

10 ANC COMMISSIONER MONTAGUE: Commissioner Jeremiah  
11 Montague, Jr., ANC 5C.

12 CHAIRPERSON HILL: Okay, great. So Commissioner,  
13 we've seen everything that you put forward in terms of the  
14 request for postponement. And I've looked at when this  
15 application was before us and the process in which they've  
16 gotten to this point.

17 Unfortunately, we're really backed up with a lot  
18 of our cases, and we're going to go on recess in August. So  
19 I don't really feel comfortable pushing this application out  
20 any farther than -- I forget, Mr. Moy, when we might be able  
21 to do this. But before I even ask or before I even try to  
22 find a date on this, I think -- and Mr. Sullivan, maybe --  
23 there you go, Commissioner.

24 We can see you. Mr. Sullivan, I don't know. Do  
25 you know -- were you guys -- as I understood, you guys

1 might've been speaking at the ANC today?

2 MR. SULLIVAN: I had a notice on Monday. Yeah,  
3 we got a notice on Monday. It appears that we're on the  
4 agenda for the ANC meeting tonight.

5 CHAIRPERSON HILL: Okay. And then Chairman  
6 Montague, you'll have another -- I think, Mr. Moy, you  
7 thought maybe we can put this on the 22nd. And Chairman --  
8 I mean, I'm sorry. Commissioner Montague, I'll give you a  
9 second to talk. Mr. Moy, what day will we be able to get  
10 this back?

11 MR. MOY: What would accommodate the Board's  
12 hearing docket would be either June 22nd or June 29th. July  
13 is pretty much out of the question. But of course, you could  
14 always add as much as you want.

15 CHAIRPERSON HILL: Right. So we'll see what  
16 happens. So Commissioner Montague, you guys have them on the  
17 hearing docket for you all today, correct?

18 ANC COMMISSIONER MONTAGUE: Correct.

19 CHAIRPERSON HILL: Okay. And then would --

20 ANC COMMISSIONER MONTAGUE: My --

21 CHAIRPERSON HILL: Go ahead, Commissioner.

22 ANC COMMISSIONER MONTAGUE: My understanding is  
23 that you're really not inclined to -- you want to keep this  
24 puppy moving. The only thing that we were requesting was to  
25 have the record left open at the end so that we can formally

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 submit our 129 as a consequence of a fully commission meeting  
2 this evening.

3 CHAIRPERSON HILL: No, no. That's great,  
4 Commissioner. I mean, we want to hear from you guys. And  
5 so I'm going to go ahead. And Mr. Moy, when is it that we  
6 have -- how many cases do we have on the 22nd and how many  
7 cases do we have on the 29th?

8 MR. MOY: For the 22nd, you just added one today.  
9 So that would give us six cases for the 22nd currently and  
10 for the 29th, five cases.

11 CHAIRPERSON HILL: Okay. Commissioner Montague,  
12 do you think you can get us something by the 24th?

13 ANC COMMISSIONER MONTAGUE: Yes, sir.

14 CHAIRPERSON HILL: Okay. And then I guess --  
15 well, actually, I'm sorry. Can you get us something in a  
16 week by the 22nd?

17 ANC COMMISSIONER MONTAGUE: Yes, sir.

18 CHAIRPERSON HILL: Okay. Then Mr. Sullivan, that  
19 would give you until the 24th to give us anything if you  
20 needed anything else.

21 MR. SULLIVAN: Yes, that would be great. Thank  
22 you.

23 CHAIRPERSON HILL: Okay. And then we'll come back  
24 on the 29th, Mr. Moy?

25 MR. MOY: Yes, I just want to amend that a little

1 bit. It's five cases plus two expedited. So I just want to  
2 be clear. Actually, one expedited, so I just want to be  
3 clear on that.

4 CHAIRPERSON HILL: On the 29th?

5 MR. MOY: Yeah, yeah. I didn't want to trick you  
6 into having less cases than you thought you might've had.

7 CHAIRPERSON HILL: No, I appreciate it. I never  
8 like to get surprised, Mr. Moy. All right. Okay. Go ahead  
9 then. Are those dates, Mr. Moy, okay?

10 So the 22nd, we'll get something from the ANC.  
11 We'll leave the record open until the 24th for a response  
12 from the applicant. And then we'll come back here for the  
13 hearing on the 29th.

14 MR. MOY: I've got it.

15 CHAIRPERSON HILL: Okay. Mr. Sullivan, does that  
16 work for you guys?

17 MR. SULLIVAN: Yes, thank you.

18 CHAIRPERSON HILL: Okay. Commissioner, are you  
19 good, Commissioner Montague?

20 ANC COMMISSIONER MONTAGUE: I'm very good, sir.

21 CHAIRPERSON HILL: Okay. All right. Then we'll  
22 see you guys on the 29th.

23 ANC COMMISSIONER MONTAGUE: Thank you.

24 CHAIRPERSON HILL: Thank you. Okay, okay. Give  
25 me one moment. Okay. All right, you guys. I think that the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 next two are going to take a little while. So if we could  
2 just take a quick five-minute break now.

3 And then what propose, I know that there's a Board  
4 member that has to do something at 1:00 o'clock. And so  
5 we'll try to see what happens and take maybe an extended  
6 lunch at 1:00 o'clock or take our lunch at 1:00 o'clock. And  
7 so let's take a quick five minutes if that's okay with you  
8 guys. Okay. Thank you.

9 (Whereupon, the above-entitled matter went off the  
10 record at 11:38 a.m. and resumed at 12:06 p.m.)

11 CHAIRPERSON HILL: I mean, Mr. Moy, can we do that  
12 preliminary matter now? Or you want to do it at the very  
13 end? You're on mute.

14 MR. MOY: Yeah, strike number 2. Okay. Yeah, I  
15 can go either direction, your choice.

16 CHAIRPERSON HILL: Let's do it now because I don't  
17 want to forget about it. So let's wait until Mr. Blake joins  
18 us.

19 MR. MOY: All right. Fine.

20 CHAIRPERSON HILL: Okay, great. All right. So  
21 Mr. Moy, go ahead and call us. And let's -- there's a  
22 preliminary matter that I want to talk about with the Board  
23 which is Case No. 20740. But I can explain it when Mr. Moy  
24 calls it.

25 MR. MOY: Okay. Yes, sir. So the Board has

1 returned to its public hearing session, and the time is at  
2 or about 12:06 p.m. So before continuing with the next case  
3 on today's docket, what is before the Board is Application  
4 No. 20740 of Eric and Jessica Alvez Desa. This is an  
5 application that is scheduled for the Board's expedited  
6 review calendar and its meeting session scheduled for June  
7 the 29th. And the issue before the Board is that there are,  
8 I would say, six to eight letters in opposition, not in  
9 support of the application.

10 CHAIRPERSON HILL: Okay, great. Thank you. So  
11 you guys, I've had a chance to look at this. So 20740 was  
12 on -- or is on expedited review for 6-29. However, because  
13 of all of the letters in opposition, I don't want to just put  
14 this on expedited review.

15 So I'm going to propose to pull it off of 6-29 off  
16 of expedited review and put it on our 7-6 docket because  
17 that's when -- it's the only time that we're going to be able  
18 to fit it between -- yeah, it's only time we're going to be  
19 able to fit it. So I don't need to take a vote. I'm just  
20 kind of -- unless you all got an issue, raise your hand. And  
21 I don't see anybody raising their hand. So Mr. Moy, let's  
22 go ahead and pull it off of expedited review and put it on  
23 our docket for 7-6. Okay?

24 MR. MOY: Yes, sir. I got it.

25 CHAIRPERSON HILL: Okay, great. And now you can

1 call 20636.

2 MR. MOY: Okay. Back to our scheduled hearing.  
3 Case Application No. 20636 of Penguin, LLC, this is a self-  
4 certified application for special exception pursuant to  
5 Subtitle C, Section 305.1 and Subtitle X, Section 901.2 from  
6 the subdivision regulations of Subtitle C, Section 302.1 and  
7 an area variance pursuant to Subtitle X, Section 1002 from  
8 the vehicular ingress and egress requirements of Subtitle C,  
9 Section 305.3(b). And the property is located in the RA-1  
10 zone at 4509 Foxhall Crescent, Northwest, Square 1397, Lot  
11 960. And I believe the only other addition I have, Mr.  
12 Chairman, is that there is a request for expert status in  
13 architecture to a Michael Greigg, G-R-E-I-G-G, and to a --  
14 there was a minute filing yesterday from the applicant for  
15 a Kyle Oliver, expert status in civil engineering.

16 CHAIRPERSON HILL: Okay, great. Thanks. All  
17 right. Ms. Giordano, can you hear me?

18 MS. GIORDANO: Yes.

19 CHAIRPERSON HILL: Could you introduce yourself  
20 for the record, please?

21 MS. GIORDANO: My name is Cynthia Giordano. I'm  
22 with Saul Ewing Law Firm representing the applicant.

23 CHAIRPERSON HILL: Okay. And Ms. Giordano, so it  
24 was an architect, and who else were you look for expert  
25 status for?

1 MS. GIORDANO: Civil engineer with FICA. He has  
2 both -- actually both gentleman have been qualified as  
3 experts before the BZA and Mr. Oliver before the Zoning  
4 Commission and the BZA.

5 CHAIRPERSON HILL: Okay. So then they're all in  
6 our book. And so because they've already gone through the  
7 process, then I'm not going to have any issues with them  
8 continuing to be considered expert witnesses. Ms. Giordano,  
9 I don't mind. I just want to know if you're using your  
10 camera or not.

11 MS. GIORDANO: Yes, I am.

12 CHAIRPERSON HILL: Okay. It's not on.

13 MS. GIORDANO: Oh.

14 CHAIRPERSON HILL: Okay, great.

15 MS. GIORDANO: Is it on now?

16 CHAIRPERSON HILL: Yes, yes.

17 MS. GIORDANO: Okay. Sorry about that.

18 CHAIRPERSON HILL: That's all right. Okay. So  
19 Ms. Giordano, what I'm going to do is I'm going to let you --  
20 I know that this case has had a little bit of history to it.  
21 But I'm going to go ahead and let you kind of walk us through  
22 your client's application as you see fit to try to explain  
23 to us what your client is trying to do and how they are  
24 meeting the criteria for us to grant the relief requested.  
25 I'm going to put 15 minutes on the clock just so I kind of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 know where we are. And you can begin whenever you like.

2 MS. GIORDANO: Okay. Mr. Young, I submitted just  
3 a presentation outline a little while ago. Mr. Hill, will  
4 you accept that into the record? It's no new information.  
5 It's just an outline.

6 CHAIRPERSON HILL: Sure. Yeah, I mean, it's so  
7 funny how this thing works now in this COVID thing. I'm  
8 never going to get used to it. I'd like to see it. And so  
9 if you could go ahead and allow it into the record, Mr. Moy.

10 And if the staff could just pop it in there so we  
11 can take a look also at our leisure. And then, Mr. Young,  
12 if you could pull it up so that Ms. Giordano would be able  
13 to do our presentation from it. And then again, Ms.  
14 Giordano, you can begin whenever you'd like.

15 MS. GIORDANO: Okay. Thank you so much.  
16 Basically, the relief as indicted by Mr. Moy that we are  
17 seeking is a variance from the 25 foot driveway requirement.  
18 And I'm not going to belabor the point on that unless the  
19 Board wants me to.

20 I think the variance standard compliance are in  
21 my statement and also the Office of Planning report which  
22 boils down to the fact that the street is already 16 feet  
23 there and paved and has been there since the start of this  
24 development. So it can't be widened to 24 feet. I think  
25 that's clearly and extraordinary condition which presents

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 practical difficulties for the applicant.

2           The second area of relief is a special exception  
3 for the proposed house on an existing theoretical lot. Just  
4 to be clear, the theoretical lot was approved already  
5 pursuant to the original project layout. And this house  
6 actually a house on this lot, it's the only undeveloped lot  
7 still within the Foxhall Crescent project community.

8           And it has been before the zoning -- I'm sorry,  
9 the BZA twice and been approved. This application is a  
10 little bit different. The house is a little bit different.

11           And the previous approval is expired without a  
12 building permit issued. The proposed house meets all of the  
13 zoning requirements. Our presentation involves an  
14 architect's presentation.

15           He's going to walk you through those plans and  
16 also discuss how it relates to the adjacent properties. And  
17 then our civil engineer from FICA is going to address  
18 stormwater management and soil and sediment control as well  
19 as the DOEE authority and process with regard to those plans.  
20 I also wanted to address up front a couple of issues relative  
21 to, first of all, the comments from the Office of Planning  
22 report.

23           And the Office of Planning report does not make  
24 a recommendation due to outstanding comments from both DOEE  
25 and DDOT. And I just wanted to note for the Board that

1 Section 405.7 of Title Y, the BZA rules of practice and  
2 procedures provides that the failure of an agency to provide  
3 a report does not prevent the Board from hearing and deciding  
4 an application. Specifically with regard to DOEE, that  
5 relates, of course, to stormwater management and soil and  
6 sediment control plans.

7           And I just note that in most cases, the applicant  
8 doesn't even submit these plans to DOEE prior to a building  
9 permit application. And the BZA and the Zoning Commission  
10 tend to rely on the expert input on these issues in the  
11 record and from the experts that are testifying before the  
12 Board. And further, the Board can condition its approval on  
13 DOEE approval.

14           We have agreed to that. It's a requirement of the  
15 building permit process. So I mean, it's clear that  
16 stormwater management and sediment control will be reviewed  
17 by that agency before any permits are issued.

18           Regarding DDOT, the issue there is Urban Forestry  
19 Division review of the landscape and the tree protection  
20 plans. They have indicated that they are not going to start  
21 their review of those plans until the issue of the fine for  
22 the heritage tree cutting is resolved. And that fine is  
23 currently being appealed, the amount of the fine, because the  
24 Urban Forestry Division and the applicant are looking at the  
25 remaining stump of the tree to determine whether there's some

1 mitigating factor there because of the disease that the  
2 applicant's arborist has indicating is showing in the stump  
3 of the tree.

4           And Urban Forestry came out about a week ago to  
5 take a look at that and we're awaiting their response on that  
6 issue. With regard to that issue of the landscape plans,  
7 typically in my experience, the BZA and the Zoning Commission  
8 both have expertise regarding landscape architecture and  
9 often review those plans themselves. It's unusual really to  
10 get a review by Urban Forestry.

11           And of course, this case is special because of the  
12 tree cutting. And that's why they are more prominently  
13 featured in this case. But again, we would be agreeable to  
14 a condition of good faith consultations with Urban Forestry  
15 regarding landscape and tree protection plans if the BZA were  
16 so inclined.

17           Regarding the ANC comments, I just wanted to point  
18 out that the ANC basically is recommending first and foremost  
19 that the BZA deny this application based upon the cutting of  
20 a heritage tree on the site without a permit. And I think  
21 Office of Planning report agrees with this, that the BZA  
22 currently just doesn't have authority for denial of a case  
23 based upon a tree cutting. There is an appropriate remedy  
24 for that or penalty for that with a fine. And the applicant  
25 will pay that fine based upon the amount that is ultimately

1 determined during the appeal process.

2           The ANC also with regard to stormwater management  
3 and that's been an issue, a concern that's been raised by  
4 abutting property owners. So the ANC was sensitive to it.  
5 They agreed, though, that a condition which we have agreed  
6 to as part of the construction management agreement require  
7 a DOEE approval for those plans prior to building permit  
8 issuance satisfies that concern.

9           In addition, we went one step further and we said  
10 that if the applicant were to request any extraordinary type  
11 relief from the typical DOEE standards which they do not  
12 intend to do. They would provide advance notice to the  
13 abutting property owners. So that concludes my overview.  
14 And unless you have any questions of me, I will ask the  
15 architect to begin his presentation.

16           CHAIRPERSON HILL: Yeah, just, Ms. Giordano, can  
17 you walk us through again the variance, the three prongs and  
18 with the -- I know you're just kind of mentioning --

19           (Simultaneous speaking.)

20           MS. GIORDANO: Sure.

21           CHAIRPERSON HILL: But can you walk us through  
22 your argument?

23           MS. GIORDANO: Okay. So basically the variance  
24 standards are that there has to be something extraordinarily  
25 unique about the condition that creates practical

1 difficulties for the applicant in complying with the zoning  
2 regulations. And in this case, the theoretical lot, special  
3 exception provisions require a 20-foot driveway for ingress  
4 and egress to a lot -- a theoretical lot. And right now, the  
5 street is only 16 feet wide adjacent to the subject property.

6           So I mean, that's certainly an extraordinary  
7 condition. This is not a new development as is typically the  
8 case with theoretical subdivisions where the BZA is reviewing  
9 a layout of lots and streets for a theoretical project. This  
10 has already been approved by the BZA, including that 16 foot  
11 street. So clearly it presents practical difficulties for  
12 the applicant because the applicant cannot widen the street.  
13 Nobody is suggesting that including DDOT or the Foxhall  
14 Crescent's homeowners association board.

15           CHAIRPERSON HILL: And so you had said that this,  
16 again, had been approved a couple of times through the BZA.  
17 But you're saying you had said that this was changed from  
18 that. How is it changed from the original ones?

19           MS. GIORDANO: I am going to suggest that to some  
20 extent the Board hear the presentation from Jody Westby who  
21 is going to address that in detail and has lived the history  
22 of that. This applicant has not. But basically, there have  
23 been two proposals before the BZA for house on this lot. And  
24 those houses differed somewhat from what's being proposed now  
25 but not substantially. And there's a whole lot of history

1 around that which if the Board would allow, I think Ms.  
2 Westby could explain and provide a lot of detail on.

3 CHAIRPERSON HILL: Okay. We'll get to that then.  
4 All right. Does the Board have any questions of Ms. Giordano  
5 before she moves on with the architect? Well, actually, I'm  
6 sorry. I don't mean to interrupt. Why don't you go ahead,  
7 Ms. Giordano, and go through your whole presentation. And  
8 then I'll ask my Board Members for their questions.

9 MS. GIORDANO: Okay. So I'm going to hand this  
10 over to Mr. Greigg.

11 CHAIRPERSON HILL: I don't see -- who are you  
12 handing it over to?

13 MR. GREIGG: My name is Michael Greigg.

14 MS. GIORDANO: Mr. Greigg. Mr. Young, can you  
15 allow him -- there he is.

16 CHAIRPERSON HILL: Could you introduce yourself,  
17 sir?

18 MR. GREIGG: My name is Michael Greigg. I'm with  
19 3G Architects. Our firm is located at 1749 Old Meadow Road,  
20 Suite 506 in McLean, Virginia.

21 I've been an architect in the area -- Washington,  
22 D.C. area for going on 30 years now and were recently  
23 assigned to this project. So I don't know a ton of the  
24 history there of the previous zoning. But just talking about  
25 the architecture portion, as it was mentioned before, we are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 in the R-1A zone which has front setbacks which is sort of  
2 in a range of properties in the area.

3 Side setbacks of 8 feet and rear setbacks of 25,  
4 and at no point are we anywhere near these setbacks in the  
5 proposed property. There's lot coverage of 40 percent. And  
6 again, we're nowhere near that lot coverage. We're well  
7 below that number.

8 MS. GIORDANO: If I could just interrupt for one  
9 minute. Mr. Young, can you pull up Exhibit 54 with the  
10 architectural plans?

11 CHAIRPERSON HILL: Is it 54 -- which 54? Yeah,  
12 A, B, C, D, E, F, G?

13 MS. GIORDANO: It starts with A and goes through  
14 F.

15 CHAIRPERSON HILL: Okay.

16 MS. GIORDANO: Or goes through E.

17 CHAIRPERSON HILL: Okay. So you want to start  
18 with A. Okay. All right. So you want the next slide?

19 MS. GIORDANO: Yes.

20 CHAIRPERSON HILL: Is this the one?

21 MR. GREIGG: That's existing lot location. I  
22 would like to show where the house is located.

23 CHAIRPERSON HILL: Okay. So the next slide,  
24 number 4?

25 MR. GREIGG: Yes.



1 CHAIRPERSON HILL: Okay.

2 MR. GREIGG: Okay. So as we can see on this  
3 slide, the house is located in the center of their property.  
4 The front is to the left of the screen. The rear is to the  
5 right. Top and bottom is side.

6 So side setbacks are 8 feet. And you can see here  
7 that we're 30 feet and 27 feet, respectively. The rear  
8 setback is 25 feet, and the house is located at 41. The  
9 front is in the range of 37. It is curved and it's sort of  
10 on an angle, so it's in that 37-foot range.

11 So it's well within the setbacks and the rights  
12 of the property. The lot coverage is 40 percent, and our lot  
13 coverage is well below that. The height of the building from  
14 the front to the building midpoint is 39.88 which is below  
15 the 40-foot max. And you can see the connection point where  
16 we have the garage driveway attaching to the existing  
17 driveway which comes into the property. Next slide, please.

18 So this starts to talk a little bit about the  
19 critical ridge structure. We tried to isolate the building  
20 areas over top of the ridge structures which we're nowhere  
21 near the 20 percent max limit for any of the trees in the  
22 areas. There's a cleared up graphic layer in the submission.  
23 Can I have the next slide?

24 MR. YOUNG: I'm bringing up the next exhibit.

25 CHAIRPERSON HILL: Okay. So this is the

1 elevations with the house sitting on the property and  
2 coordinated with the site sloping. And we can see from the  
3 front door to the midpoint of the house, it's going to be  
4 39.88 height of the house from the front. But realistically,  
5 the front is artificially created through some retaining  
6 walls and the house is not going to sit that high off the  
7 ground with the slope -- with the house being embedded into  
8 the slope.

9           Across the back, it's probably going to be in the  
10 neighborhood of 22, 23 feet high. So it's not going to be  
11 imposing on the neighborhood. It's just right at the front  
12 door where we have to cut the slope out, create an artificial  
13 area to get to the front door will come close to the 40-foot  
14 setback.

15           But again, we're within right of what we're  
16 allowed to do on the property. As far as the architectural  
17 design, this is in keeping with the neighborhood that Arthur  
18 Cotton Moore had designed originally. So we're matching the  
19 architectural detailing of the neighborhood. Next slide when  
20 you're ready. Which one -- are you on C now?

21           MR. GREIGG: Yes, C. We're looking for the  
22 analysis. We did a neighborhood analysis and a residential  
23 distance analysis.

24           MS. GIORDANO: I think we may have to come back  
25 to that during rebuttal actually.

1 MR. GREIGG: Okay. That's fine.

2 MS. GIORDANO: I don't think it's this exhibit.

3 MR. GREIGG: Yeah, I guess my closing statement  
4 would just be that everything that we're submitting for here  
5 as far as the house goes is within a matter of right. We're  
6 not asking for any other variances other than the connection  
7 point of the property to the neighborhood.

8 CHAIRPERSON HILL: Okay. All right. Ms.  
9 Giordano, are you at your next piece here?

10 MS. GIORDANO: Yes, I would request that Mr. Young  
11 go ahead and move toward Exhibit 54(d) for the next witness.  
12 That's the stormwater management plan. And these are broken  
13 up because of the limitation of the ISIZ website to take  
14 certain amount of megabytes. So Mr. Oliver, are you ready?

15 CHAIRPERSON HILL: Yes, could you introduce  
16 yourself for the record, please, sir?

17 MR. OLIVER: Absolutely. My name is Kyle Oliver  
18 with FICA Capital, LLC. And we're located at 4910  
19 Massachusetts Avenue, Suite 16, Northwest. I was brought on  
20 as a consultant to look at the civil engineering plans that  
21 were prepared.

22 The utility connections, the stormwater  
23 management, and the sediment control, I offer my expertise  
24 to the current design. And the plans actually have been  
25 submitted to DOEE to their database. And yesterday, the

1 client received the preliminary comments, the first round of  
2 comments from DOEE.

3 I've reviewed those comments. They are typical  
4 at this preliminary stage of review. And I did not see any  
5 issues that could not be addressed. And I also offered my  
6 client a couple of minor drainage improvements to ensure that  
7 the water gets to the permeable pavers.

8 You can kind of see the driveway out in front of  
9 the garage, that brick stipple pattern. Those will all be  
10 permeable pavers, and that will handle the stormwater  
11 management runoff for the site. So I'm here to answer any  
12 other questions you might have.

13 CHAIRPERSON HILL: Okay. I'm looking at your  
14 exhibits. Ms. Giordano, are you moving on to another one?

15 MS. GIORDANO: I would just ask Mr. Oliver to  
16 also, if he would, explain the DOEE process and his  
17 experience with that.

18 MR. OLIVER: Absolutely. So the plans get  
19 uploaded to the database. They receive a review. Typically,  
20 the comments are addressed. If need be, we set up meetings  
21 with DOEE.

22 They review sediment control, stormwater  
23 management, tree protection, those issues that might arise  
24 during construction. Those comments are addressed. There's  
25 typically a stormwater management covenant that the owner

1 will be required to maintain the stormwater management  
2 facility.

3 In this case, it's a permeable paver facility.  
4 And then that is recorded in the land records. And once  
5 that's recorded all of the comments are addressed to the  
6 satisfaction of DOEE.

7 Then an approval is gained. It's not a permit,  
8 but it is an approval from DOEE. And that is one of the  
9 approvals that is required prior to the issuance of a  
10 building permit by DCRA.

11 MS. GIORDANO: And how long does that process  
12 typically take?

13 MR. OLIVER: Right now with the amount of  
14 construction in the District, that process typically takes  
15 six to eight months. But we're well on our way because we've  
16 already received our first set of comments. So my guess  
17 would be we're within the three to four months to get all  
18 those comments addressed and final paperwork done before DOEE  
19 issues their approval.

20 MS. GIORDANO: Thank you. That concludes our  
21 presentation, Mr. Hill, unless there are any questions from  
22 the Board.

23 CHAIRPERSON HILL: Let me see. Did the staff  
24 upload that document? Are you guys able to see it? And Ms.  
25 Giordano, you didn't actually refer to the document, right?

1 It's just an outline, I guess, of what you plan to do?

2 MS. GIORDANO: Yes, and I've walked through that.

3 CHAIRPERSON HILL: Okay. Does the Board have any  
4 -- I'm just trying to pull this up. Does the Board have any  
5 questions for the applicant? I will start with Mr. Blake.

6 MEMBER BLAKE: This question is from earlier for  
7 Ms. Giordano. You talked a little bit about the appeals  
8 process that you had ongoing with DDOT's Forestry. I wanted  
9 to just -- as you just talked about the time frame with DDOE,  
10 would you kind of give us a sense of how that lays out where  
11 you are in that appeals process with that and the time frame  
12 that may occur? And I realize there's a lot of subjects too.  
13 But just give us a sense or where that is at this point.

14 MS. GIORDANO: Okay. I don't personally have any  
15 experience with that appeal process. So I don't know exactly  
16 how long it takes. But I do know that the first step in the  
17 process was from a representative from Urban Forestry to come  
18 out to the site and to take a look at the remaining stump of  
19 the tree and evaluate what the applicant's arborist indicated  
20 is signs of disease with the tree. So that was with John  
21 O'Neil from Urban Forestry. And he said that he would get  
22 back to the applicant with his assessment.

23 MEMBER BLAKE: The second question I had was I  
24 don't know if this would be helpful or not for me. Could you  
25 point out where that tree would reside relative to the plat

1 that you showed us with the buildings? I saw a lot of  
2 different configurations there with trees and stuff. I just  
3 want to understand exactly where this particular one would  
4 have sat.

5 MS. GIORDANO: Right. I think that -- is that  
6 something, Michael, that you could show on the site plan?

7 MR. GREIGG: Go back to --

8 MS. GIORDANO: It would be on the conditions. I  
9 think it would be 54(a).

10 MR. GREIGG: Yeah, it's on the existing conditions  
11 plan. It should be, or at least we can show it there.

12 CHAIRPERSON HILL: Before we move on, Mr. Young  
13 or Mr. Moy, there's a bunch of photographs in here now. Was  
14 that -- how did those get in there and who put them in?

15 MS. GIORDANO: I believe that a number of them  
16 were submitted by the applicant and a number were submitted  
17 by the party in support, the Foxhall Crescent Homeowners  
18 Association.

19 CHAIRPERSON HILL: So Mr. Moy, can all of those  
20 be submitted?

21 MS. GIORDANO: And I think that Ms. Westby will  
22 address those as part of her presentation.

23 CHAIRPERSON HILL: Okay. So you think that it's  
24 the party status person's presentation.

25 MS. GIORDANO: Yes.

1 CHAIRPERSON HILL: Just leave it alone. Just  
2 leave it the way it is. Okay. We'll see what happens next.

3 MR. MOY: Okay.

4 CHAIRPERSON HILL: What was the question? I'm  
5 sorry.

6 MEMBER BLAKE: Can you show me where the stump was  
7 located in that diagram?

8 CHAIRPERSON HILL: Which one should he pull up,  
9 Mr. Giordano?

10 MS. GIORDANO: 54(a).

11 CHAIRPERSON HILL: 54(a).

12 MS. GIORDANO: So Mr. Greigg?

13 MR. GREIGG: Yeah.

14 CHAIRPERSON HILL: Number 3? Mr. Young, slide 3,  
15 perhaps.

16 MS. GIORDANO: It's actually number 10.

17 CHAIRPERSON HILL: Oh, number 10? And 54(a), I  
18 only got five slides.

19 MR. GREIGG: I think the one on the screen can  
20 show it. It's right below. You see where it says line 60,  
21 there's a big tree right below a plan south of that.

22 MEMBER BLAKE: Can you show it to me on one that  
23 has the superimposed house and all that stuff?

24 MR. GREIGG: It would be in the -- yeah, if you  
25 go to the one where the house is, it's going to be in the



1 bottom right corner of the house. Yeah, there you go. Go  
2 back. Yeah, right there, if you can zoom in. There's a tree  
3 in the bottom right corner.

4 MEMBER BLAKE: Okay. Thank you.

5 CHAIRPERSON HILL: There is -- Ms. Giordano,  
6 there's a slide that you had that kind of X'ed out some trees  
7 that you claim were taken out during the previous  
8 application. Is that right?

9 MS. GIORDANO: I'm not sure what you're referring  
10 to.

11 CHAIRPERSON HILL: I thought I saw a slid that had  
12 -- you showed us, and then I'm trying to look for it in the  
13 exhibit again. I apologize. It had, like, the -- you'd put  
14 a line on there.

15 MS. GIORDANO: It might be part of Ms. Westby's  
16 presentation.

17 CHAIRPERSON HILL: Maybe. Oh, I see it. It's  
18 Exhibit 75, slide 3. Is that right?

19 MS. GIORDANO: That's the opposition's PowerPoint.

20 CHAIRPERSON HILL: No, that's not it. I see what  
21 it is. I just can't -- the exhibits don't pop up that easily  
22 for some reason. And they have different numbers sometimes.

23 And there's an X that says trees previously  
24 removed in previous phase, a purple X. And then there's a  
25 blue X, trees to be removed in upcoming phase. And then

1 there's an orange line, limits of root pruning.

2 MS. GIORDANO: Okay, yes. I think that is the  
3 tree -- part of the tree protection plan or the landscape  
4 plan.

5 CHAIRPERSON HILL: Is that 54(c)?

6 MS. GIORDANO: Yes.

7 CHAIRPERSON HILL: Yeah, 54(c). Okay, great.  
8 Okay. I don't know, Mr. Blake, if one of those -- so is one  
9 of those Xs, sir, the tree in the bottom right corner?

10 MR. GREIGG: Sorry I was on mute. Yeah, it's in  
11 the bottom right corner. It's the next down.

12 CHAIRPERSON HILL: Yeah, got it. Mr. Blake, is  
13 that helpful? Okay. All right. I see him nodding yes. All  
14 right. Let's see. I can't see everyone. Does anybody else  
15 have any questions for the applicant at this point? And if  
16 so, just speak up because I can't see you. Oh, now I can see  
17 you. Okay, yeah, sure. Dr. Imamura?

18 COMMISSIONER IMAMURA: Yes. I have a few  
19 questions -- thank you, Mr. Chairman -- for both Mr. Greigg  
20 and Mr. Oliver. Mr. Greigg, you said you haven't been on the  
21 project very long. Can you tell me when you came on this  
22 project? I assume it was after the heritage tree was  
23 removed.

24 MR. GREIGG: Correct. Yeah, we were brought on  
25 after the heritage tree was removed. We've been with the

1 project since late April. So I just don't know the history  
2 of the property directly. We've been working with the house  
3 and the civil engineer since that point.

4 COMMISSIONER IMAMURA: So you didn't inherit a  
5 design, per se. You actually started the design?

6 MR. GREIGG: Well, we inherited the perimeter of  
7 the house because that is in keeping with what Arthur Cotton  
8 Moore had originally designed and if it's on the property and  
9 it's what the client wanted. So we inherited that. But it  
10 wasn't coordinated with the civil engineer. So when we came  
11 in, we got caught up to speed with what was going on with the  
12 property with the sites and the variances and things like  
13 that and then coordinated the heights and elevations of the  
14 property to the elevations to make sure that we were staying  
15 within our 40-foot limits and to make sure that our points  
16 around the house were adequate and coordinated properly.

17 COMMISSIONER IMAMURA: So would it be sufficient  
18 to say that you inherited a footprint?

19 MR. GREIGG: Yes, we inherited a footprint, yes.

20 COMMISSIONER IMAMURA: And the siding of the  
21 building was already established by --

22 MR. GREIGG: The siding was already established  
23 from the previous work. But we didn't -- in our review of  
24 this, we didn't see any issues of the siding because it  
25 limited the amount of critical root zone structure that we'd

1 have to deal with. It allowed minimum connection from the  
2 drive aisles to the parking areas. It didn't provide any  
3 sort of issues with site lines and things like that. So we  
4 didn't see any need to make any major changes to it at this  
5 time.

6 COMMISSIONER IMAMURA: Okay. Mr. Young, can you  
7 pull up Exhibit 75 again. Sheet 3 of 4 is the last exhibit  
8 pulled up with some proposed -- there we go. Thank you, sir.

9 So Mr. Greigg, this may be for you or for Mr.  
10 Oliver. But as the architect, I'll direct it to you first.  
11 So I'm curious why there's listed set of trees to be removed  
12 in the upcoming days, why additional trees are being removed.

13 MR. GREIGG: Yeah, I'd have to let Mr. Oliver  
14 respond to that.

15 COMMISSIONER IMAMURA: Okay. Mr. Oliver?

16 MR. OLIVER: I was brought on the project last  
17 week. So I'm not familiar with why these additional trees --  
18 I don't know if they're damaged. Actually, the owner or  
19 counsel might have to answer that question.

20 COMMISSIONER IMAMURA: Okay. So Mr. Oliver,  
21 that's actually a good segue to my next question about your  
22 role and involvement by Gladys Sira (phonetic), Ms. Sira.  
23 So can you describe that a little bit more?

24 MR. OLIVER: I was brought in by Penguin, LLC to  
25 review the overall plan, both the civil stormwater management

1 utility connections, just to offer my insight to see if there  
2 was any improvements, if there was anything that we could  
3 recommend. And actually like I said -- testified a little  
4 while ago, there's some minor drainage improvements. The  
5 water sheet flows basically from the lower right-hand  
6 property corner to the driveway basically.

7           And so the water kind of will be split and goes  
8 around the buildings. So I'm recommending to add a couple  
9 of drains. There's a couple of retaining walls next to both  
10 the north and south sides of the driveway. So I'd like to  
11 add a couple of retaining drainage so that the water will not  
12 spill over the walls but drain through the walls to hit to  
13 the permeable pavers and ensure that the permeable pavers  
14 will act accordingly the way they're designed.

15           I'll give an overall review of the utility  
16 connections and sediment control. And they're all in keeping  
17 with standard engineering practice, that in conjunction with  
18 just receiving the comments from DOEE and making sure those  
19 get addressed. And it would meet all the requirements that  
20 the city normally requires.

21           COMMISSIONER IMAMURA: So you mentioned that  
22 obviously it seemed the erosion sediment control comments  
23 from DOEE. Can you describe that in a little more detail?  
24 You just kind of glossed over that and said it's typical at  
25 this stage. But what specifically did they call out?

1 MR. OLIVER: They just wanted to make sure that  
2 there was tree protection fencing to be put at the limits of  
3 the CRZ or limits of disturbance. They wanted -- I'm just  
4 reading them out. They're up on my screen here. They want  
5 the actual area of the limits to disturbance to show up on  
6 various sheets, not just the sediment control plan but the  
7 site plan and the stormwater management plan.

8 They want the width of the construction entrance  
9 to be 10 feet wide minimum. The stockpile area that's shown  
10 on the plans is a little small. So they wanted to make sure  
11 with trying to stay out of the critical root zones of the  
12 trees to show other locations and that the perimeter controls  
13 across the construction entrance be replaced at the end of  
14 each day. So those were the sediment control plan comments.

15 MS. GIORDANO: I'm happy to submit those comments  
16 to the record if the Board would like to receive them?

17 COMMISSIONER IMAMURA: Yes, please. That would  
18 be great. Thank you. So clearly I think what I see here is  
19 it's challenging. And Mr. Oliver and Mr. Greigg, both of you  
20 have inherited this project with decisions that have already  
21 been made before you.

22 Essentially, this project is really beyond the  
23 realty point. So it's about sort of salvaging what was left.  
24 To me, as an architect and landscape architect, it's  
25 disappointing that the heritage tree could not have been sort

1 of highlighted and celebrated. And that's why I think it  
2 would've been a really phenomenal project site and home.

3 But again, we're beyond that point. So the  
4 biggest concern that I have is the additional clearing and  
5 grubbing that's planned here. Obviously, there's significant  
6 slope to the site. Mr. Oliver, what is that slope from the  
7 south -- I guess plan south in this corner here to the --

8 MR. OLIVER: The applicant actually has done a  
9 slope stability analysis for global stability on the project  
10 in two locations. And I don't know if that's in the record  
11 or not. But those both --

12 (Simultaneous speaking.)

13 MS. GIORDANO: It is.

14 MR. OLIVER: Okay. They both exceed the safety  
15 factor that's typically recommended of 1.5. In some  
16 instances, the one slope analysis if I remember right was  
17 over 2, and the other one was 1.6 -- or excuse me, 1.7 and  
18 1.8 which again exceeds the 1.5 recommended.

19 COMMISSIONER IMAMURA: Sure, sure. That's where  
20 I'm good. Again, though, here we're clearing and grubbing  
21 an entire site which for quite some time, right, that has  
22 mature vegetation to absorb all that water. And Mr. Oliver,  
23 you're recommending, I guess, some underdrains around the  
24 property to direct some of the grading to the permeable  
25 pavers.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1           So -- and forgive me. It's probably in the  
2 record. I don't know the size of this site here. But it  
3 doesn't seem to me that collecting all the stormwater runoff  
4 at least most or the majority of the site could be absorbed  
5 by such a small patio there with permeable pavers. Can you  
6 talk a little bit about sort of what that catchment looks  
7 like with that --

8           (Simultaneous speaking.)

9           MR. OLIVER: Well, the other thing that I didn't  
10 mention was that the actual roof itself which is a large  
11 portion of what's in this limits of disturbance, those all  
12 have downspouts. And so those downspouts will be routed to  
13 the edge of the garage opening. And basically, there's a 12  
14 percent slope coming out of the garage.

15           So the water will be discharged there, and then  
16 sheet flow across the permeable pavers. So a large chunk of  
17 that's already being diverted to the permeable pavers with  
18 the design. And my recommendation would be some of the areas  
19 that's not being disturbed but then still drains toward the  
20 driveway.

21           It can -- the water can hit the wall, drain over  
22 the wall, and then into the permeable pavers. But I'm  
23 recommending a couple of area drains on both sides of the  
24 driveway to make sure that the water gets to the permeable  
25 pavers. So yes, there is some water that goes around the



1 building, but we're also collecting the building itself with  
2 roof liters and diverting it directly.

3 COMMISSIONER IMAMURA: Okay. Did I miss -- I  
4 didn't see a grading plan. Did I miss that?

5 MR. OLIVER: There should be a grading plan that  
6 was -- well, one of my comments was to clarify how the  
7 grading. So basically, the patio will have a retaining wall.  
8 And then there'll be some proposed grading just north of that  
9 patio at the back. On the south side of the building, the  
10 grade is such that the water will run along the face or just  
11 outside of the face of the building and come around toward  
12 the driveway following the natural topography there. And  
13 then that's where I'm recommending some additional drains.

14 COMMISSIONER IMAMURA: Okay.

15 (Simultaneous speaking.)

16 MR. OLIVER: But there should be a grading plan  
17 in the set. Sorry for interrupting.

18 COMMISSIONER IMAMURA: No, I'm sorry. But I  
19 didn't see that in the set. So we're talking conceptually  
20 about what that grading plan looked like. I don't see that  
21 in the plans. I don't see a grading plan.

22 MR. OLIVER: Okay. Then we should add that in if  
23 we can. Cynthia, if we can get that added into the record.

24 MS. GIORDANO: I think it's in the record. I'm  
25 just trying to find it right now. I think it was submitted

1 quite late, unfortunately, in the process. I think it is --  
2 I think the updated site plan has the proposed grading on it,  
3 and it would be 69(a).

4 COMMISSIONER IMAMURA: Thank you.

5 MS. GIORDANO: There were contours added on the  
6 updated site plan to be more specific with regard to grading.

7 CHAIRPERSON HILL: Let me interrupt you one  
8 second, you guys. I know that there's a Board Member that  
9 has to take a break. And so I don't want to miss anything  
10 for this. So why don't we go ahead and take a 45-minute  
11 lunch break and then we'll come back. And so Dr. Imamura,  
12 did you get your final question answered, or can you wait  
13 until the end? I just don't want you to forget.

14 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
15 No, I think I have enough information here. My biggest  
16 concern is just the additional clearing and grubbing just  
17 only exacerbates the stormwater runoff.

18 Mr. Oliver is probably in agreement with that.  
19 Mr. Greigg is probably in agreement with that. And I think  
20 that's a significant concern to the neighbors.

21 MS. GIORDANO: Dr. Imamura, I believe that in the  
22 record is a chart that shows the condition of all the trees  
23 and identifies them. And that may be --

24 CHAIRPERSON HILL: Ms. Giordano, can you hear me?  
25 You cut off there for one second. We'll come back. I just

1 want to ask real quick. Ms. Giordano, I forgot. Like, who  
2 cut down the heritage tree? Was it this applicant or was it  
3 the previous applicant?

4 MS. GIORDANO: It was this applicant.

5 CHAIRPERSON HILL: Okay. And all right, it was  
6 this applicant. Okay. All right. I am curious more about  
7 that as we go on. So I want to know when it happened and et  
8 cetera. Okay?

9 MS. GIORDANO: Okay.

10 CHAIRPERSON HILL: All right. Okay. All right.  
11 Let's go ahead and take a 45-minute break. We'll come back  
12 at 1:45. Okay.

13 (Whereupon, the above-entitled matter went off the  
14 record at 1:00 p.m. and resumed at 1:49 p.m.)

15 MR. MOY: After a lunch recess, the Board is back  
16 in -- has returned to its hearing session. And the time is  
17 at or about 1:49 p.m. And this would be to continue the  
18 hearing on Case Application No. 20636 of Penguin, LLC.

19 CHAIRPERSON HILL: Okay, great. Okay. Let's see.  
20 Do we have the parties? Mr. Giordano, are you there?

21 MS. GIORDANO: Yes, I am. And I have a response  
22 to one of the questions that was posed right before the  
23 break.

24 CHAIRPERSON HILL: Okay. Give me one second then.  
25 Commissioner -- oh, that's not a Commissioner. Ms. Westby,

1 are you there? Okay. Now I've neglected to kind of explain  
2 all this ahead at the very beginning. But as someone who had  
3 party status as you do, you have an opportunity to ask  
4 questions of anyone during this process.

5 And so you have a question to ask of Ms. Giordano.  
6 Now since you are -- I believe you're a party in support.  
7 Is that correct?

8 MS. WESTBY: Yes.

9 CHAIRPERSON HILL: So since you're a party in  
10 support, it's not -- the questions tend not to be the same  
11 as though -- as if you're in opposition, like, you tend to  
12 ask questions of the applicant. But in any case, you will  
13 have an opportunity to ask questions of the applicant.  
14 You'll also have an opportunity to give your presentation.

15 We will give -- also ask questions of you  
16 concerning your presentation, I'm sure. The Office of  
17 Planning will then have an opportunity to give us their  
18 thoughts. And you can have questions to ask them. You're  
19 basically a participant, right?

20 MS. WESTBY: Okay.

21 CHAIRPERSON HILL: So just to let you know how  
22 this is going to move and work. And Ms. Giordano, can you  
23 turn your camera on for me?

24 MS. GIORDANO: There you go. Can you see me?

25 CHAIRPERSON HILL: Now I can, yes, great. Thank

1 you. Now so before I -- that's okay. I can't remember --  
2 Dr. Imamura, you were asking questions about, I think, water  
3 drainage or something or the slope. I mean, can you please  
4 either continue or where were you -- did you get the answers  
5 that you wanted?

6 MS. GIORDANO: Trees.

7 CHAIRPERSON HILL: Oh, trees.

8 COMMISSIONER IMAMURA: Yes, that was one of the  
9 questions I had -- thank you, Mr. Chairman -- was the  
10 additional removal of some of the trees that were identified  
11 in the plan. And Mr. Oliver having just come on board was  
12 unable to provide a response.

13 CHAIRPERSON HILL: Is that one of the things, Ms.  
14 Giordano, you're speaking to or no?

15 (Simultaneous speaking.)

16 MS. GIORDANO: Yes.

17 CHAIRPERSON HILL: Okay. Go ahead then. Can you  
18 answer the question then?

19 MS. GIORDANO: Okay. So Exhibit 28(b), there's  
20 a chart of all the trees. And it shows the ones that were  
21 removed and retained and their condition. It's a survey of  
22 the trees on the site. So that may be helpful.

23 And my understanding is the first 20 trees that  
24 were cut were all approved by Urban Forestry. They were cut  
25 on February 11th, 2022. The heritage tree was not approved.

1 It was cut on February 24th, 2022.

2 COMMISSIONER IMAMURA: And there was no permit for  
3 that obviously.

4 MS. GIORDANO: That's correct.

5 (Simultaneous speaking.)

6 CHAIRPERSON HILL: Which exhibit, I'm sorry, was  
7 the chart?

8 MS. GIORDANO: 28(b).

9 CHAIRPERSON HILL: Okay. I'm sorry to interrupt  
10 you, Dr. Imamura.

11 COMMISSIONER IMAMURA: No, that's quite all right,  
12 Mr. Chairman. It appears that there's a little bit of copy,  
13 paste in some of that language about, just for scaffold  
14 branching. And it appears that Mr. Kirsch (phonetic), ISA  
15 certified was the one that provided the assessment, right?

16 MS. GIORDANO: Yes.

17 COMMISSIONER IMAMURA: I think, Mr. Chair, most  
18 of my questions have either been answered or at least  
19 received the information I wanted. I think what I just find  
20 disconcerting is just the fact that Mr. Oliver has been  
21 brought on board right before this hearing and either as a  
22 replacement for Ms. Sierra. Or it's unclear to me why the  
23 applicant would hire another party to review an engineer's  
24 drawings that they hired in the first place.

25 So that gives me a little bit of a pause and tells

1 me something was amiss to hire another engineer to review  
2 somebody you've already hired to do that work. So it's as  
3 if the applicant would hire another architect to review Mr.  
4 Greigg's work. So it's a little unusual for that. So that  
5 gives me some -- I'm a little unclear.

6 CHAIRPERSON HILL: Dr. Imamura, I'm sorry. Are  
7 you speaking of the grading plan? I forget which -- what are  
8 you speaking to again?

9 COMMISSIONER IMAMURA: Sure. I'm speaking as the  
10 civil engineer, both for the sediment control plans and the  
11 stormwater management.

12 CHAIRPERSON HILL: Okay.

13 COMMISSIONER IMAMURA: So evidently, the civil  
14 engineer is not with us today. And so they found Mr. Oliver  
15 a couple weeks ago. And he said he was brought on board to  
16 review Ms. Sierra's work and review the comments by DOEE.

17 So as we discussed, right, that will be entered  
18 into the record, the DOEE comments. So maybe the plans were  
19 severely deficient. I don't know.

20 So I think in terms of my questioning -- some of  
21 my questions, and I think I've received everything that I  
22 needed to, Mr. Chairman, I don't want the public to think  
23 that I was hangry before break. But thank you for the lunch  
24 break. So I'm satisfied at least with the information I've  
25 received, although incredibly discouraged by the results of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 all of this.

2 CHAIRPERSON HILL: Okay. Well, I'm looking --  
3 just -- and Mr. Oliver, I'll give you a chance to respond.  
4 I mean, there's a Board member that had been pulled away.  
5 And so they're going to have to review this. So I doubt  
6 we're going to get a vote today.

7 So we're probably going to figure out what we're  
8 going to do anyway. And Dr. Imamura, I'm going to try to  
9 figure out what exactly you're disconcerted about. And I'm  
10 going to let Mr. Oliver explain that in a moment. For me,  
11 Ms. Giordano, and I'm not -- your owner is not here, correct?

12 MS. GIORDANO: That's correct. He was  
13 unavailable.

14 CHAIRPERSON HILL: Okay. So I mean, what I'm  
15 disconcerted by is the heritage tree. And so I mean, Ms.  
16 Giordano, I've seen you before. So I'm not going to, like --  
17 but, like, so what happened? Like, did they really just  
18 decide to cut it down and pay the penalty and just deal with  
19 the ramifications?

20 MS. GIORDANO: I think it's more complicated than  
21 that. And I know that Ms. Westby is going to address that  
22 because she and Ms. Collette Goodman were the board members  
23 that were intimately involved in the goings on around that  
24 issue. But it had to do with the fact that he truly believed  
25 that the tree was diseased, and it was perching on a fairly



1 substantial slope that was going to overlook the house that  
2 he had planned. And he was worried about it falling over as  
3 two apparently trees in the neighborhood I think of the same  
4 species had done fairly recently.

5 CHAIRPERSON HILL: All right.

6 (Simultaneous speaking.)

7 MS. GIORDANO: But there's a lot of detail.

8 CHAIRPERSON HILL: All right. Okay. All right.  
9 Okay. I'll let Ms. Westby kind of fill us in as well, and  
10 I'll come back to Dr. Imamura because he had his hand up.  
11 Mr. Oliver, you wanted to respond to something?

12 MR. OLIVER: So I have a long history with the  
13 client that goes back over 25 years. So as a favor to him,  
14 he asked if I could review the plans. When I accepted to  
15 review the plans, we did not have any comments from DOEE.

16 So in preparation for the hearing, he just wanted  
17 me to make sure I would look over the plans, make sure that  
18 we're going down the right path, and making sure we're taking  
19 care of everything. And then knowing that DOEE would review  
20 them in the future, obviously address those plans as -- those  
21 comments as well. So that's all.

22 CHAIRPERSON HILL: Okay. Dr. Imamura, you had  
23 your hand up.

24 COMMISSIONER IMAMURA: Yes. Thank you, Mr.  
25 Chairman. So Mr. Oliver, are you to remain on the project

1 for the life of the project?

2 MR. OLIVER: As a consultant, I am not going to  
3 be resubmitting the plans. But then I will then take another  
4 look at the responses to the comments just to try and smooth  
5 things through so that we don't have multiple reviews. But  
6 I'm not the engineer of record.

7 COMMISSIONER IMAMURA: Okay. That's very clear  
8 to me. And then Ms. Giordano, is there in the record  
9 documentation that the heritage tree probably some 100-year-  
10 old tree was, in fact, diagnosed with some sort of disease?

11 MS. GIORDANO: There will be photographs as part  
12 of the record of the stump. It's a fairly large hole in it.

13 COMMISSIONER IMAMURA: From the certified arborist  
14 that said it was diseased before it was cut down, is there  
15 any record of that?

16 MS. GIORDANO: I could be wrong. But I believe  
17 the circumstance was that the arborist rendered an opinion  
18 but was -- I'll check these facts -- but somewhat reluctant  
19 to put it in writing over concern of being at odds with Urban  
20 Forestry which I understand is kind of a thing with arborists  
21 in the city.

22 COMMISSIONER IMAMURA: Sure. All right. Thank  
23 you very much for your forthrightness in that response.

24 CHAIRPERSON HILL: Okay. Sorry, Dr. Imamura. I  
25 didn't mean to interrupt. Mr. Blake, do you have any

1 questions before I move on to Ms. Westby?

2 MEMBER BLAKE: No, thank you.

3 CHAIRPERSON HILL: Okay. Ms. Westby, do you have  
4 any questions of Ms. Giordano?

5 MS. WESTBY: No, thank you.

6 CHAIRPERSON HILL: Okay. Would you like to give  
7 us your presentation or tell us your story?

8 MS. WESTBY: Sure. First of all, I did submit a  
9 document yesterday requesting that I be able to substitute  
10 one of my witnesses, Melanie Stern, with Irving Kuczynski.  
11 Melanie was called out of town and she doesn't have access  
12 to the internet. Irving is another board member and lives  
13 very close to the site. And he'll speak on the same topic  
14 of stormwater management. And then I also submitted some  
15 additional pictures that I asked I could be able to use  
16 because I thought it would better inform the BZA.

17 CHAIRPERSON HILL: Okay. I see all the pictures  
18 and request to substitute expert witness with photos. Is  
19 that the one -- oh, got it. Okay.

20 MS. WESTBY: I kind of combined some of the photos  
21 that were in --

22 CHAIRPERSON HILL: That's okay. So Melanie Stern  
23 was the person. Now you want Mr. Kuczynski to speak?

24 MS. WESTBY: Correct.

25 CHAIRPERSON HILL: That's fine. They're both

1 board members, right? Or they were both board members?

2 MS. WESTBY: Irving is a board member. Melanie  
3 is not a board member.

4 CHAIRPERSON HILL: Irving is a board member.  
5 Okay. I mean, I don't want to get into this expert on  
6 stormwater management. I mean, we do take expert testimony.

7 But honestly -- and I'm looking at my Board  
8 Members. Honestly, it doesn't really necessarily weigh any  
9 differently one way or the other in my opinion. But that's  
10 just my opinion sometimes.

11 But I do want to hear from your fellow board  
12 member. So I'm fine with switching out your witness. And  
13 as far as them being a stormwater expert, that's not what  
14 you're asking for, correct?

15 MS. WESTBY: No, he lives next door to Mr. Godley.  
16 And so he has the same water flow into his home as Mr.  
17 Godley.

18 CHAIRPERSON HILL: Okay. So he's giving  
19 testimony?

20 MS. WESTBY: He's giving testimony.

21 CHAIRPERSON HILL: Okay. That's fine. So go  
22 ahead, Ms. Westby.

23 MS. WESTBY: Thank you. So I am Jody Westby. I'm  
24 president of the Foxhall Crescent Homeowners Association, and  
25 I'm an attorney licensed to practice in the District of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 Columbia. I am here today representing Foxhall Crescent 1  
2 I'll call them because there's three and they're all  
3 separate.

4 Foxhall Crescent 1 community as president of the  
5 HOA to express the support of a majority of the homeowners  
6 for the application by the applicant to build the last home  
7 in our neighborhood finally after 40 years. Foxhall Crescent  
8 was designed by Washington's renowned architect Arthur Cotton  
9 Moore. Foxhall Crescent 1 is a private community.

10 There's 26 homes. The one being requested will  
11 make it 27. We maintain all of our own roads and  
12 infrastructure, including stormwater drains. We do not rely  
13 on the city for maintenance or waste services. We even  
14 maintain and replace our own fire hydrants. We do use city  
15 water.

16 I'd like to speak a minute about the size and  
17 design of the home and its placement on the site. I think  
18 it will address some of the other points you were asking  
19 earlier. First, the size and design of the home, Arthur  
20 Cotton Moore modeled our neighborhood after the Crescents in  
21 Bath, England. And I want to share my screen if I could,  
22 please.

23 CHAIRPERSON HILL: I don't know if you can. I  
24 don't think you can.

25 MS. WESTBY: Oh, no.

1 CHAIRPERSON HILL: I mean, that's -- at least Mr.  
2 -- and this is where you guys got -- I always forget. First  
3 of all, Mr. Young, I don't know if it's possible. And then  
4 secondly, Ms. Nagelhout, I forget how we do this with people  
5 trying to share their screen. Do you know? Is it something  
6 that has to be in the record? Because if we were live,  
7 again, they would just be presenting.

8 So it would be something that would be before us  
9 anyway. So first, I'll turn to Ms. Nagelhout. Do you have  
10 an opinion again because I can't recall?

11 MS. NAGELHOUT: Everything that's supposed to be  
12 in the record in advance of the hearing. And you could waive  
13 it into the record at this point. But it does have to come  
14 into the record.

15 CHAIRPERSON HILL: It does have to come into the  
16 record. So what is it, Ms. Westby, are you trying to show?

17 MS. WESTBY: I put together pictures that go along  
18 with my marks so that I can visually show you what I'm  
19 seeing.

20 CHAIRPERSON HILL: Are those all the pictures that  
21 are in the record?

22 MS. WESTBY: They're entered of ones for the ANC  
23 and ones I submitted yesterday.

24 CHAIRPERSON HILL: Are there any in the record  
25 that are going to be in your presentation? I'm sorry. Are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 there any in the record that are not going to be in your  
2 presentation?

3 MS. WESTBY: There are some in the record that I'm  
4 not using in the ANC one, for example. And I also, I  
5 believe, pulled a couple of pictures from other admitted  
6 exhibits. I think Exhibit 5.

7 CHAIRPERSON HILL: If you're showing -- well, I'll  
8 do this. What you're about to show is everything in the  
9 record?

10 MS. WESTBY: Yes, I believe it is.

11 CHAIRPERSON HILL: I believe it is. I have a  
12 company. Whenever an employee says, I believe it is, it  
13 doesn't work for me. So --

14 MS. WESTBY: As far as I know to the best of my  
15 knowledge, yes, everything is in the record.

16 CHAIRPERSON HILL: Both, by the way, employees  
17 say, as far as I know and the best of my knowledge. So okay.

18 MS. WESTBY: Remember, I'm an attorney. I'm  
19 trying to be very correct here.

20 CHAIRPERSON HILL: Oh, okay. Well, there you go  
21 then. You're leaving yourself a way out is what you're  
22 trying to say. So okay, Mr. Young, is it possible to show --  
23 share screens?

24 MR. YOUNG: It is.

25 CHAIRPERSON HILL: Okay. So for the efficiency

1 of the Board in this particular case, I'm not necessarily  
2 doing this from now on. It's just that since we have  
3 somebody who's a layperson, I'd rather just let them kind of  
4 show us what they're trying to show us. Does anybody have  
5 an issue with that, my fellow Board Members? Okay. So go  
6 ahead, Mr. Young, and let Ms. Westby share her screen. And  
7 Ms. Westby, please only show us things that are in the  
8 record.

9 MS. WESTBY: I will do that. I have to check a  
10 box here for Webex. Mr. Young, it tells me to go to system  
11 preferences, and I'm in system preferences. I want to check  
12 this box. Let me see, general privacy, I can't check the  
13 box. Do you know what -- why can't I check the box? Oh,  
14 maybe it's this. Mr. Young, do you know?

15 MR. YOUNG: There should be a tab next to where  
16 your start and stop video is at the bottom.

17 MS. WESTBY: I did that.

18 MR. YOUNG: It says, share.

19 MS. WESTBY: Mm-hmm. It says, open system  
20 preferences. And then it says, allow the apps below to  
21 record the content of your screen. Oh, because you're  
22 recording.

23 MR. YOUNG: Correct.

24 MS. WESTBY: Oh, I see. Okay. Screen recording,  
25 and it's not letting me check the box. Oh, because I have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 to unlock. Okay. One second. Okay. Now I can do Webex.  
2 Okay. So it says I'm supposed to quit and reopen. Oh,  
3 brother.

4 CHAIRPERSON HILL: Are there photos that maybe --  
5 I mean, I saw all those photos that are in the record, Ms.  
6 Westby. We can just pull them up.

7 MS. WESTBY: Well, maybe I can just hold them up.  
8 Would that work?

9 CHAIRPERSON HILL: No.

10 MS. WESTBY: Okay. Give me a minute then, please.

11 CHAIRPERSON HILL: Sure. I'll tell you what, Ms.  
12 Westby. I'm sorry to do this. Do you have the record in  
13 front of you?

14 MS. WESTBY: The record? You mean --

15 CHAIRPERSON HILL: Meaning you know where the  
16 photographs are in the record?

17 MS. WESTBY: Yes.

18 CHAIRPERSON HILL: Pardon?

19 MS. WESTBY: Ms. Giordano, I have it. But I think  
20 she has organized them in a way that flows and it would be  
21 very disjointed, I think, to try and pull them up. If they  
22 are --

23 (Simultaneous speaking.)

24 MS. WESTBY: -- in the record already --

25 CHAIRPERSON HILL: I just want to help Ms.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Giordano having the technology to let Ms. Westby share the  
2 screen. And I'm trying to move us along. So I'm trying to  
3 figure out what to do.

4 MS. GIORDANO: Is there a problem with her holding  
5 it up if she submits all that to the record afterwards?

6 CHAIRPERSON HILL: I mean, I don't know. You can  
7 hold it up a second, Ms. Westby, and see if I can see it in  
8 front of the camera.

9 MS. GIORDANO: I could see it when she did it a  
10 minute ago.

11 MS. WESTBY: Yeah, I was holding it up like this.  
12 Can you see it?

13 CHAIRPERSON HILL: I mean, I can't see it.

14 MS. WESTBY: Oh, okay.

15 CHAIRPERSON HILL: Why don't you go ahead and give  
16 us your testimony because there's a bunch of photographs.  
17 I mean, I just kind of want to click through. I mean, I know  
18 it might not be the way you had thought about it --

19 (Simultaneous speaking.)

20 CHAIRPERSON HILL: If we go through 77(a) and just  
21 kind of click through the photos.

22 MS. WESTBY: It will then be very helpful to you  
23 to see these, I believe. But let me try to do it a different  
24 way.

25 MEMBER BLAKE: Mr. Chairman, can she submit it to

1 the record now in the order that she has it?

2 MS. WESTBY: It's 75 megabytes. So that's the  
3 problem. It takes a long time to upload. I don't know. It  
4 should allow me to do system preferences. The problem is  
5 that it's the recording. That's what's throwing it off. And  
6 I checked Webex --

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: Okay. Give me a second. I  
9 just got another message from somebody else. I'm going to  
10 lose another Board Member in, like, 15 minutes. And I got  
11 another case that's not going to be easy. So Ms. Westby,  
12 we're going to do it this way.

13 So go ahead and tell us your story. And we're  
14 going to click through whatever I got. So Mr. Young, can you  
15 pull up 77(a)? Or why don't you -- Ms. Westby, first give  
16 us your testimony and we'll see what photographs we need to  
17 pull up.

18 MS. WESTBY: Okay. We'll try that. We'll go from  
19 there. All right. So first, I want to talk about the size  
20 and design of the home. So Arthur Cotton Moore modeled our  
21 neighborhood after the Crescents in Bath, England. And if  
22 any of you can see this picture, you'll see that it is all  
23 the homes looking alike. And it's a very central feature of  
24 how the neighborhood is designed.

25 In 1993, Gene and Patricia Godley who live at 4513

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Foxhall Crescent and also on 4509. They obtained approval  
2 from the homeowners association, ANC, and BZA to build a  
3 7,000 square foot home plus a three-car garage that was L-  
4 shaped and not of a similar design to our homes.  
5 Fortunately, that home was not built.

6           Since their approval, however, they sold the lot  
7 and then they actively worked to oppose any development on  
8 the 4509 lot, claiming there was massive stormwater runoff  
9 issues despite two expert reports and testimony they  
10 submitted to the BZA to the contrary in 1994. This is, if  
11 you can see it, the plat of the house they requested. I've  
12 outlined it in pink.

13           (Simultaneous speaking.)

14           CHAIRPERSON HILL: Hey, Ms. Westby. I'm sorry.  
15 I don't know how to do this. But I mean, I don't think I can  
16 take -- I mean, I remember reading this thing. I got at  
17 least one more now. I got one Board Member back.

18           I don't think we're supposed to take video  
19 testimony. I don't know if this counts as video testimony.  
20 So this isn't going to -- just go ahead and -- why don't you  
21 just go ahead and give us your testimony and not hold up the  
22 signs. Okay? And if we have to go back and look at  
23 something or if we have to have something supplemented with  
24 the record and do this later, we will. Okay?

25           MS. WESTBY: Okay. I'll do my best to describe.

1 So their home was set back and it was an L-shape. Then in  
2 2012 to 2017, Amir Mautlag bought the property. And Mr.  
3 Mautlag tried to build the home that was designed by Arthur  
4 Cotton Moore on the lot which the BZA approved.

5 But he was thwarted by the Godleys and Mr. Sharkey  
6 and Mr. Wong who were also board members. I was going to  
7 show you an exhibit of the Mautlag home. But it is the exact  
8 design of Foxhall Crescent. He was building a Type 6 home.  
9 He used the blueprints from Arthur Cotton Moore.

10 In 2021, then Penguin purchased the lot from Mr.  
11 Mautlag to build as a home as a wedding gift for the owner's  
12 son, Christopher. After nine months of discussions with the  
13 FCHOA Board, he had made no headway and received no approval  
14 from the board. This March, the majority of the homeowners  
15 came together to remove Mr. Godley and Mr. Wong from the  
16 board.

17 They resigned and our president at that time, John  
18 Fox, who aligned with them resigned also. We now have a new  
19 board, and this action makes a strong statement of the  
20 homeowners will to have this home built. The board voted  
21 unanimously on June 10, 2022 to support this application to  
22 the BZA.

23 The home that is planned by Penguin is based on  
24 Arthur Cotton Moore's plans for a Type 6 home. It is  
25 slightly bigger. Mr. Godley says the home is 67 percent

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 larger than the home Arthur Cotton Moore designed and the  
2 previously approved Mautlag home.

3           How is that possible when Mr. Mautlag proposed a  
4 home 34 by 52 and Penguin proposes a home 38 by 57? I guess  
5 that's new math. But the home that Mr. Zumot Penguin has  
6 proposed is the exact design as Michael testified, and it is  
7 fully compatible with the design in the homes in the  
8 neighborhood.

9           The square footage of the Penguin home will be  
10 4,967 square feet. The HOA's original homes are  
11 approximately 3,500 to 4,100 square feet. However, as homes  
12 age and homeowners engaged in improvements, some homes have  
13 expanded. And one is near 5,000 square feet today.

14           The proposed house that Penguin has put forth to  
15 the BZA is not a mansion as suggested by Mr. Godley. It's  
16 a home that is matching in design and compatible in size with  
17 other homes in the neighborhood. It's also -- as you noticed  
18 when Michael was presenting, it's nicely centered on the lot.

19           It faces forward so we have a pleasant view of the  
20 home instead of the side view. The original plan was there  
21 was a home planned behind 4511. So 4509 was on its side, and  
22 here's 4511 with an easement driveway coming through.

23           So that's why it was turned sideways. But the  
24 4511 lot was sold to the German Embassy and it's been  
25 incorporated into their embassy home for the number 2

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 diplomat. So went that went away, then there was no driveway  
2 or anything else. So it was just 4509 remained.

3 I was also going to show you a picture from  
4 Melanie Stern's house with a looming house -- showing a big  
5 house looming over the lot. And that is actually the German  
6 home up there on Foxhall Road. And so what we are pleased  
7 about is now that there's no home at 4511, the home has been  
8 turned forward to face the road.

9 So when you look up, you'll see the beautiful  
10 front of the home like you see the fronts of the rest of our  
11 homes, not the side of some home. And so that would be very  
12 pleasing to the community to look there and see another home  
13 like ours instead of just looking up and seeing the hill or  
14 the German house behind us. So that was to be explained.

15 Let me turn to the stormwater drainage issue from  
16 4509. The stormwater drainage issue has been exaggerated by  
17 the opposition. And Ms. Giordano noted earlier, I have been  
18 involved in this project as a board member and as a neighbor  
19 in various capacities since 2012.

20 And so I had a long history with what's happened  
21 with this lot. When the Godley's owned the lot, they  
22 submitted a surface water report and a subsurface soil and  
23 groundwater report and assured the BZA that, and I quote, we  
24 believe the possibility of an adverse effect caused by  
25 erosion, soil erosion, or groundwater. The evidence shows

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that that is not going to be a threat to either property  
2 itself or to the adjacent properties based on these experts,  
3 the two reports they submitted.

4           According to the transcript of that BZA hearing  
5 on December 22, 1993 at page 29, Mrs. Godley testified, this  
6 shows basically the footprint of the house and indicates that  
7 there are drains. There is one major drain currently that  
8 was constructed under the original plans for the development  
9 to catch all of the runoff from that street. If you will  
10 recall from the first driveway, the proposed street went  
11 straight down the hill abutting to the current street.

12           So as a result of that, an oversized drain was put  
13 in there. And it is existing today to catch that runoff  
14 coming straight down the street. That is the end of the  
15 quote, but it's important testimony because that drain exists  
16 today.

17           It has not been talked about before in this  
18 hearing. And it has been maintained over the years. Not  
19 only is that drain there, but there's now a new drain in  
20 front of 4510 which is the Melanie Stern email I believe you  
21 were looking at before. It's in Exhibit 55(a).

22           And she shows the new drain that the HOA built.  
23 And she sent an email to John Fox, the former president of  
24 the homeowners saying, why do you keep talking about  
25 stormwater problems on 4509? They've never been 4509. Why

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 didn't you mention my house?

2 I had all the stormwater piled up in my driveway  
3 for years. It took her seven years to get Mr. Godley and his  
4 board to fix that problem in front of her home. She now has  
5 a nice new drain in front of the home and there's no  
6 stormwater.

7 When we just had these recent rains, there's no  
8 dirt in the street. There's no problem. So not only is that  
9 drain there that exists which is right there at the 4509 lot  
10 but just across onto the Godley property.

11 There's now a new drain front of 4510 which also  
12 captures major stormwater. I was going to show you a picture  
13 of the drain in front of Melanie's house. I will draw your  
14 attention, though, it's Exhibit H of my letter to the ANC.  
15 It's your Exhibit 55(a) where it has Melanie's email and  
16 pictures that I've referenced.

17 It's important for the ANC to know that the owner  
18 of 4507, Mr. Wong, has been funneling his water onto 4509 for  
19 years. I was going to show you an exhibit -- it's from 55A  
20 -- of the drainage from Mr. Wong's house. He has a black  
21 plastic corrugated pipe attached to his downspout that runs  
22 completely across his property and onto --

23 (Simultaneous speaking.)

24 CHAIRPERSON HILL: Ms. Westby.

25 MS. WESTBY: Yes?

1 CHAIRPERSON HILL: Ms. Westby, how much time  
2 longer do you think you need?

3 MS. WESTBY: A while.

4 CHAIRPERSON HILL: Okay, Ms. Westby. So I have  
5 to -- I'm trying to -- I mean, you're an attorney which is  
6 great. So again, I'm here for what we're supposed to be  
7 looking to in terms of the standard for review for the  
8 special exception and to allow multiple primary buildings on  
9 a single lot and then the area variance, right? So the  
10 drainage issues, that's something that -- I mean, I  
11 appreciate all this testimony. But I kind of need to know  
12 how much time you think you need.

13 MS. WESTBY: Well, I thought I probably would have  
14 20 minutes, and Ms. Goodman will probably need another 5 or  
15 7 minutes and Mr. --

16 CHAIRPERSON HILL: Tell you what. I'll give you  
17 20 minutes in total starting right now. Okay. And you can  
18 go ahead and get to -- because I have other things to do now.  
19 Or I should say I have another case that's happening pretty  
20 soon. And so I got to make sure that we get to everybody.  
21 So go ahead.

22 MS. WESTBY: I understand. And I have tried in  
23 putting my remarks together to just touch on those issues  
24 that I thought were the important issues that were being  
25 raised before you. So I was trying to provide information

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 to you about those issues.

2 CHAIRPERSON HILL: Yeah.

3 MS. WESTBY: So I will just say that Mr. Godley,  
4 Mr. Wong, and Mr. Sharkey were board members. They blocked  
5 Mr. Mautlag's every effort to --

6 CHAIRPERSON HILL: I guess what I'm trying to get  
7 at, Ms. Westby, is, like, the board member stuff and  
8 everything that happened with you guys and your board, it's  
9 not really something that we're looking at. And so that's  
10 why I'm trying to just -- I mean, I appreciate how you got  
11 here. And I think what also will be helpful is I think the  
12 Board -- my Board is going to ask you questions. And I want  
13 to make sure they get to ask your questions before one of  
14 them leaves.

15 MS. WESTBY: Okay.

16 CHAIRPERSON HILL: And so that's what I'm trying  
17 to get to what the merits are of this case. And it has  
18 nothing to do with your board and what happened to your  
19 board.

20 MS. WESTBY: So when you look at a map of the  
21 neighborhood, Mr. Godley who's made the most noise on this,  
22 this time has a very tiny boundary line with 4509. The back  
23 of his house and the back of Mr. Kuczynski's house all back  
24 up to 2510 Foxhall Road. All the water coming down is coming  
25 from 2510.

1           And so it's not 4509 because he just has that one  
2 little border. And so Andy is dumping out four pipes of  
3 water from 4507 onto the 4509 lot. But right at that little  
4 line that Godley has with this lot where he touches this lot  
5 line, right there is that great big drain. So now let me  
6 move on and talk about parking and access from Mrs. Godley.  
7 Mr. Godly claimed his --

8           CHAIRPERSON HILL: Hold on one second, Ms. Westby.  
9 Again, you keep naming names of people. And this is what I  
10 just don't understand. Like, you're kind of, like,  
11 testifying against people that aren't here that have nothing  
12 to do with this, right?

13           (Simultaneous speaking.)

14           CHAIRPERSON HILL: I mean, I'm here to figure out  
15 whether or not this driveway is going to be meeting the  
16 criteria for us to grant or not grant an area variance,  
17 right? And whether or not somebody thinks that they can do  
18 it or they can't do it, that has nothing to do with us,  
19 right? And so I guess I would like to hear your thoughts on  
20 the driveway, I suppose.

21           But I just don't need you to kind of mention  
22 people's names and they're not here to kind of, like, defend  
23 themselves or dispute what you're saying because I don't  
24 anybody else in party status. The people you're talking  
25 about are going to be giving -- if I ever get to them are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 going to be giving testimony, public testimony. So I would  
2 just stick to the facts of the case again, and please  
3 continue.

4 MS. WESTBY: Okay. Just please understand I'm  
5 trying to say this in words what I would show you in a  
6 picture. I'd show you a picture of the neighborhood. This  
7 person lives here, here. These were the people that applied  
8 for party status. Here's the layout. So I'm sorry. It's  
9 hard for you to visualize I know because I haven't been able  
10 to give you that picture. So let me --

11 CHAIRPERSON HILL: Let me do this real quick also,  
12 Ms. Westby. Maybe my Board Members have specific questions  
13 that they want to ask of you. And that might be a little bit  
14 more direction that you might get and my Board Members who  
15 are going to leave. I'm going to lose on in a minute.

16 I want to make sure that they're getting -- do you  
17 guys know what you're trying to get out of somebody -- I  
18 mean, out of the party that they're here in support. And  
19 they're the ones that have had the history of this particular  
20 project. And I'm going to go around the -- I mean, do you  
21 guys know what you want to hear from Ms. Westby?

22 MS. WESTBY: May I suggest that I then --

23 CHAIRPERSON HILL: Give me one second, Ms. Westby.  
24 I'm looking at my Board Members. So you guys don't have a  
25 specific thing that you want to know?

1 COMMISSIONER IMAMURA: I have a question for Ms.  
2 Westby. I do acknowledge and recognize her comment about the  
3 property line, and I see that in the record. But I don't  
4 have any specific that I'd like from Ms. Westby.

5 CHAIRPERSON HILL: Okay. So if nobody has, then  
6 I'm going to keep going the way it is going. And I'll let  
7 Ms. Westby continue. So nobody has --

8 MS. WESTBY: Let me -- in the spirit of trying to  
9 work with you, Mr. Chairman, let me just go by my topic  
10 headings and give you one or two sentences on each one.

11 CHAIRPERSON HILL: Okay.

12 MS. WESTBY: And then if your Board has questions,  
13 then they can ask and maybe that would help. Is that okay?

14 CHAIRPERSON HILL: Yeah, that sounds good.

15 MS. WESTBY: Okay. Let's try that. So you heard  
16 what I had to say about stormwater management. Now I want  
17 to move onto the issue of parking and access.

18 One of the -- the Godley home and I believe that  
19 they are on this call today, and he has asked to speak. But  
20 he claims his burden with traffic congestion and he doesn't  
21 want anyone parking there by the side of his home because his  
22 wife is very ill and may need emergency access. I just  
23 wanted to state that we have agreed that four construction  
24 vehicles could be parked on the Foxhall Crescent street, no  
25 restriction of where they had to be parked, and that it's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 unrealistic to think that site, as steep as it is and as  
2 small as it is could hold all the construction vehicles.

3           So we've said you can have four. They thought  
4 that was reasonable. And that there is a strip of land  
5 between the Godleys' front steps and the beginning of the  
6 4509 lot that would allow at least a couple of cars to be  
7 parked.

8           That should not be blocked. He's making an issue  
9 of his back garden gate which is a pretext. There is a  
10 spiral staircase. There's lawn furniture. There shrubbery.  
11 And then when you finally get to the gate, guess, what,  
12 there's a tree that's standing there right about halfway down  
13 on the gate.

14           So that's not -- the garden gate is not a  
15 reasonable access point. We will agree. I will tell the  
16 neighborhood, ask all the construction never to park in front  
17 of the entrance to his home so that entrance stays open.  
18 Plus he has an elevator that goes down directly to the garage  
19 as people could take her out through the garage.

20           So that was what I wanted to say about the parking  
21 and access from Mrs. Godley. We have had to absorb a lot of  
22 the parking overflow from the BEAR property that they're  
23 building up there. I think it's 2400 Foxhall Crescent -- I  
24 mean Foxhall Road.

25           And we weren't happy about that. But that's what

1 neighbors do. And we're now happy. We have their beautiful  
2 home as our neighbor. So we deal with that.

3 Other issues that need clearing up is in the  
4 previous BZA order, you will see an agreement between the  
5 association and Mr. Mautlag. Mr. Mautlag was pressured into  
6 signing that agreement at the prior BZA hearing. Mr. Godley  
7 had it all prepared, and it was illegally entered into.

8 I want to explain this because it was part of the  
9 previous BZA order. Mr. Godley, Mr. Sharkey, and Mr. Wong  
10 entered into that agreement in violation of the D.C.  
11 Nonprofit Corporation Act. Mr. and Mrs. Godley were  
12 personally registered as opponents and given party status.  
13 So were Mr. and Mrs. Sharkey as was Mr. Wong. Mr. and Mrs.  
14 Godley even hired their own personal attorney who they  
15 entered an appearance on behalf of the homeowners association  
16 and made filings and represent the HOA in front of the ANC.

17 CHAIRPERSON HILL: Okay. Ms. Westby, you guys,  
18 I have to run real quick and open a door. I love this. I'm  
19 at the office. I'm all alone.

20 Ms. Westby, I don't want you to mention these  
21 people's names anymore. Like, I don't know what is going on  
22 with all the names. And just give me a second. I'll be  
23 right back.

24 MS. WESTBY: I'm making him crabby. I'm trying  
25 not to.



1 CHAIRPERSON HILL: Okay. I'm back. Okay.

2 MS. WESTBY: I'm sorry. I'm not trying --

3 CHAIRPERSON HILL: Ms. Westby, I know. I know,  
4 Ms. Westby. I'm not crabby because of you. I'm just trying  
5 to figure out how to get to the point of merits of this and  
6 not get to where if I had somebody else that was having party  
7 status, they would be arguing for days that you're mentioning  
8 all these people's names.

9 And then we'd be back and forth on things that  
10 have nothing to do with what's before the Board. And you're  
11 not an expert in zoning. And so I know that. So I'm trying  
12 to get through this and let you continue.

13 MS. WESTBY: The agreement that was signed by the  
14 former HOA board members and spouses and Mautlag was never  
15 filed in the land records. It was a conflict of interest  
16 transaction that was avoidable under D.C. code. And the  
17 Foxhall Crescent board unanimously voided that contract.

18 It has no legal bearing on 4509. It was not  
19 recorded in D.C. land records, so Penguin had no notice of  
20 it when they purchased the lot. Plus the agreement had not  
21 be signed by all the land owners of 4509.

22 So when you see that agreement that's attached to  
23 the previous BZA order, it's now null and void. The  
24 opponents have made a big issue about this undisturbed  
25 perimeter. The undisturbed perimeter is supposed to be 30

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 feet basically around the outside edges of the neighborhood  
2 just to serve as a buffer to try to preserve some of the  
3 natural beauty that this used to be the old Rockefeller  
4 Estate.

5           Basically, very few people in the neighborhood are  
6 aware of this. They don't apply and abide by it. Everyone's  
7 backyard is landscaped the way they wanted to do it. Many  
8 of them put proposals before the board, and they were  
9 approved.

10           And so we have backyard kitchens. We have  
11 swimming pools up to the border. We have big bolder brick  
12 walls all filled in with dirt. And so the notion of this  
13 undisturbed perimeter is a notion that was in these old  
14 documents.

15           And our bylaws are old. The documents aren't even  
16 up to date, the exhibits. But my point is we do not see the  
17 undisturbed perimeter as any issue.

18           And as the architect showed, there's certainly 30  
19 feet of natural landscaping, mostly all the way around the  
20 house. So that would be met anyway. Plus remember that most  
21 of the boundaries of that 4509 lot aren't Foxhall Crescent.  
22 They're now 2500 and 2510 Foxhall Crescent.

23           CHAIRPERSON HILL: Okay. Who's your witness and  
24 what do you want them to speak to?

25           MS. WESTBY: I have two witnesses.

1 CHAIRPERSON HILL: Okay.

2 MS. WESTBY: One is Irving Kuczynski about the  
3 stormwater that comes down off 2510 and one is Collette  
4 Goodman who is also an attorney and knows a lot about the  
5 heritage tree.

6 CHAIRPERSON HILL: Okay. Let's hear from your  
7 witnesses. Who's the first one again? I'm sorry. Oh,  
8 Kuczynski?

9 MS. WESTBY: Irving.

10 CHAIRPERSON HILL: Okay, Mr. Kuczynski --

11 MS. WESTBY: Irving, are you with us?

12 CHAIRPERSON HILL: -- can you hear me?

13 MR. KUCZYNSKI: I am. Can you hear me?

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

16 MR. KUCZYNSKI: Sure. I'm Irving Kuczynski. I'm  
17 an owner of 4515 Foxhall Crescent which is in the downstream  
18 of the proposed building and similar buildings up from  
19 Foxhall Road. And if the water flows anywhere, it flows down  
20 into my lot. And my comments are going to be about 90  
21 seconds.

22 CHAIRPERSON HILL: okay.

23 MR. KUCZYNSKI: My only concern -- I mean, I can't  
24 see any issues here at all why this house can't be built to  
25 the design. You can't widen the road because there are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 already curves and houses there. The road is what it is for  
2 access.

3           It can't be widened one way or the other. And it  
4 seems pretty wide road to me. To the extent there's any  
5 water runoff into my property, it's coming from the German  
6 Embassy building up the road. There doesn't seem to be any  
7 significant water runoff coming from this particular lot that  
8 you're looking at.

9           But to the extent there is any water coming from  
10 there, it seems to me the developer is putting new drainage  
11 subject to D.C. regulations. So if anything, the situation  
12 has to improve. So I don't see anything about this  
13 application that is deleterious to me or to anybody. So  
14 that's it.

15           CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
16 Kuczynski. I'm sorry. Ms. Westby, who's the next one?

17           MS. WESTBY: Ms. Goodman, Collette Goodman.

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

19           MS. GOODMAN: I can. I'm not sure I can get --

20           (Simultaneous speaking.)

21           CHAIRPERSON HILL: That's all right. That's all  
22 right.

23           MS. GOODMAN: And I just was going to -- I know  
24 you had mentioned the heritage tree. And that obviously has  
25 been an issue here as Ms. Giordano said at the outset. I

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 wanted to provide what I think could be some helpful context  
2 because this was not a willful violation by any means.

3           For one thing, Mr. Zumot presented to the prior  
4 board alternatives to avoid cutting down the heritage tree  
5 which they just simply refused to ever consider. And a good  
6 board would have sat down and done exactly that. And instead  
7 they insisted he agree to only build that house that had been  
8 originally designed for the community.

9           But as Ms. Westby said when there was to be  
10 another house up above it knowing at that time that they  
11 could not build that house unless they could remove the  
12 heritage tree and knowing at that time it was unlikely they  
13 were going to get permission. So they really boxed him in.  
14 And the evidence, however, now does show that I think it's  
15 quite strong evidence that the permit was wrongly denied.

16           And I live at 4524 behind us on Dexter Street, our  
17 neighbor, we've had experiences with three of their heritage  
18 trees, one of which two years -- three years ago fell and did  
19 tens of thousands of dollars of damage on our house. The  
20 next one was last August of 2021. The co-owner of that house  
21 had -- this was the second time she had the Urban Forest  
22 Division, the D.C. arborist come look at that tree. She was  
23 very fearful that it was going to fall. He said, no, it's  
24 healthy.

25           CHAIRPERSON HILL: Who was fearful it's going to

1 fall?

2 MS. GOODMAN: The owner of this house on Dexter  
3 Street which abuts our property, the rear of our property.

4 CHAIRPERSON HILL: Okay.

5 MS. GOODMAN: And it was tilted. There had been  
6 a lightning storm. Refused to give them a permits. Two  
7 months later, October, it fell and did damage on our patio  
8 and the neighbor's patio.

9 They had another heritage tree look very much like  
10 the one on 4509. While DDOT was denying a permit to Mr.  
11 Zumot, they granted a permit for that tree. When it was  
12 taken down, it had all the same markings, black in the stump  
13 and a huge hole that goes about --

14 CHAIRPERSON HILL: Okay. Is that it, Ms. Goodman?

15 MS. GOODMAN: Well, I just want to say that I want  
16 to praise the Office of Planning, Matt Jesick and Joel. They  
17 have been right in saying the heritage tree issue is not a  
18 zoning matter. And the ANC as you know has come to you and  
19 said, deny this permit because they claim willful which was  
20 not in violation of the heritage tree law.

21 That is not an issue for you to be affected by,  
22 apart from the fact that there is very strong evidence that  
23 they should've been granted a permit. And now that Urban  
24 Forestry is retaliating as Ms. Giordano said, there's been --  
25 I had asked a tree service person that took down the heritage

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 tree that was diseased. He came, looked at this one, said  
2 that does look like it should come down. It's on a very  
3 precipitous hill as well.

4 CHAIRPERSON HILL: Okay.

5 MS. GOODMAN: And the next day, he said, oh, I  
6 can't give you a statement because I'm afraid of retaliation.

7 CHAIRPERSON HILL: Okay. Again, right, whether  
8 or not that's within -- again, whether that's something we're  
9 looking at or not. But I was curious of what's going on.  
10 Okay. I want to make sure I get to the Office of Planning  
11 before I lose my Board Member. So --

12 MS. WESTBY: May I --

13 CHAIRPERSON HILL: Go ahead.

14 MS. WESTBY: -- add one final point that's  
15 important for you to know. The previous BZA in approving the  
16 Mautlag application approved the removal of that very exact  
17 heritage tree over the Office of Planning's objections. They  
18 knew that tree had to be removed for them to build a house  
19 on that lot.

20 So they approved it in 2014. This time it was the  
21 same thing. You can't build the house with the tree there.  
22 And that's why it was -- the law had changed in the meantime.  
23 But he had been given approval before from the BZA to remove  
24 that tree.

25 CHAIRPERSON HILL: Okay. All right. Okay. Thank

1 you. Mr. Jesick, are you there?

2 MR. JESICK: Yes, Mr. Chairman.

3 CHAIRPERSON HILL: Great, Mr. Jesick. Can you  
4 introduce yourself for the record?

5 MR. JESICK: Yes, thank you, Mr. Chairman and  
6 Members of the Board. My name is Matt Jesick, and I'll be  
7 presenting OP's testimony in this case. And for my  
8 testimony, I will be referring to our most recent report at  
9 Exhibit 61. So the Board may find it helpful to refer to  
10 that.

11 And in that report on page 2, we did list a number  
12 of outstanding items that needed to be addressed. And since  
13 our report was entered into the record, the applicant has  
14 addressed several of those. And just in summary, Items 4  
15 through 7, we feel have been addressed. And I can get into  
16 those details if the Board will like.

17 CHAIRPERSON HILL: Maybe in a minute, Mr. Jesick.  
18 I'm waiting to hear your statement.

19 MR. JESICK: Sure. Number 3, I'm working reverse  
20 order. Number 3 asked that all exhibits be made consistent.  
21 So just for the record, Exhibit 69(a) and 69(b) seem to do  
22 that.

23 However, today in the hearing the applicant  
24 referred to Exhibits 54(a) and 54(b). And we just wanted to  
25 note that the updated exhibits are the correct exhibits with

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 the correct location on the exterior stairs and the correct  
2 elevation for the part of the house. We wanted to note that  
3 on the record.

4           Number 2, we feel the dimensions still clarify the  
5 impervious -- or excuse me, pervious surface calculation for  
6 the lot. They have no trouble meeting the requirement of 50  
7 percent. But the figure given in the record of 85 percent  
8 is not correct.

9           The biggest issue, however, is number 1 on our  
10 list there. Again, on page 2 of our report. These would be  
11 ongoing evaluations by the Department of Energy and  
12 Environment, DOEE, and the Department of Transportation Urban  
13 Forestry Division. And Subtitle C, Section 305.5 states that  
14 before taking final action on an application under this  
15 section, the board shall refer to the application to the  
16 Office of Planning for coordination, review, and report,  
17 including the environment related to water supply, water  
18 pollution, soil erosion, and solid waste management.

19           And because those key analyses by DOEE and DDOT  
20 are not yet complete, OP cannot make a recommendation on this  
21 application. Now once those reviews are complete, OP can  
22 provide further feedback on whether the project would  
23 successfully address the criteria of Subtitle C, Section  
24 305.5 which, again, seek to minimize impacts related to water  
25 pollution, soil erosion, and related impacts on nearby

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 properties. Now if I could just related to that, the Board  
2 had asked about the DOEE comments on the stormwater  
3 management plan and erosion sediment control plan.

4 And I'm glad that the applicant's representatives  
5 said she would be entering that into the record. They're not  
6 insubstantial comments. It's not a handful of comments.  
7 It's close to 50 comments.

8 And that is, again, for the first round of review.  
9 It sounds like the stormwater management plan may be revised.  
10 So those revisions would also have to be taken into account  
11 in the DOEE review process. And then again just for the  
12 record, we did consult with the OZ legal division. And as  
13 we noted in our report, it was concluded that we would  
14 process the application based on the current condition of the  
15 property.

16 However, I would like to note in response to Board  
17 Member Imamura's comment or question that both Exhibit 28(b)  
18 which the applicant referenced and 54(c) state that the  
19 heritage tree despite no severe biotic issues, had good  
20 color, vigor, vitality, and structure. And it was cited for  
21 reservation. So I just wanted to put that on the record, but  
22 I'm happy to take any questions. Thank you.

23 CHAIRPERSON HILL: Okay, thanks. Does the Board  
24 have any questions for the Office of Planning? If so, please  
25 raise your hand. So Mr. Jesick, you haven't gotten

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 everything you need to give us an opinion. Is that what  
2 you're trying to say?

3 MR. JESICK: That's correct. We're waiting for  
4 the final evaluations from DOEE and DDOT.

5 CHAIRPERSON HILL: Got it. And Mr. Giordano, can  
6 you hear me? The evaluation that you're trying to get on the  
7 record, is that the final one from DOEE?

8 MS. GIORDANO: No, it's just the first review.  
9 And I think that our expert from FICA indicated that he  
10 estimates there's probably another -- I think he said three  
11 months or more in the process back and forth with DOEE which  
12 is typical to address comments and submit corrections,  
13 updates, responses.

14 CHAIRPERSON HILL: So Mr. Jesick, do we normally  
15 -- does the Office of Planning normally wait for something  
16 from DOEE before they make an analysis?

17 MR. JESICK: Well, it's hard to say. A relief  
18 under this section is not very -- we don't see it very often.  
19 I think in this case because of the nature of the site -- the  
20 sloped nature of the site, the fact that the trees have been  
21 cut and removed from the site, we thought it was very  
22 critical to get those reviews. Also given the exact language  
23 of the zoning regulations which, again, says that the Board  
24 should take these analyses into account before taking final  
25 action on an application under this section, we felt that led

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 to us making a -- that we could not make a recommendation at  
2 this time.

3 CHAIRPERSON HILL: Okay. And then DDOT, you still  
4 haven't gotten your report from DDOT?

5 MR. JESICK: The Urban Forestry Division has not  
6 completed their analysis of the tree preservation plan.

7 CHAIRPERSON HILL: Did DDOT ever report -- okay,  
8 okay. And Ms. Giordano, when do you think you might get  
9 that?

10 MS. GIORDANO: I have no idea. There does seem  
11 to be some reluctance on -- well, first of all, they've  
12 indicated that they're not going to start the review until  
13 the issue with the fine is resolved. And there's really no  
14 relationship between those issues. There's no reason why  
15 they can't start the review which tends to indicate that  
16 they're not interested really in doing this expeditiously.

17 CHAIRPERSON HILL: Okay. So we'll see what  
18 happens there as well. Okay. And then, Mr. Jesick -- I  
19 don't know. I'll come back to it. Let's see. And everyone  
20 is going to get to ask their questions as well as Ms. Westby  
21 if she has any for the Office of Planning. Does the Board  
22 have any questions for the Office of Planning? Okay. I got  
23 to take a three-minute break. I apologize. Can I just take  
24 a three-minute break? I'll be right back.

25 (Whereupon, the above-entitled matter went off the

1 record at 2:49 p.m. and resumed at 2:52 p.m.)

2 CHAIRPERSON HILL: Okay. I'll start back again.  
3 Nobody had any questions for Office of Planning. Ms.  
4 Giordano, do you have any questions for the Office of  
5 Planning?

6 MS. GIORDANO: I do. Mr. Jesick, I was just  
7 wondering if you're aware of BZA Case 20594. It's the exact  
8 same type of relief here, a theoretical subdivision with a  
9 house involving a sloping site and stormwater management  
10 plans. And the Office of Planning report had no problem,  
11 indicating support without anything from DOEE.

12 CHAIRPERSON HILL: Okay. Ms. Giordano, what's  
13 your next question?

14 MS. GIORDANO: That's it. Thank you.

15 CHAIRPERSON HILL: Okay. Ms. Westby, do you have  
16 any questions for the Office of Planning? Okay. No, all  
17 right. Let's see. Mr. Young, who's here wishing to testify?

18 MR. YOUNG: We have five people, although I'm not  
19 sure if Ms. Ferster is representing two people. I'll just  
20 bring her on. And if she wants her people to testify, I'll  
21 bring them up.

22 CHAIRPERSON HILL: Okay. Maybe they are  
23 testifying as individuals. But go ahead and I guess bring --  
24 well, I know Ms. Ferster is there. I can see here. And then  
25 who else do I got, Mr. Young, because I'm going to write the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 names down.

2 MR. YOUNG: Robert Sharkey.

3 CHAIRPERSON HILL: Okay. And maybe, Mr. Young,  
4 I'm sorry. I don't know how many people you can bring in.  
5 I guess bring them all in.

6 MR. YOUNG: Yeah, bring them all in.

7 CHAIRPERSON HILL: For the rest of the people that  
8 are on this call, I'm just taking public testimony. There's  
9 no need for cross talk. Thank you. Who's the next person  
10 after Sharkey, Mr. Young.

11 MR. YOUNG: Gene Godley.

12 CHAIRPERSON HILL: Okay.

13 MR. YOUNG: And Alan Savada, and the last person  
14 is John Fox.

15 CHAIRPERSON HILL: Fox? Okay, great. Ms.  
16 Ferster, can you hear me?

17 MS. FERSTER: Mr. Chairman, I'm actually here for  
18 the next case which where I represent a party to because you  
19 have denied my clients in this case party status. I'm not  
20 going to take away from their very limited time to present  
21 their testimony as persons in opposition.

22 CHAIRPERSON HILL: Okay, no. That's great. Okay,  
23 great. So you're not here for this case. Hold on.

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: Hold on. Mr. Imamura?

1 COMMISSIONER IMAMURA: Yes, Mr. Chairman. I have  
2 a hard stop at 3:00, but I will continue to review the  
3 record. And if I may, there's actually a request. So I did  
4 request the grading plan and the plan that Ms. Giordano had  
5 pointed out was just the site plans. So if there's a chance  
6 they can get the grading plan into the record, that would be  
7 really helpful.

8 CHAIRPERSON HILL: Ms. Giordano, did you hear  
9 that? Okay. All right. So Ms. Ferster is not in this case,  
10 Mr. Young. You can allow her to go. Is it Shakey? Shakey?  
11 Oh, Sharkey, Sharkey. Mr. Sharkey, can you hear me? Mr.  
12 Sharkey, can you hear me?

13 MR. SHARKEY: Yes, I can.

14 CHAIRPERSON HILL: Maybe you got your computer and  
15 your phone on at the same time because there's an echo.

16 MR. SHARKEY: No, I don't have my phone on, just  
17 my computer.

18 CHAIRPERSON HILL: Okay.

19 MR. SHARKEY: This is the first time in a  
20 proceeding there's been an echo.

21 MR. YOUNG: It looks like you're logged in  
22 multiple times. So if you have more than one Webex open,  
23 you'll need to exit out of one of them.

24 MR. SHARKEY: As I said, I only logged in once.  
25 So I'm afraid if start closing, I'll lose you. But I'll

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 close.

2 CHAIRPERSON HILL: Mr. Sharkey, can you hear us?  
3 Why don't you call in the phone number. Can you see the  
4 phone number or can I tell it to you?

5 MR. SHARKEY: I can, and the echo is gone.

6 CHAIRPERSON HILL: Oh, great, perfect. Even  
7 better. All right, Mr. Sharkey. Can you introduce yourself  
8 for the record, please?

9 MR. SHARKEY: Yes. I'm not on video. Is that  
10 okay?

11 CHAIRPERSON HILL: That's okay.

12 MR. SHARKEY: My name is Robert Sharkey. My wife  
13 and I reside at 4514 Foxhall Crescent within 200 feet of the  
14 property in question, 4509. We have lived 14 years at that  
15 address and previously -- you have your hand up?

16 CHAIRPERSON HILL: Yeah, thanks, Mr. Sharkey.  
17 What I was going to do is I know that you and your wife, I  
18 believe, were the ones that had applied for party status.

19 MR. SHARKEY: Along with Gene and Patricia Godley.

20 CHAIRPERSON HILL: Gene and Patricia Godley.  
21 Okay. All right. So what I'm trying to do is you each will  
22 get three minutes as a member of the public. And so I'm  
23 trying to do this in a way that might -- I mean, the  
24 PowerPoint is in the record. And so that's easy enough for  
25 the Board to kind of refer to. But I'm not sure if that's

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 the one that you submitted or not.

2 MR. SHARKEY: The PowerPoint is Exhibit 75, and  
3 it would be helpful if that was brought up for reference, not  
4 only by me but also by Mr. Godley and Mr. Fox.

5 CHAIRPERSON HILL: Right. So you have your wife  
6 there. Is that correct?

7 MR. SHARKEY: She's present with me, yes.

8 CHAIRPERSON HILL: Okay. That's fine. All right.  
9 So I'm going to claim you guys are both public witnesses.  
10 So I'm going to put six minutes on the clock for you. And  
11 then Mr. Young, if you can pull up Exhibit --

12 MR. SHARKEY: 75.

13 CHAIRPERSON HILL: Thank you, 75. And I won't  
14 start until the exhibit comes up. And then you can -- give  
15 me a second. Or I should say give Mr. Young a second.

16 MR. YOUNG: I have it ready. Just I need to start  
17 the clock before I pull it up.

18 CHAIRPERSON HILL: Oh, yeah, yeah. Okay. Go  
19 ahead and pull it up. I have my own timer over here too.  
20 Okay, Mr. Godley. You can say next slide whenever you want.  
21 And you can kind of, like, go through this. Okay?

22 MR. SHARKEY: That would be true for me too,  
23 Sharkey?

24 CHAIRPERSON HILL: No, I'm sorry. Sharkey,  
25 Sharkey. I apologize.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 MR. SHARKEY: That's all right.

2 CHAIRPERSON HILL: Go ahead.

3 MR. SHARKEY: So I have introduced myself, and I  
4 wanted to thank you, Mr. Hill, and the Board for this  
5 opportunity to speak. As you alluded to, my and my wife's  
6 application for party status was denied because apparently  
7 it was filed late. Without belaboring the point, it would  
8 ask that the responses to the opposition which were stricken,  
9 Exhibit 70, 71, 72, and 73 be admitted into the record as  
10 evidentiary submissions made during the presentations by me  
11 and Mr. Godley.

12 CHAIRPERSON HILL: Let me get back to that. I  
13 don't want to take away from your time. And just go ahead  
14 get us through your presentation.

15 MR. SHARKEY: Sure. In addition to Mr. Godley,  
16 Patricia and Gene Godley and my wife and myself, Andy Wong,  
17 an abutting property owner has also filed objections to the  
18 application. That's Exhibit -- BZA Exhibit 21. And it's  
19 already been stated that the Office of Planning has not made  
20 a recommendation.

21 And the ANC 3D rejected the application primarily  
22 on the basis of the willful destruction of the heritage tree  
23 done within days of the new D.C. legislation which would in  
24 addition to fines for the violation of the law restrict a  
25 developer from even getting a building permit for violating

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the law for years. The representations that Mr. Zumot and  
2 Penguin were unaware of the issues dealing with this property  
3 of course are false. We, that's the opponents, have never  
4 opposed construction on the site.

5 And the only objections we have had and have now  
6 is that the construction must be in accordance with the  
7 recorded bylaws and covenants covering our Foxhall Crescent  
8 community. As Ms. Westby so eloquently pointed out, our  
9 community is designed by Arthur Cotton Moore after the royal  
10 Crescents in Bath, Wales, England. And in connection with  
11 that, not only are there architectural restrictions on  
12 development, but there are also restrictions dealing with the  
13 construction or invasion of the perimeters around the  
14 property. There are two perimeters.

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: Mr. Sharkey, you've gone  
17 through three minutes. I just want to let you know. Like,  
18 do you want to go through these slides or not?

19 MR. SHARKEY: Yes, Slides 3 and 4, I was going to  
20 call up next because those slides will reflect -- Slide 3 is  
21 a picture of the Foxhall Crescent 1. And you can see in the  
22 arrow at the right-hand corner pointing to the property in  
23 question. The blackened area around the properties, that is  
24 the perimeters.

25 And there are two perimeters, the exterior

1 perimeter and the interior perimeters. Ms. Westby alluded  
2 to the fact that the interior perimeters sometimes have been  
3 invaded. Under our bylaws, that's permissible with board  
4 approval.

5           However the exterior perimeter which we're talking  
6 about, and that's the perimeter that goes nearest to the  
7 adjoining property owners. That's a 30-foot perimeter which  
8 is supposed to remain undeveloped. Going to Slide 4, Slide  
9 4 is a picture of the Mautlag plan.

10           That Mautlag application in 2014 was eventually  
11 approved by the BZA. But as you'll see in that case, 18708,  
12 it was done on conditions. And the condition was that the  
13 Mautlag house was going to be reduced in size and there was  
14 going to be heightened stormwater management provisions.

15           At that time in 2017 or the application by Mautlag  
16 was before the heightened regulations dealing with stormwater  
17 management was not applicable. Since then and it's covered  
18 in this application, disturbance of land over 5,000 square  
19 feet is covered by very, very strict regulations. And our  
20 only interest now is to make sure that the Department of  
21 Energy and Environment pay strict attention to these  
22 regulations and strictly enforces them.

23           But of particular importance, you'll see on  
24 Exhibit 4 there is a road that goes from the left which is  
25 the access road to the main Foxhall Street, that road goes

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 through the property. And the reason for the importance of  
2 that is under the recorded bylaws and covenants of the  
3 association, that street is covered by an easement. And like  
4 all other streets in the community, the residents have an  
5 easement of use, can use those streets. This would be the  
6 only property if that was eliminated where that easement is,  
7 for some reason, eradicated.

8 CHAIRPERSON HILL: Mr. Sharkey?

9 MR. SHARKEY: Yes?

10 CHAIRPERSON HILL: Mr. Sharkey, I'm going to let  
11 you know you're over six minutes now, and I'm going to give  
12 you another minutes.

13 MR. SHARKEY: So the bottom line here is if the  
14 original application by Zumot in November 2021 was adhered  
15 to where he represented that he intended to a development  
16 that was consistent with the relief in 18708, we would be  
17 wholly in support of it because that decision, one, preserved  
18 the undisturbed perimeter and had no effect on the easement  
19 whereas what is being proposed here by the developer. And  
20 that's shown on Slides 5 and 6, the impact on those two which  
21 as Mr. Godley will explain has serious implications dealing  
22 with access to the property by emergency vehicles. There's  
23 no parking that would be available to this property because  
24 all of the other streets and parking available, they are  
25 owned by the abutting property owners. And the only street

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that this property would have for that purpose would be this  
2 access street through the property done in accordance with  
3 the bylaws.

4 CHAIRPERSON HILL: Okay. All right.

5 MR. SHARKEY: Thank you very much for your  
6 consideration.

7 CHAIRPERSON HILL: Thank you, Mr. Sharkey, and  
8 thank you for your time. I know it's tough to do it in short  
9 time. Mr. Godley, are you there? Mr. Godley, can you hear  
10 me?

11 MR. GODLEY: Yes, I'm sorry. I think it would be  
12 preferable if Mr. Fox would go before me.

13 CHAIRPERSON HILL: Mr. Fox? Okay, sure. Mr. Fox,  
14 can you hear me? Mr. Godley, if you'd just mute your line  
15 for me, sir, if you don't mind. Thank you. Mr. Fox, can you  
16 hear me?

17 MR. FOX: Can you hear me?

18 CHAIRPERSON HILL: Yes.

19 MR. FOX: Okay, good. Thank you very much.

20 CHAIRPERSON HILL: Would you introduce yourself  
21 for the record, please, sir?

22 MR. FOX: My name is John Fox. I live with my  
23 wife at 4504 Foxhall Crescent in the District.

24 CHAIRPERSON HILL: Okay, great. So as a member  
25 of the public, you'll have three minutes to give your

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 testimony. You can begin whenever you like.

2 MR. FOX: I'll begin now. I have two issues which  
3 means I have a minute and a half each. One is on the  
4 heritage tree. The applicant's willful destruction of this  
5 tree on the lot has raised grave concerns by multiple D.C.  
6 agencies in light of completely unrepentant post hoc  
7 justifications for this intentional disregard for the law  
8 were made by the applicant.

9 We believe it is necessary to set the record  
10 straight here. Last August when Mr. Zumot met with the board  
11 of directors, he said he was going to build a house just as  
12 called for by Arthur Cotton Moore, same type, same location.  
13 A complication came up in October when the D.C. Department  
14 of Transportation Urban Forestry Division denied Mr. Zumot's  
15 request for removal of a tree that would be necessary to  
16 build the house in the location originally planned.

17 This was not a problem in 2014 for Mautlag  
18 application because the law did not exist then. Mr. Zumot  
19 appealed this denial permission to the mayor and requested  
20 support from the HOA board. The majority of the board was  
21 unwilling to ask the mayor to violate D.C. law.

22 Their discussions with Mr. Zumot about possible  
23 alternative locations. He never made a clear specific  
24 request in this regard to the board. Instead, he took the  
25 law essentially into his own hands and cut the tree down

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 February 24, 2022, five days before the D.C. Council approved  
2 emergency legislation that would allow a stop work order to  
3 prevent such a cut down.

4           There is a legal process that exists for  
5 challenging determination of D.C. arborist views. And Mr.  
6 Zumot chose instead to pay a large fine and not bother with  
7 following the rule of law. D.C. Council now has enacted new  
8 legislation, permanent legislation which prohibits developers  
9 from this sort of act and would prevent them from further  
10 development for a period of years.

11           Mr. Zumot's action in cutting down the heritage  
12 tree and essentially clearing the lost by cutting the other  
13 trees without HOA board approval as required by our bylaws  
14 which demonstrates that Mr. Zumot's disregard for the rule  
15 of law when it's inconvenient for him which I believe the BZA  
16 should take due notice. With the heritage tree now removed,  
17 of course, Mr. Zumot can file his original commitment made  
18 to the board last August to build as called for by Arthur  
19 Cotton Moore. But for some reason, he doesn't do this.

20           Regarding the easement, the thing the proposal  
21 calls for constructing a large house directly across the  
22 easement running through 4509 as discussed by Mr. Bob  
23 Sharkey. There is a recorded bylaw to this effect. Our  
24 bylaws are recorded and there's a D.C. court decision saying  
25 that they should be given due consideration in zoning

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com



1 decisions like give the citation later.

2           The basis for the easement that we have for 4509  
3 dates back to a covenant signed by the owners of the property  
4 in 1979, a multiple building covenant which is recorded from  
5 the Office of Deeds, D.C. The covenant states that it is  
6 constituted to run with the land as provided by law and shall  
7 be binding on all parties and persons claimed for the benefit  
8 and limitations on future owners of the property. The  
9 covenant also says that this provides for the establishment  
10 of easements which includes 4509 as showing in Exhibit D on  
11 the document.

12           CHAIRPERSON HILL: Mr. Fox, you're at three  
13 minutes 30 just to let you know.

14           MR. FOX: I appreciate your warning. Let me just  
15 say that the easements of this covenant are perpetual and  
16 should only be extinguished with the written consent of the  
17 District of Columbia. To my knowledge, there's no evidence  
18 to the land records that this easement has been extinguished.

19           In terms of the easement issue -- I'm sorry -- the  
20 easement issue, Penguin proposal calls for establishment of  
21 a large house directly across -- this time I'm confused.  
22 I've lost track of my papers. In terms of the easement, this  
23 dates back as I said. And I think we've done that.

24           If this easement is not recognized, then  
25 presumably none of the easements across our other streets are

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 recognized. And therefore, the owner of 4509 no longer has  
2 access to his property because if the easements don't exist,  
3 they don't exist. I guess that's it. Thank you.

4 CHAIRPERSON HILL: Okay. All right. Thank you  
5 for your testimony. Okay. So Mr. Godley, you would like to  
6 go next. Can you hear me?

7 MR. GODLEY: I can hear you if you can hear me.

8 CHAIRPERSON HILL: Yes. Can you introduce  
9 yourself for the record, please, sir?

10 MR. GODLEY: Yes. I'm Gene Godley. My wife,  
11 Patricia, and I live at 4513 Foxhall Crescent which is on the  
12 northwest corner of 4509. We're downhill. The funnel  
13 funnels into our property. And we share about 40 feet of  
14 border with 4509.

15 CHAIRPERSON HILL: Okay, Mr. Godley. I'm going  
16 to go ahead and start the clock, and you'll have three  
17 minutes to give your testimony.

18 MR. GODLEY: Thank you. I want to pick it up  
19 where John left off just to explain that the structure of  
20 Foxhall Crescent is totally private. No public streets. No  
21 property in common. We're own the street in fee simple to  
22 the middle. So we share it and we have other homeowners buy  
23 this covenant access over our property. In turn, they're  
24 contributing to the street.

25 This property by virtue of changing and if you

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 look at Slide 5, the Penguin application, by changing and  
2 marking the easement up through their property, not only  
3 doesn't accommodate any parking. But by doing that, they  
4 essentially push all of their parking downhill to other  
5 homeowners. And if the easement is not applicable to them  
6 as John said, they also don't have reciprocal access over our  
7 street. And so they're land locked.

8           So there's a confusion about that easement. The  
9 parking is very much a concern to me because it is already  
10 congested as you can see on Slides 9 through 12 where the  
11 cars are parked. And if we accommodate four construction  
12 vehicles in that space, I am concerned that parking --  
13 handicap parking for my spouse who needs a parking space for  
14 EMS access and her own access may be blocked. Therefore, I  
15 would hope any approval will be conditional, not impeding our  
16 parking.

17           I also appreciate the Board's consider with the  
18 stormwater runoff which is probably the major issue. It was  
19 in the Mautlag which is was and he never satisfied the Board.  
20 He could never satisfy DOEE in seven years that he could have  
21 an acceptable plan. I'm concerned because right now there  
22 are berms on that property that guide the water away from my  
23 property down to the drain.

24           Under the late stormwater management plan that  
25 we've been able to see, I can't see that those would be

1 accommodated. And it looks like the berms would be removed.  
2 So even if water is retained on the property volumetrically  
3 to the satisfaction of DOEE, it may be diverted. So whatever  
4 runoff there is will come through my property.

5 And as Irving stated, his property and my property  
6 are most exposed. We're actually exposed to two different  
7 funnels. My funnel comes off of 4509, and I think that is  
8 a concern.

9 We have other concerns, the size of the house.  
10 It is 67 percent larger than the footprint of Arthur Cotton  
11 Moore. That looks like -- we've mentioned, it's going to  
12 destroy the character of the neighborhood. And simply  
13 imitating the facade architecturally does not make it in  
14 character with the neighborhood.

15 The scale is large as well as the location. Now  
16 that we've lost a heritage tree, I see no reason why he  
17 doesn't put it back to the Arthur Cotton Moore site which was  
18 consciously done. Environmental impact we all know, Bob  
19 covered the invasion into the undisturbed perimeter which  
20 violates or covenants.

21 And in addition to that, with the loss of all the  
22 heritage tree and the rest of the trees, it really sets off  
23 the Cotton Moore plan back considerably. And our covenanted  
24 and coveted undisturbed perimeters lost. And with that, Mr.  
25 Chairman, I appreciate your time and I hope I focused on

1 relevant issues not personalities or narratives. Thank you.

2 CHAIRPERSON HILL: Thank you. Thank you, Mr.  
3 Godley. That was very helpful. Thank you. Mr. or Ms. --  
4 is it Savada?

5 MR. SAVADA: Savada.

6 CHAIRPERSON HILL: Savada?

7 MR. SAVADA: Yes.

8 CHAIRPERSON HILL: Can you hear me?

9 MR. SAVADA: I can hear you.

10 CHAIRPERSON HILL: Did you introduce yourself for  
11 the record, please?

12 MR. SAVADA: Yes, I'm Alan Savada. I live at 4519  
13 Foxhall Crescent. I'm one lot away from where the building  
14 will be, and I am presently -- actually, looking over that  
15 lot. It's right over there. I live here with my husband.  
16 I'm probably one of the oldest residents, here 30 years next  
17 week. And our son who is also of voting age is a resident  
18 here.

19 CHAIRPERSON HILL: Mr. Savada, well, first of all,  
20 congratulations on being in the District as long as you have.

21 MR. SAVADA: I've been in the District 43 years,  
22 but I've been in the house 30.

23 CHAIRPERSON HILL: I've been in the District not  
24 that long but pretty darn close to that long. All right.  
25 Mr. Savada, you'll get three minutes as a member of the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 public, and you can begin wherever you like.

2 MR. SAVADA: I just want to state that Mr. Zumot  
3 made it very clear before he tore down that tree that he was  
4 going to do it no matter what, no matter what it cost, no  
5 matter what the damage, no matter what. It was very clear.  
6 He even said that to the press and the news that covered this  
7 whole thing.

8 That being the fact and the fact that he says, I  
9 don't care what the fines, I'll pay the fines. Great. The  
10 problem was we had noise coming out of here starting at 6:00  
11 a.m. every morning, beep, beep, beep, beep. We still get it  
12 from the house at the corner of 45 of Foxhall Road and  
13 Foxhall Crescent. This is going on constantly in this area.

14 And nobody who does construction in this area  
15 observes noise laws, nobody, nobody. Well, I do because I  
16 don't want anyone coming in my house before 9:00 o'clock.  
17 So fact is if he doesn't care fines, if he doesn't care about  
18 laws, if he doesn't care --

19 MS. GIORDANO: Chairman, you objected to this  
20 personality, criticism on the part of Ms. Westby. And this  
21 is, like, far beyond that.

22 CHAIRPERSON HILL: Okay, Ms. Giordano. Mr.  
23 Savada, I was trying to listen to what you are saying in  
24 terms of the beginning. I know that people have an opinion  
25 as to what happened with the heritage tree. But I will agree

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 with Ms. Giordano. If you could stick to not mentioning  
2 names or personalities and try to --

3 (Simultaneous speaking.)

4 MR. SAVADA: Fine.

5 CHAIRPERSON HILL: -- issues.

6 MR. SAVADA: People have a complete disregard for  
7 the law should not be allowed to do construction at their  
8 will. My biggest problem is that when we have these issues,  
9 we have nowhere to go to complain about them. You can't call  
10 the police a 6:00 a.m. truck backing up and offloading  
11 material is gone at 6:15 and it takes an hour or two for the  
12 police to come out.

13 And it's not an urgent need. It's not important.  
14 So we don't have zoning policy. The zoning agent is not  
15 going to come out for two weeks to see what's been done. And  
16 they're not going to come at 5:00 or 6:00 in the morning when  
17 the trucks are backing up and offloading and blocking people.

18 So I am dead set against anyone who had a complete  
19 disregard for the law to begin with which we know this  
20 person. Therefore, I am against the construction and a  
21 massive site that would be right here, completely against the  
22 rules that were set up 40 years ago when this association  
23 made its rules for the houses to be of certain sizes. And  
24 I really don't want a giant eyesore in my backyard. I'm  
25 finished in less than three minutes. It's really disgusting

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 that people do whatever they want around here.

2 CHAIRPERSON HILL: Okay. All right. Thanks, Mr.  
3 Savada. Okay. All right. Okay. Well, thank you all to the  
4 witnesses. And I guess if you want to just wait in the  
5 waiting room, Mr. Young. If we have anything from anybody,  
6 we will go back to the witnesses. All right. Thank you, Mr.  
7 Young. If you can excuse everyone.

8 MR. SHARKEY: Mr. Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. SHARKEY: This is Robert Sharkey. I made a  
11 motion for inclusion in the record of the responses to  
12 opposition. And I believe you deferred that decision.

13 CHAIRPERSON HILL: Thanks. It wasn't -- and I  
14 appreciate it. It wasn't necessarily a motion, Mr. Sharkey.  
15 But I mean, I'd actually going outside my attorney. So I  
16 don't know what it technically was. I thought -- Mr. Moy,  
17 is that what we addressed earlier?

18 MS. GIORDANO: Yes, it was in violation of the  
19 rules. It was --

20 CHAIRPERSON HILL: Give me one second.

21 MS. GIORDANO: -- in response to --

22 CHAIRPERSON HILL: Ms. Giordano?

23 MS. GIORDANO: Yeah.

24 CHAIRPERSON HILL: It'd be helpful if you turn on  
25 your camera --



1 MS. GIORDANO: Okay.

2 CHAIRPERSON HILL: -- just so I can see you raise  
3 your hand or something. I mean, thanks. Right. So there  
4 was Mr. Moy. There was a request for party status which we  
5 denied. Then there was opposition to party status which was  
6 put forward by Ms. Giordano which was in violation of Y  
7 404.9. And then now what -- Mr. Sharkey, what are the other  
8 things that was stricken from the record that you're speaking  
9 about?

10 MR. SHARKEY: The responses to the objections, 70  
11 through 73.

12 CHAIRPERSON HILL: Right. The responses to the  
13 objective of the opposition of the party status request?

14 MR. SHARKEY: Yes.

15 CHAIRPERSON HILL: Yeah. So --

16 MR. SHARKEY: I ask that be included --

17 CHAIRPERSON HILL: Right. Mr. Sharkey --

18 MR. SHARKEY: -- as part of the evidentiary  
19 record.

20 CHAIRPERSON HILL: I got you. And thank you, Ms.  
21 Giordano. Give me a second. Mr. Sharkey, that can't be  
22 included as part of the record because we've already stricken  
23 the opposition to the party status request. That wasn't  
24 supposed to be there anyway. So your response to that  
25 response, it's moot.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 MR. SHARKEY: But during the hearing in essence  
2 I'm offering that to the record.

3 CHAIRPERSON HILL: Yeah, okay. Sorry, Ms.  
4 Giordano.

5 MS. GIORDANO: It was stricken because it was in  
6 violation of the rules. So he's --

7 CHAIRPERSON HILL: Right.

8 MS. GIORDANO: -- just trying to put it in another  
9 way now.

10 CHAIRPERSON HILL: It doesn't matter. I mean, Ms.  
11 Giordano, again, we decide what's the rules, right? Okay.  
12 And the attorneys help me decide what the rules are as far  
13 as the Board is concerned, right? So Mr. Sharkey, we're not  
14 going to put it in the record because what you're replying  
15 to wasn't supposed to be in the record. So we already took  
16 that out. So I hope that explains that.

17 MR. SHARKEY: Well, not to belabor the point, my  
18 motion and my request is that the substance of those papers  
19 be made part of the record because they, in essence, reflect  
20 what was relevant for their testimony.

21 CHAIRPERSON HILL: I understand. So Mr. Sharkey,  
22 just for the regulations, first of all, you can only make a  
23 motion if you're a party and you're not a party. But the  
24 items that you're speaking to have already been stricken from  
25 the record as I've explained because they were replying to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 something that wasn't supposed to be in the record, I think.

2 Right now, I'm getting something else. Hold on.

3 Okay. Now I'm going to ask legal. So Ms. Nagelhout, what  
4 is that you think Mr. Sharkey is trying to do?

5 MS. NAGELHOUT: I haven't reviewed any of this.  
6 But it sounds to me like he submitted something as a reply  
7 to opposition to party status which is not permitted. So it  
8 was stricken.

9 But he's also asking essentially to submit the  
10 same information as a person in opposition which I think the  
11 Board could access. The record is still open. If he wants  
12 to reformat his filings and submit it as a person in  
13 opposition, I think you could accept it.

14 CHAIRPERSON HILL: Okay. So then that's again now  
15 -- again, if we were in person and people came to the hearing  
16 with their exhibits, that's when we would take them, correct?

17 MS. NAGELHOUT: Yes.

18 CHAIRPERSON HILL: Okay. All right. So Mr.  
19 Sharkey, can you hear me?

20 MR. SHARKEY: Yes, I can.

21 CHAIRPERSON HILL: If you want to resubmit those  
22 as a person in opposition and not in response to something  
23 that we've already stricken from the record, you can go ahead  
24 and do so, unless my fellow Board Members have any issues.  
25 And if so, please raise your hand. Okay. Okay, Mr. Sharkey.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 Okay?

2 MR. SHARKEY: Thank you very much.

3 CHAIRPERSON HILL: Okay. I'm going to excuse out  
4 all of the witnesses.

5 MS. WESTBY: May I make a request, please?

6 CHAIRPERSON HILL: Is that Ms. Westby?

7 MS. WESTBY: Most of what you just heard from  
8 these witnesses is false. I tried to put the facts in my  
9 testimony. But we didn't have time. I would like to request  
10 -- I typed them up. They're in bullets. Could I just submit  
11 my remarks that I had prepared to you since I didn't get to  
12 go through and say them all, provide you the information on  
13 several of those points?

14 CHAIRPERSON HILL: If you want to submit something  
15 to the record, I think we will leave the record open for  
16 that, Ms. Westby. Let me just wait until the end that we get  
17 from the Board Members. Ms. Giordano is going to have an  
18 opportunity as the applicant to have rebuttal. So she'll  
19 have a chance to rebut anything that was said.

20 And then so that's what we're going to do in a  
21 minute. I guess, Ms. Giordano, like, I know that this has  
22 gone on for a while. You came in. I guess you're kind of  
23 new, right? Or have you been with this for a little while?  
24 Right.

25 So I mean, this is kind of convoluted. And so I

1 know, Ms. Giordano, you've been with us before. I mean,  
2 again, we're here for zoning issues and zoning laws and  
3 zoning criteria. And you're here. And I know you know that  
4 we know this, right? And we follow all the zoning issues and  
5 all of the other things that are not in our purview are  
6 things we don't really necessarily pay attention to.

7           However, there are things that sometimes cross  
8 back and forth such as construction management agreements,  
9 easements, and things such as that, right? So there are  
10 things that I think some of us might want a little bit more  
11 clarification on prior to us coming to a decision, right?  
12 And so I'm just kind of throwing that out there for now.  
13 Okay.

14           So I'm going to turn quick to my Board Members.  
15 Do you have any questions for the applicant at this point?  
16 Okay. Because I know we're going to wait -- I think we're  
17 going to -- I don't know about you guys. I'm still  
18 interested in whatever DOEE has to say, right?

19           And I still don't have anything from the Office  
20 of Planning. It sounds like I might be getting something.  
21 I'm not sure, Mr. Jesick, as to what -- I would like kind of  
22 a general understanding as to if you don't think anything is  
23 ever going to come, then that's a different situation from  
24 maybe one day we'll get somewhere. Okay? So that's what I  
25 want to -- just give me a second, Mr. Jesick. I'm

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 processing.

2           So Ms. Giordano, if you want to go ahead and give  
3 your rebuttal, please do. Okay? And what I'd like to hear  
4 from -- what I'd like into the record at some point in time  
5 is I guess I'd like to hear something about -- I'm a little  
6 confused about this tree thing still. And I don't know what  
7 I think about it yet or how I feel about it.

8           And then any kind of thing that you might have in  
9 terms of the construction management agreement or anything  
10 that you might be trying to put together that might help with  
11 construction if this were actually to move forward. And then  
12 I guess I don't know what my fellow Board Members -- is there  
13 anything else you guys want? Okay. So I must be the only  
14 one that's confused. All right.

15           MEMBER BLAKE: Just the stuff that Dr. Imamura had  
16 asked for.

17           CHAIRPERSON HILL: Right. The grading plan,  
18 right? And then now we -- Ms. Giordano, you put something  
19 in the record from DOEE. But it's not a final. I haven't  
20 seen it yet. But I assume that's going to be in the record.

21           The record is going to be left open for some  
22 testimony from Ms. Westby because it was a little bit  
23 disjointed. And then also we're going to leave the record  
24 open for Mr. Sharkey and his items that he had requested.  
25 So let's see. Okay. So Ms. Giordano, would you like to give

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 us your rebuttal?

2 MS. GIORDANO: Okay. Just a few points. Much of  
3 what you have heard is not relevant to zoning. But it has  
4 been raised by the opposition and it is confusing, I'm sure.  
5 First of all, the homeowners association has no authority to  
6 restrict this site.

7 There are no easements on this property that  
8 create a road back through a lot that has since been  
9 developed by the German Embassy. There's no authority for  
10 the homeowners association to approve grading or trees. And  
11 along those lines, I would like to ask if I can incorporate  
12 some rebuttal remarks for Ms. Westby because she is the  
13 expert on the homeowners association and what their authority  
14 is.

15 The opposition has put forth a whole lot of  
16 allegations about that. And they're just not relevant. So  
17 I would ask if I could cede some of my time to her.

18 CHAIRPERSON HILL: Sure.

19 MS. GIORDANO: Okay.

20 CHAIRPERSON HILL: For rebuttal you mean? Sure,  
21 go ahead.

22 MS. GIORDANO: Thank you.

23 CHAIRPERSON HILL: Ms. Westby, if you can, try not  
24 to name names.

25 MS. WESTBY: Okay. So back in 1981, there was a

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 first amendment to the Foxhall Crescent. And the first  
2 amendment removed lot 4511. The first amendment also removed  
3 tree restrictions and grading restrictions from lot 4509.

4 That first amendment was signed by every single  
5 homeowner. Every signature of a homeowner was notarized.  
6 And that was signed by every mortgage holder to Foxhall  
7 Crescent. It was appropriately recorded in the land records.

8 The second amendment was an amendment that kind  
9 of created the basic structure of the bylaws we have today.  
10 The third amendment recognized the first amendment and second  
11 amendment and their land record numbers. And it also said  
12 that it was the bylaws for 1994 is when the third amendment  
13 occurred.

14 But that was just simply for ease of putting  
15 everything in one place. It was nonsubstantive. We also  
16 have provision within our bylaws, though, that say you cannot  
17 take away any homeowners right unless you -- it says no  
18 amendment or modification of these bylaws impairing or  
19 affecting such rights, priorities, remedies, or interest of  
20 a mortgagee should be adopted without the prior written  
21 consent of such mortgagee.

22 The removal of the restrictions on 4509 was a  
23 right and interest of the 4509 property owner. And the  
24 granting of this right was signed by all owners and mortgage  
25 holders. It cannot be removed just because it's not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 specifically stated in the 1994 bylaws.

2           So that is a lot of detail to say that for 4509,  
3 our bylaws do not have any control over trees or grading.  
4 Number two is as Ms. Giordano said, there is not existing  
5 road there now. It's a dirt lot.

6           And what Mr. Sharkey has put forward about not  
7 having other members have access to it is just false. We  
8 could walk up the driveway to that house like we could walk  
9 up the driveway to anybody's house. And so there are some  
10 of these issues that have been raised about grading and trees  
11 and easements and roads simply don't exist.

12           There is no easement on any of the owner's --  
13 three prior owners of this 4509 lot. There's no easement on  
14 their land records. We have checked even today. And so that  
15 is a full clean title. There's no easement on those lots.  
16 So maybe this clarified a few of the points.

17           CHAIRPERSON HILL: Okay. All right. Thanks. Ms.  
18 Giordano, if you could put something into the record that  
19 just speaks to this easement issue, that there's nothing  
20 about this property that has anything to do with an easement.  
21 Okay?

22           MS. GIORDANO: I'd be happy to put the deeds on  
23 the record.

24           CHAIRPERSON HILL: Okay. Thank you. So that's  
25 one.

1 MS. GIORDANO: And I also -- I'd like to comment  
2 on the DOEE and DDOT issues. I just want to say that it's  
3 entirely unreasonable to hold up a decision in this case  
4 based upon DOEE comments. It's unprecedented. I mean, I've  
5 been doing this for over 30 years. I've just never had that  
6 issue before.

7 And as far as Urban Forestry goes, I think we all  
8 know that DDOT is a bit of a different agency in the District  
9 of Columbia. And it's hard to make them do anything that  
10 they don't want to do. And I have no idea what a reasonable  
11 time frame would be if we would ever get any comments from  
12 Urban Forestry.

13 And again, we have expertise on the board about  
14 landscape design and tree protection. And typically, that's  
15 the way that the review of those kinds of issues has been  
16 handled in the past.

17 CHAIRPERSON HILL: Okay. All right. Okay. All  
18 right. Okay. Does anybody have anything else? All right.  
19 Mr. Jesick, are you there? Thanks. So you have everything  
20 except for a final report from DOEE and a final report from  
21 Urban Forestry Division. Is that correct?

22 MR. JESICK: Yes, that's what it boils down to.

23 CHAIRPERSON HILL: Those are those two items. So  
24 you don't know when you're going to get this -- like, is this  
25 on the applicant to try to collect this information for you?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. JESICK: Well, DOEE are DDOT are in the  
2 process of reviewing those plans. The timeline that I was  
3 given is similar to what Mr. Oliver stated earlier, three to  
4 four months perhaps.

5 CHAIRPERSON HILL: Yeah, so Mr. Jesick, and I  
6 understand you're telling me this is a unique situation. I  
7 think we're going to chew on this for a while. I'm not  
8 really sure how unique this is.

9 I mean, this is the first time -- I've been doing  
10 this as long as Ms. Giordano. And apparently I've been doing  
11 this for seven years which is not a long time, but thousands  
12 of cases. And I haven't waited for a report from Office of  
13 Planning because of another agency within the District. And  
14 also it seems like another agency in the District is somehow  
15 deciding what the BZA should do.

16 And so I'm a little confused as well. So you, Mr.  
17 Jesick, and I don't know what we're going to do here at the  
18 end because I really don't know. But you, Mr. Jesick, you're  
19 saying you don't think I'm going to get anything from the  
20 Office of Planning for three to four months?

21 MR. JESICK: Well, we would wait for -- as I  
22 stated in my report, we would wait for those agencies to  
23 weigh in. And then we could give our opinion as to whether  
24 the criteria, 305.5, had been met.

25 CHAIRPERSON HILL: Okay. I got you. All right.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 Okay. I'm looking at my fellow Board Members. Okay. Ms.  
2 Giordano, are you finished?

3 MS. GIORDANO: Yes, I am.

4 CHAIRPERSON HILL: Okay, thanks. So now I'm  
5 looking at my fellow Board Members. And Ms. Giordano and Ms.  
6 Westby, I'm not talking to you guys. I'm trying to figure  
7 out what my Board Members want to do.

8 I don't know whether to put this on for a  
9 continued hearing. If we get something back from DOEE, wait  
10 and just see. Think about a decision. I'll give you a  
11 second, Mr. Blake. Think about a decision or put it on for  
12 decision which is fine. And Mr. Blake seems to have an  
13 opinion. So go ahead, Mr. Blake.

14 MEMBER BLAKE: A question for Mr. Jesick. We've  
15 talked about DOEE, but did you mention the DDOT? That had  
16 the -- from what I can recall of the question, that had less  
17 certainty on it than the three, two, four months or whatever  
18 with DOEE. Would you require both? And if so, do you have  
19 an indication of what you think DDOT Forestry timing might  
20 be?

21 MR. JESICK: I don't have a number for their  
22 timeline. As the applicant stated and what they stated to  
23 me was they were waiting for the issue of the finding to be  
24 resolved. And I think the timing of that is very uncertain.

25 Now DOEE in the comments which Ms. Giordano is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 going to submit to the record in their first round of review  
2 for the stormwater plan, they requested an approved tree  
3 preservation plan as part of their review. So they would not  
4 be able to complete -- DOEE would not be able to complete  
5 their review before DDOT completes its review.

6 MEMBER BLAKE: So in other words, you wouldn't be  
7 able to opine on this either way until both were in. Is that  
8 what you're saying?

9 MR. JESICK: Yes, that's correct.

10 MEMBER BLAKE: So then you don't have a sense of  
11 the timing. It's not two or three months. It's unclear.

12 MR. JESICK: Yes, I think that's a fair statement.

13 MEMBER BLAKE: Thank you, Mr. Chair. Thank you,  
14 Mr. Jesick.

15 CHAIRPERSON HILL: And again, like, I'm going to  
16 go back and look at the regulations closely and try to  
17 understand what our responsibility is as a Board. I'll get  
18 you, Ms. Giordano. However, I do find this tree thing a  
19 little bit confusing, right?

20 There's a lot of whether or not the tree was cut  
21 down intentionally and whether or not that actually has  
22 anything to do with us. I guess what that's doing to the  
23 fines that are in place, I'm not really sure. But I guess  
24 I'm kind of throwing this out to my Board Members then. I'm  
25 going to take a look at the regulations and try to figure out

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 where exactly this tree thing falls in our purview one way  
2 or the other. Ms. Giordano, you had a question?

3 MS. GIORDANO: I don't want to repeat myself. But  
4 I did reference the rule in the BZA rules of procedure for  
5 the provision that states that any inability to get comments  
6 from an agency of the District of Columbia does not prevent  
7 the BZA from getting to review or decide a case.

8 CHAIRPERSON HILL: I appreciate that, Ms.  
9 Giordano. Okay. All right. Do you guys -- so I lost Mr.  
10 Smith for a second. All right. I think that maybe -- I  
11 don't know. I mean, whatever you guys want to do. I mean,  
12 we can -- I don't know if I'm going to get to a decision or  
13 not.

14 We can throw this out for a couple of weeks and  
15 come back or two weeks and come back and see what we want to  
16 do, whether you guys are ready for a decision. We have to  
17 get some filings from the applicant. And then I'd rather  
18 kind of figure out what we're going to do sooner rather than  
19 later. So Ms. Giordano, can you hear me?

20 MS. GIORDANO: Yes.

21 CHAIRPERSON HILL: When do you think you can --  
22 well, I guess we're not really asking for a whole lot. I'm  
23 asking for, like, something on the record about the easement,  
24 right? And then something about any kind of construction  
25 management issues that you might -- that your client might

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 want to offer in terms of keeping everybody apprised of the  
2 situation or what's going on. So I'd like to see those.

3 There's also the grading plan that I know that Dr.  
4 Imamura wanted to see. So it's just those three items. Do  
5 you know when you might be able to get those to us?

6 MS. GIORDANO: Within a week.

7 CHAIRPERSON HILL: Okay.

8 MS. GIORDANO: On the construction management,  
9 that is in the record. We submitted that.

10 CHAIRPERSON HILL: Where is that?

11 MS. GIORDANO: And we've agreed to it.

12 CHAIRPERSON HILL: Okay. I didn't see that one.  
13 Which one is that in? Do you know?

14 MS. GIORDANO: I can resubmit it, but it's in the  
15 record. It's an attachment to one of my supplemental  
16 filings.

17 CHAIRPERSON HILL: Okay, yeah. If you could  
18 please submit that again --

19 MS. GIORDANO: Sure.

20 CHAIRPERSON HILL: -- as an individual piece, it's  
21 easier for the Board. Okay. Then I don't know. Then if we  
22 get that in, Mr. Moy, how can you get us back here for a  
23 decision of the 29th?

24 MR. MOY: Can you do that?

25 CHAIRPERSON HILL: Yeah.

1 MS. GIORDANO: I can do it sooner if that  
2 influences Mr. Moy's schedule because you'll need seven days  
3 for response time.

4 MR. MOY: Today's 15, 29. If the applicant can  
5 make their filing within a week, that would give us next  
6 Wednesday which would be June 22nd. I'm sorry. Did you say  
7 that you could submit it earlier than a week --

8 MS. GIORDANO: Yes, right.

9 MR. MOY: -- Ms. Giordano?

10 MS. GIORDANO: Because I know that you're probably  
11 backing into this from the 29th. And the ANC is going to get  
12 seven days to respond.

13 MR. MOY: Yeah, if you could let's say make your  
14 filing by Monday, June the 20th, then responses can be filed  
15 into the record the following Monday of June 27th. And then  
16 we're back with the hearing on June 29th.

17 MS. GIORDANO: Okay. And then Ms. Westby also  
18 asked permission to submit her piece as if she were  
19 submitting it in a nonvirtual hearing. She had it packaged.

20 MS. WESTBY: I can submit that within the next  
21 couple days. So by Monday is fine.

22 MR. MOY: Okay. So --

23 MS. WESTBY: I think it's the 20th, Mr. Moy.

24 MR. MOY: Yes, that's correct. That'd be Monday,  
25 June 20th.



1 MS. WESTBY: That's no problem.

2 MR. MOY: Responses from the --

3 MS. WESTBY: ANC.

4 MR. MOY: The parties in this case will be the ANC  
5 the following Monday which would be June 27th. And this  
6 would be back for a continued hearing or decision on June  
7 29th, Mr. Chairman.

8 CHAIRPERSON HILL: I know what's going to happen.  
9 Let's put it up for decision and see what happens on the  
10 29th.

11 MR. MOY: Okay.

12 CHAIRPERSON HILL: Meaning if we aren't anywhere  
13 else, we might open it up for -- I mean, I still don't know  
14 what's going to happen with the Office of Planning thing in  
15 my mind. Oh, and then also Mr. Moy, if you could reach out  
16 to Mr. Sharkey and see if he can submit whatever he had  
17 wanted to submit by the 20th.

18 MR. MOY: Sure.

19 CHAIRPERSON HILL: Ms. Giordano?

20 MS. GIORDANO: Did you want the possibility of any  
21 update from the Office of Planning in case they get any  
22 comments?

23 CHAIRPERSON HILL: Yeah, Ms. Giordano. The Office  
24 of Planning I'm sure knows by now that I'm waiting for  
25 anything that they might have. Like, at the last minute if

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 the Office of Planning decides to give me something, believe  
2 me, they'll give me something. But yes, the record will be  
3 left open for the Office of Planning.

4 MR. MOY: So for my own edification then, Mr.  
5 Chairman, so the responses will be from the parties which is  
6 the ANC as well as any supplemental from the Office of  
7 Planning or their response to anything. Is the Board also  
8 including, allowing responses from individuals who gave  
9 testimony today or not?

10 (Simultaneous speaking.)

11 CHAIRPERSON HILL: We normally don't leave the  
12 record open for that.

13 MR. MOY: That's correct. I just wanted to be  
14 certain.

15 CHAIRPERSON HILL: Yeah. This is just -- we're  
16 just dealing with people that have party status this  
17 particular time. And we're leaving the record open for Mr.  
18 Sharkey and his items that he's rewording so that they fit  
19 within the testimony that he's given for the 20th.

20 MR. MOY: Okay. So the dates are Monday, June  
21 20th, Monday, June 27th, and Wednesday, June 29th. And if  
22 you could let me know before the closing of this record today  
23 whether that's a continued hearing or a decision meeting.

24 CHAIRPERSON HILL: No, I'm looking at my Board  
25 right -- hold on. Ms. Giordano?

1 MS. GIORDANO: I'm sorry. So obviously we would  
2 get an opportunity to respond to anything that Mr. Sharkey  
3 submits.

4 CHAIRPERSON HILL: Right. So Mr. Moy, if Mr.  
5 Sharkey comes in on the 20th, right, then Ms. Giordano would  
6 have an opportunity to respond by when?

7 MR. MOY: Well, it's going to be tight because if  
8 that's June 27th and you're coming back on June 29th, then  
9 the applicant would have to reply within a day. So we're  
10 looking at Tuesday, June 28th.

11 CHAIRPERSON HILL: No, I'm saying Mr. Sharkey is  
12 submitting his items that he -- I think it's just going to  
13 be a repeat of what we stricken from the record basically on  
14 the 20th. You're going to ask staff to reach out to Mr.  
15 Sharkey to get his items for the record by the 20th.

16 MR. MOY: That's correct. Thank you. That's what  
17 I was missing.

18 CHAIRPERSON HILL: And then Ms. Giordano would  
19 have an opportunity on behalf of her client to respond to  
20 that --

21 MR. MOY: Yes.

22 CHAIRPERSON HILL: -- as, I guess, will all the  
23 other parties by the 27th.

24 MR. MOY: That's correct.

25 CHAIRPERSON HILL: So Ms. Giordano, on the 20th

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 you guys are going to submit everything, right, as is Ms.  
2 Westby. All the parties and Ms. Westby is one of the  
3 parties, but she'll have a week to respond to, I guess,  
4 anything that Mr. Sharkey puts into the record on the 20th,  
5 right, by the 27th.

6 MS. WESTBY: Okay. Thank you.

7 CHAIRPERSON HILL: And we'll have a decision on  
8 the 29th which I don't know whether we're going to -- just  
9 right now I don't know what's going to happen on the 29th.  
10 But we'll see. Okay. All right.

11 MS. WESTBY: Thank you.

12 CHAIRPERSON HILL: Okay. Thank you. I'm going  
13 to go ahead and close the hearing and the record except for  
14 what we asked for and I'm going to look for my fellow Board  
15 Members in a moment. Okay. So let's take a break, and we  
16 have one more case.

17 And I thought we were going to get Mr. Imamura  
18 back or Dr. Imamura. And so let me see if I can track him  
19 down. Is, like, five minutes okay? We'll just do it when  
20 we come back. Okay. All right. Thank you.

21 (Whereupon, the above-entitled matter went off the  
22 record at 3:52 p.m. and resumed at 4:04 p.m.)

23 CHAIRPERSON HILL: Okay. All right, Mr. Moy.

24 MR. MOY: The Board has returned to its public  
25 hearing session after a brief recess. And the time is at or

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 about 4:04 p.m.

2 CHAIRPERSON HILL: You want to call our final  
3 case?

4 MR. MOY: Oh, okay. The next and final case is  
5 Application No. 20718 of 9 Tree, LLC. This is a self-  
6 certified application for special exceptions pursuant to  
7 Subtitle F, Section 5201 and Subtitle X, Section 901.2 from  
8 court requirements, Subtitle F, Section 202.1 and lot  
9 occupancy requirements, Subtitle F, Section 304.1, property  
10 located in the RA-2 zone at 1722 Swann Street, Northwest,  
11 Square 152, Lot 91. And I believe -- yes, that's all I have.

12 CHAIRPERSON HILL: Okay, great. I'm looking for  
13 counsel. Oh, okay. Mr. --

14 MR. PRITCHARD: Pritchard.

15 CHAIRPERSON HILL: -- Evan Pritchard?

16 MR. PRITCHARD: Pritchard.

17 CHAIRPERSON HILL: Pritchard. All right, Mr.  
18 Pritchard. Could you introduce yourself for the record,  
19 please?

20 MR. PRITCHARD: Thank you. Evan Pritchard with  
21 the firm Cozen O'Connor on behalf of the applicant.

22 CHAIRPERSON HILL: Okay, Mr. Pritchard. Are you  
23 new, Mr. Pritchard?

24 MR. PRITCHARD: New-ish. I've appeared before you  
25 under a different firm banner. But it's been a little while.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Did the Darcy Hotel approval with you guys a couple years  
2 ago. So I was at Venable and now at Cozen O'Connor.

3 CHAIRPERSON HILL: Okay. All right. Okay. Well,  
4 welcome. Ms. Ferster, can you hear me? Could you introduce  
5 yourself for the record, please?

6 MS. FERSTER: Yes, I'm Andrea Ferster. I represent  
7 Anne Carson who has been accepted as a party in opposition  
8 to the application.

9 CHAIRPERSON HILL: Okay, great. All right.  
10 Thanks, Ms. Ferster. Welcome as well. All right. I think  
11 you guys know how this works. So I'm not going to bother  
12 going through it meaning that everybody knows how it works.  
13 So Mr. Pritchard?

14 MR. PRITCHARD: Yes.

15 CHAIRPERSON HILL: Pritchard. If you want to go  
16 ahead and walk us through your presentation. I'm going to  
17 start with 15 minutes just so I know where we are. And  
18 whatever time you use, the same amount of time that the  
19 opposition will get. And you can begin whenever you like.

20 MR. PRITCHARD: Sure. And I think that should be  
21 plenty of time because we've worked really hard and reached  
22 a settlement agreement with Ms. Ferster's client. So earlier  
23 today, we submitted a motion for a late filing of the abutter  
24 agreement that includes a construction management agreement  
25 as an attachment and also includes revised plans.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 I spoke to Mr. Reed about this earlier. So  
2 hopefully it's -- tried to get it all in the system. But we  
3 have some updated plans that are very similar to the plans  
4 that we took to the ANC but with some design solutions that  
5 we've incorporated to address Ms. Ferster's client's  
6 concerns.

7 CHAIRPERSON HILL: Okay. First of all, Mr. Moy,  
8 have those been put in the record yet? I don't even see the  
9 request to open the record.

10 MR. MOY: I'll have to check that. Let me check  
11 that. Continue and I'll get back with you.

12 CHAIRPERSON HILL: Okay. All right. Okay, Mr.  
13 Pritchard. Go ahead then and give us your presentation. Oh,  
14 hold on one second, Ms. Ferster. Mr. Pritchard, go ahead and  
15 give us your presentation. And when you're giving your  
16 presentation, if you can point out to us where you think the  
17 differences are between what you're presenting to us and what  
18 you presented to the ANC, that would be helpful. Ms.  
19 Ferster, you had a question or a comment?

20 MS. FERSTER: Yeah, I'd like to be heard briefly.  
21 We did work out an agreement. My client has submitted  
22 through BZA submissions email and served all parties a letter  
23 in which we are now supporting the project based on the  
24 applicant's willingness to incorporate certain design  
25 commitments into the BZA order.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 And that's part of the filing that was made but  
2 apparently has not yet been uploaded. We negotiated hard and  
3 late to get that done. And so because my client is now a  
4 supporting party, I do not intend to participate in this  
5 hearing.

6 My client would like to save some money and have  
7 me go off of the virtual hearing. But I wanted to be present  
8 to make sure that you understood that we are now supporting  
9 the project based on the letter that we've submitted to the  
10 BZA submissions email. That is, of course, subject to the  
11 agreement that we reached with the applicant.

12 CHAIRPERSON HILL: Okay.

13 MR. MOY: Mr. Chairman?

14 CHAIRPERSON HILL: Yeah.

15 MR. MOY: If I could just intervene for a moment.  
16 Those filings are being entered into the record now. So you  
17 may want to take a quick glance at it before you dismiss  
18 counsel.

19 CHAIRPERSON HILL: Yeah.

20 MR. MOY: Yeah. Thank you.

21 CHAIRPERSON HILL: I got you. Ms. Ferster -- and  
22 believe me, I don't want to waste any of your client's time.  
23 And my hesitation real quick is that I can't necessarily  
24 approve anything yet until after I see the hearing, right?  
25 And so I don't know what's going to happen.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1 Just because you guys agreed to something doesn't  
2 mean that the BZA is going to agree to it. But give me one  
3 minute. Why don't you talk to your client and see whether  
4 they want you to sit on the line or not. Okay? I'm going  
5 to wait until they drop this in the record and let the Board  
6 take a look at it just for a couple of minutes. You have  
7 something to say, Ms. Ferster?

8 MS. FERSTER: Yeah. My client has signed a  
9 written binding agreement that we are supporting the project.  
10 So that's not going to change. So if the BZA decides you  
11 don't want to grant the special exception, that's a  
12 completely different matter.

13 But I am off the -- at this point, I cannot  
14 participate as a party in opposition which was my role  
15 because I have signed and my client has signed an agreement  
16 to support the project. So once Mr. Moy confirms that the  
17 documents have been uploaded, I do need to step off because  
18 there's no role for me in this proceeding.

19 CHAIRPERSON HILL: Okay. I'll let you step off.  
20 I guess what I'm trying to say -- and I'm not trying to split  
21 hairs, believe me -- is that if I'm understanding correctly  
22 your client is withdrawing their opposition based on  
23 something that you guys have talked about that I don't know  
24 if the BZA is going to agree with. And so that's fine with  
25 me. As long as that's clear. So okay. So you're saying,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 Mr. Moy, it's in the record now?

2 MR. MOY: It's in the record now as I speak.

3 CHAIRPERSON HILL: Okay. All right, Ms. Ferster.  
4 Well, it was a pleasure to have you on just for a short time,  
5 and I hope you have a nice afternoon.

6 MS. FERSTER: Thank you. It is always a pleasure  
7 to be part of a negotiated solution to these cases. I was  
8 listening in on the last cases, and I think it's something  
9 that the BZA encourages parties to do is to work things out.  
10 And we did so in this case, and I do commend the applicant  
11 for doing that.

12 CHAIRPERSON HILL: Thank you. Thank you, Ms.  
13 Ferster. And thank you for saying in such a nice way. I  
14 wish that to be the case on all of our cases together, Ms.  
15 Ferster. Okay, bye. All right. Mr. Pritchard, then you can  
16 go ahead and give your presentation to us.

17 MR. PRITCHARD: Sure. I'm actually going to hand  
18 it over to our project architect, David Bagnoli, who signed  
19 up to speak. He's emailing me that he's having a little  
20 trouble getting his camera on.

21 CHAIRPERSON HILL: I don't even see his name.

22 MR. PRITCHARD: I see him right now, David  
23 Bagnoli, B-A-G --

24 CHAIRPERSON HILL: Oh, I got you. I got you.  
25 Okay. And then there's another gentleman here with you?

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 MR. PRITCHARD: And then I'm also joined by my  
2 client, Abrar Lohani.

3 CHAIRPERSON HILL: Okay.

4 MR. PRITCHARD: He may chime in. I believe he  
5 signed up as well.

6 CHAIRPERSON HILL: Okay. All right. So Mr.  
7 Bagnoli, can you hear me?

8 MR. BAGNOLI: Come in on my machine so I can share  
9 the presentation.

10 MR. PRITCHARD: I think, Mr. Moy, one of the  
11 attachments that was included in what we filed and the  
12 settlement agreement is the revised plans that Mr. Bagnoli  
13 will be speaking to. When I spoke to Mr. Reed earlier, he  
14 also suggested I send to him the same plans as a separate  
15 attachment. So I can get those to the agency.

16 CHAIRPERSON HILL: Okay. I don't see the revised  
17 plans yet, Mr. Moy.

18 MR. BAGNOLI: I'm also not able to share. I'm not  
19 sure if you all hear me.

20 CHAIRPERSON HILL: Yeah, Mr. Bagnoli, we can hear  
21 you. This is --

22 (Simultaneous speaking.)

23 CHAIRPERSON HILL: You're not allowed to share  
24 things that aren't in the record.

25 MR. BAGNOLI: Got you. Okay. No worries.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 CHAIRPERSON HILL: And so I'd rather wait for it  
2 to come into the record. We'll put it out of the record, and  
3 then you can speak to it. Dr. Imamura, did you say  
4 something? No?

5 COMMISSIONER IMAMURA: No, sir.

6 CHAIRPERSON HILL: Okay. So Mr. Moy, let us know  
7 when. I mean, Mr. Bagnoli is going to speak to the revised  
8 plans. Is that correct, Mr. Pritchard?

9 MR. PRITCHARD: Yes. And just for clarity, Mr.  
10 Moy, they're attached as Tab A to my letter.

11 MR. MOY: I'm having staff re-label that  
12 particular filing to say revised plans or potential plans.  
13 The word, revised, should be on that. So that's being done  
14 now. It should be under 37(a) as in alpha.

15 CHAIRPERSON HILL: Okay. So I'm going to -- I see  
16 landscape plans. Is that it? Well, I mean, it's labeled  
17 landscape plans. If those are the revised plans, I'm not  
18 clear.

19 MR. MOY: Look under Exhibit 37(a) -- Exhibit  
20 37(a).

21 CHAIRPERSON HILL: Okay. Mr. Young, if you can  
22 pull up Exhibit 37(a). And then let Mr. Bagnoli walk us  
23 through. And Mr. Pritchard, again, if you could review for  
24 us again how your client is meeting the legal standard for  
25 us to grant this after Mr. Bagnoli goes through, I guess,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 what changes they made to the design that the ANC has not  
2 seen. Hopefully, they're not substantial or anything to be  
3 worried about.

4 MR. PRITCHARD: Absolutely. Well, I should say  
5 as I get forward to go through, we received unanimous support  
6 from the changes you're about to see, full support from our  
7 original ANC meeting for the BZA relief that we're looking  
8 for, special exception. And that continued through our most  
9 recent hearing. So it was the neighbor who filed for party  
10 status that we wanted to work through.

11 So we never had opposition from the ANC to the BZA  
12 case. But that's a nuance that you can talk to the lawyer  
13 about. I'll just walk you through what the proposal is.

14 (Simultaneous speaking.)

15 CHAIRPERSON HILL: But what I'm saying the ANC saw  
16 your revised plans?

17 MR. PRITCHARD: They have, yes. And they are in  
18 total agreement. And --

19 CHAIRPERSON HILL: Okay.

20 MR. PRITCHARD: -- we had neighbors speak in  
21 support of the project as well.

22 CHAIRPERSON HILL: Okay.

23 (Simultaneous speaking.)

24 MR. PRITCHARD: -- party status. Yes, yes.

25 CHAIRPERSON HILL: You're saying that on the

1 record. Okay. Go ahead, Mr. Bagnoli.

2 MR. BAGNOLI: Okay. If we can go to the next  
3 slide, please. I'm Dave Bagnoli from StudioMB. I'm jointed  
4 by Mr. Abrar Lohani who represents the owner. He has been  
5 very involved with the negotiations with the neighbor who  
6 previously had filed party status that is now in support of  
7 the project.

8 We are back speaking with you all, having gone  
9 through the HPRB process, the ANC process, the Dupont  
10 Conservancy, and other folks who are interested in reviewing  
11 this. We are here to talk about two issues of relief that  
12 we'll get into in terms of the details. But the project is  
13 located on the 1700 block of Swann Street, Northwest and the  
14 Dupont Circle Historic District.

15 It's a previously undeveloped lot to everybody's  
16 ability to discern. There was never a house here. There's  
17 a little two-story property that you see there in the bottom  
18 left image which is set back significantly from the street.  
19 And then the neighbor to the east there, the large tall party  
20 wall on the bottom left that you see is Ms. Carson whose  
21 attorney just dropped off the line.

22 We're looking for relief on a front court and a  
23 slight relief in lot occupancy which is really with -- it's  
24 a 2 percent relief we're looking for. And I'll get into that  
25 in just a moment if we go to the next slide, please. Just

1 a couple other views of the context of the street.

2           And again, you can start to see that there's a lot  
3 of variation in the way these houses front a block. But in  
4 particular, I would point your attention to that top right  
5 image which shows a transition in a facade that is aligned  
6 with the street in the far portion of that image. It then  
7 steps back successfully, we would say, to a stepped back  
8 porch row house that's on the north side of our block.

9           And we're trying to do something very similar to  
10 that with an open court on the front to open towards that  
11 historic house that I mentioned on the previous slide. I'll  
12 show you that in just a moment. Next slide. So here's our  
13 site survey.

14           There's a couple things to note about the site  
15 survey. One, unlike a lot of properties that we all deal  
16 with in the District, the facade, the principle facade of  
17 those row houses is actually set back from the property line  
18 slightly in the bay which you can see. If you look at one  
19 that says east 20 feet, to the right of that where it says  
20 stoop, the bay actually crosses.

21           Half of the bay is in the property line and half  
22 of it is in the public space. And rather than adjusting our  
23 facade to be out of the property line, we're actually  
24 aligning with the neighbors who are actually slightly off of  
25 the property line to make that alignment. And we're also

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 going to align with the house on the right under Lot 90 that  
2 you see there.

3           A couple other things, we've had this surveyed a  
4 couple times and there's a significant kind of amount of  
5 overage into our lot by the party wall and particularly the  
6 party wall of Block 92 which is about 70 square feet. And  
7 so we're looking for about 39 square feet of relief on our  
8 lot occupancy. And in doing so, we're able to align our  
9 property with the front of the building where you see that  
10 word, stoop, on the abutting property to the east and on the  
11 back of the words, Lot 90.

12           So our 62 percent allows us to align the front of  
13 and back of the property. So that's one of the two relief  
14 we're looking for. The other would be a court that we're  
15 going to see here under the word, east, on the top of that  
16 survey. Next slide.

17           So here's the subject property. Next slide. The  
18 opposite side of the street which is significantly different.  
19 These houses are raised up a stoop but we'll be out at the  
20 property aligning with the principle facade of those houses  
21 to the east. Next slide.

22           So here is our proposed lot coverage if you will.  
23 On the left-hand plan you see there, that's the alignment  
24 that I was just referring to where even though our property  
25 line sits back, our building sets back 2 foot 1 inch from the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)



1 property line. We will align the front of our property there.

2           You see the word in the red where it says 12 foot  
3 10. We would align that. And the relief we're looking for  
4 is the open court. The 7 foot 2 open court is smaller than  
5 the required relief of the open -- I mean, the dimension of  
6 the open court by zoning.

7           And we're doing that so that we can have a usable  
8 room and align with that facade. And then on the rear of the  
9 property, you can see those two alignments that we're trying  
10 to do there on the back which is about that 39 square feet  
11 of extra area that we're looking for. So it's that front  
12 court and that 39 square feet.

13           So I'll quickly go through the following slides.  
14 Those are the kind of relief. But if we can just jump  
15 forward, I'll show you the changes go forward. It's a three-  
16 unit property with a ground floor unit in the basement and  
17 then two L-shaped units with roof access, privacy access, a  
18 private terrace for the blue unit there on top

19           The retextured glass screen with minimal support  
20 is an agreement we came to with the abutting neighbor who was  
21 previously party status. That was one of the things we  
22 agreed to. The other thing was to change a little bit of the  
23 shape of the penthouse to get it to align with the rear of  
24 her highest level.

25           And so I think with that, we were able to come to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 agreement. And that's what's been entered into the record.  
2 Next slide. Just some floor plans. Again, you can see on  
3 the far left plan that the blue blocks aligns now with the  
4 back of her property. And the rest of this has been pretty  
5 much unchanged since our previous submission. Next slide.

6 Here's just the side elevation and the front  
7 elevation. These are changes that we made in response to the  
8 preservation community's group, questions as well as just  
9 refinement with the neighbors in general on the block. Next  
10 slide. It's the opposite elevations in the rear, again, with  
11 those alignments shown on the rear that we're calling for.  
12 Next slide.

13 Just some previous examples that we've done in the  
14 neighborhoods around Dupont Circle and in Shaw just to give  
15 a sense of what the architecture could be. Next slide.  
16 Similar kind of precedent of how we were opposing, although  
17 these are less pertinent because we've gotten rid of some of  
18 these window surrounds in response to some of the historic  
19 community's comments. Next slide. So this next slide shows  
20 the previously submitted views which had really no deviation  
21 from the relief that we are looking for.

22 It was really an architectural switch that we've  
23 done and had the ANC approval. So none of the zoning relief  
24 that we were looking for and as previously submitted has been  
25 modified in the least. It's really an architectural kind of

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 modification that you'll see.

2           And so if we go to the next slide, you'll see the  
3 new modifications. This is what's been approved from the  
4 ANC, Dupont Conservancy, the HPO, and the many neighbors who  
5 testified in favor of the proposal modifications here. So  
6 we expect no opposition moving forward from the HPRB  
7 standpoint.

8           And then the next slide, one of the last things  
9 they asked us to do was rise up and just giving them the  
10 sense of what somebody who lives on the opposite side of the  
11 street might see from their window and just understand what  
12 that penthouse would be. And so that's just showing the  
13 coloration and the scale and mass of that. But you really  
14 wouldn't see that from the street.

15           This is taken 50 feet in the air, and there's no  
16 building where you're standing. So that's the presentation.  
17 I tried to get through that as quickly as possible for your  
18 all's benefit. Thank you.

19           CHAIRPERSON HILL: Thank you, Mr. Bagnoli.

20           MR. PRITCHARD: And as requested, Chair Hill, and  
21 as Mr. Bagnoli explained, we're requesting two elements of  
22 special exception relief, neither of which have been impacted  
23 at all by these last minute discussions we've had with the  
24 neighbor, Anne Carson. The court relief on the Swann Street  
25 frontage which, as Mr. Bagnoli explained, really arose out

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 of a desire from historic preservation staff and later the  
2 HPRB is to sort of just respect the step back to neighboring  
3 property since it sits so much further back from the street.  
4 And then the other request is for the additional lot  
5 occupancy of 63 percent or 62 percent.

6           That was the result of party walls on the existing  
7 structures on either side of our lot intrude a little bit.  
8 So we had to make up for that with the additional request.  
9 Typically, 60 percent lot occupancy is permitted in the RA-2  
10 district that we're in. So the additional 3 percent is  
11 something that the BZA can grant by special exception as long  
12 as it's in harmony with the surrounding community, doesn't  
13 adversely affect the neighborhood.

14           And so there's certain specific conditions that  
15 I can go through just that you've heard before in terms of  
16 light and air and privacy and visual compatibility with the  
17 surrounding neighborhood from the street, all which we'd  
18 meet. Just the background on the clear glass structure  
19 that's been added, we were given direction from ANC. Ms.  
20 Carson spoke at ANC and I believe also at the HPRB meetings.

21           And both of those groups were supportive of the  
22 application but also very supportive of us working with her  
23 to address the concerns she had. And her concerns related  
24 to privacy, where we've located, that beaded glass screen.  
25 It's adjacent to our proposed rooftop deck.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1           And she was concerned that users in the future of  
2 that rooftop deck if they go over in that section where we  
3 put the screen would have a direct line of sight into her  
4 unit next door. So the compromised solution was to put up  
5 this screen that's clear glass. It's translucent, not  
6 transparent.

7           So she cans still get sunlight through that. But  
8 obviously her privacy is preserved. So we agreed to add that  
9 feature. And as Mr. Bagnoli indicated, we have the fully  
10 support of the HPRB and ANC to those changes because they're  
11 consistent with what we've shown before and aren't visible  
12 from Swann Street. So happy to answer any further questions  
13 you may have on any of that.

14           CHAIRPERSON HILL: Thank you. Does the Board have  
15 any questions of the applicant? Sure, go ahead, Dr. Imamura.

16           COMMISSIONER IMAMURA: Just real quick. This is  
17 for Mr. Bagnoli. Can you just walk me through sort of what  
18 was the trigger point that initiated the new design with the  
19 red brick?

20           MR. BAGNOLI: So there were four kind of comments  
21 that we addressed that came up in a variety of kind of  
22 presentations. But those were consistent and having to do  
23 with the handrail at the fourth floor, the visibility of the  
24 penthouse, the coloration of the brick, and the disposition  
25 of the windows on the facade. And so what we were able to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 do was confirm with the zoning administrator that we could  
2 elevate the brick parapet to be the handrail which went a  
3 long way towards I think minimizing the view of the  
4 penthouse.

5           We did reconfigure that penthouse and push it back  
6 out of the view cone. We also in negotiation with Ms. Carson  
7 were able to get a full roof deck across the rear and move  
8 the roof deck more on the alley side of the building. And  
9 that satisfied the neighbors.

10           So had about 20 good feet off of the face of the  
11 building if we restrict access. Coloration, we talked about  
12 that with the neighbors and told them that's not open to  
13 review. You can paint your building whatever you want.

14           In fact, many people on that street as you saw  
15 have painted their buildings a variety of colors. And so we  
16 agreed with them that we'll do a red brick building and make  
17 the determination -- the developer can make the determination  
18 or the owners in the future whether or not to paint that.  
19 And then we aligned the windows.

20           So the red brick is really -- it'll be the  
21 underlying brick surface. We wanted the building not to  
22 match the two red brick buildings on either side of it. But  
23 we're happy to consider painting it in the future if that's  
24 the right decision for the developer who may want to  
25 differentiate the property in some way. So that's why we

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 went to the red.

2 COMMISSIONER IMAMURA: I appreciate the  
3 explanation. Much improved in terms of just materiality,  
4 disposition of the windows, right? I don't want to use the  
5 word -- elected to use the word, atrocious. But the new  
6 design scheme is much better, cleaner, simpler. So sometimes  
7 group design isn't always the best.

8 But sometimes it works out when you've got other  
9 forces that require you to reconsider some of your design  
10 gestures and design themes. So I think it's fantastic. I  
11 think it's miles better than what you had originally  
12 proposed. That's all I had to say, Mr. Chairman.

13 CHAIRPERSON HILL: All right. Thank you, Dr.  
14 Imamura. Anyone else? Sure, Mr. Smith.

15 MEMBER SMITH: A lot was done and the changes were  
16 the result of about doing 1722 Swann Street. I just had some  
17 questions about was there any dialogue with the property  
18 owner to the -- at 1724. It's set a little further back.

19 MR. BAGNOLI: Yes, she was the seller of the vacant  
20 lot. But I'm going to let Mr. Lohani explain that  
21 relationship.

22 MEMBER SMITH: You're on mute, sir.

23 CHAIRPERSON HILL: Still on -- oh, there we go.

24 MR. LOHANI: You guys can hear me?

25 CHAIRPERSON HILL: Yes.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

1 MR. LOHANI: Yes, we did purchase that property  
2 from the neighbor at 1724 Swann Street. She was aware of our  
3 -- or the sellers were aware of our development potential or  
4 that we were developing the property. In terms of any  
5 designs, we have not shared any of these designs with that  
6 homeowner or the current owners of that building. It is  
7 tenant occupied to my understanding.

8 MEMBER SMITH: Okay. And the property owner, when  
9 they sold it to you, they didn't have any concerns about  
10 light and air given the scale of the building that would sit  
11 next to them?

12 MR. LOHANI: No, there were no concerns. They  
13 even further signed an agreement for us to box in or close  
14 in some of the windows that are on the property line. So  
15 they're well aware that light and air is going away.

16 MEMBER SMITH: All right. Those are the only  
17 questions I had. Thank you, Mr. Chair.

18 CHAIRPERSON HILL: Okay. Thank you. Anyone else?  
19 Okay. Turn to the Office of Planning.

20 MS. THOMAS: Yes. Good afternoon, Mr. Chair,  
21 Members of the Board. The Office of Planning is in support  
22 of this application. And we support the fact that the  
23 applicant really worked with the neighbor to address those  
24 concerns that they had with respect to their privacy as  
25 viewed from the rear.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309



1           The changes made did not affect the lot occupancy  
2 relief or the court relief. And our reasons are established  
3 in our report. And if you have any questions, I'd be happy  
4 to answer them. Thank you.

5           CHAIRPERSON HILL: All right. Thanks, Ms. Thomas.  
6 Just to clarify again, the Office of Planning's  
7 recommendation does not change based upon any of the changes  
8 that happened to the plans, correct?

9           MS. THOMAS: That's correct. We stand in support  
10 of the application.

11          CHAIRPERSON HILL: Okay. Does anybody have any  
12 questions of the Office of Planning?

13          Okay. Mr. Young, is there anyone here wishing  
14 to speak?

15          Okay. All right. Let's see. Mr. Pritchard, is  
16 there anything you'd like to add at the end?

17          MR. PRITCHARD: No, thank you to Ms. Carson for  
18 working with us. And as she said at the beginning, she  
19 didn't want to stand in the way of this project. She just  
20 wanted to make sure that her concerns were addressed. So  
21 thank you to the Board for -- I know this is a last minute  
22 change. But thanks for facilitating this. I think it's a  
23 good outcome.

24          CHAIRPERSON HILL: Thank you, Mr. Pritchard. All  
25 right. I'm going to go ahead and close the hearing and the

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)

1 record. You can excuse everyone, Mr. Young. Thank you. You  
2 all have a nice evening. Yes.

3 MR. MOY: I do have one small question. I did  
4 read the letter, the file on the record that's written by  
5 Andrea Ferster where she said her client is not in support  
6 of the application. In the discussion just now, were there  
7 any words to the effect that Anne Carson was withdrawing her  
8 party status request?

9 CHAIRPERSON HILL: That's what I believe Ms.  
10 Ferster said.

11 MR. MOY: Well, she'd already left the hearing,  
12 right?

13 CHAIRPERSON HILL: Okay. Let's bring back in Mr.  
14 Pritchard if he's not gone. He'd hopefully have waited.

15 MR. PRITCHARD: Yes, I can confirm. Mr. Chair,  
16 you did pose that question to her, and she did acknowledge  
17 that the fact that Ms. Carson is supportive now is a  
18 withdrawal of their opposition status. I can confirm from  
19 the last six hours that was the intent.

20 CHAIRPERSON HILL: Okay. I believe -- I'm sorry.  
21 I'm comfortable with that being on the record. Mr. Moy, is  
22 that good with you?

23 MR. MOY: Typically, I tend to prefer more of a  
24 hard copy letter to the words withdraw. But I'll leave that  
25 to our attorney, Ms. Nagelhout.

1 CHAIRPERSON HILL: Can you put something into the  
2 record -- okay. Well, let me ask Ms. Nagelhout then. Well,  
3 I was going to ask if Mr. Pritchard could get -- we'll leave  
4 the record open for a letter officially withdrawing the  
5 opposition. But what is also being pointed out to me is that  
6 -- Ms. Nagelhout, do you have a comment?

7 MS. NAGELHOUT: My impression that the party --  
8 I did not hear her say she was withdrawing. But she clearly  
9 was no longer in opposition. So she could be considered a  
10 party in support.

11 CHAIRPERSON HILL: Okay. Someone is speaking.  
12 Okay. All right. So a letter expressing your support of the  
13 application which is supported and conditional upon the  
14 application of the Board Office of Zoning. So I am  
15 comfortable -- I don't need anything in the record.

16 I'm comfortable that either Ms. Ferster's client  
17 is remaining a party in support or withdrawing their party  
18 status. I guess that is the hair that we're splitting, Ms.  
19 Nagelhout, correct?

20 MS. NAGELHOUT: I don't see it as splitting hairs.  
21 I did not hear withdraw. But clearly, she is now in support  
22 and not in opposition. So I would keep her as a party in  
23 support.

24 CHAIRPERSON HILL: If she's a party in support,  
25 I don't have to write a full order. Is that correct?

1 MS. NAGELHOUT: Correct.

2 CHAIRPERSON HILL: Okay, fine. So then we'll go  
3 ahead and count her as a party in support. Mr. Pritchard,  
4 do you understand and you agree?

5 MR. PRITCHARD: Yes, I agree with that. I think  
6 the whole goal that we've been collecting working for is just  
7 to avoid a full opinion that would delay. So if the Board  
8 can issue a summary ruling on this with her as a party in  
9 support, that's great for us.

10 CHAIRPERSON HILL: Great. That's what I  
11 understand the case to be, Mr. Pritchard. So I'm comfortable  
12 closing the record the way it is. So once again now, Mr.  
13 Moore, are we good?

14 MR. MOY: Yes. Sorry for being such a stickler,  
15 Mr. Chairman.

16 CHAIRPERSON HILL: No, no. We only have this one  
17 moment. All right. So okay, I'll go ahead and close the  
18 hearing on the record. Thank you, Mr. Pritchard. Okay. I'm  
19 a little tired. Can somebody else start, Mr. Smith?

20 MEMBER SMITH: Given the change in party status  
21 of the neighbor represented by Ms. Ferster and given the  
22 changes that were -- can everybody hear me?

23 CHAIRPERSON HILL: Yes.

24 MEMBER SMITH: Okay. Just to make sure. Given  
25 the changes that were presented by Mr. Pritchard, I think

1 it's a fairly straightforward application. I do believe  
2 given everything that's presented to us with the record, what  
3 was presented to us by the applicant, from their testimony,  
4 and these changes, I do believe that the applicant has  
5 presented a substantial burden of proof for us to be able to  
6 grant the special exceptions.

7           The two special exceptions that they're  
8 requesting, I believe that -- kudos to the applicant for  
9 redesigning this project. I saw the first one. The first  
10 design was very tasteful. I do believe that this is a much  
11 improved product, especially with the tempered glass on the  
12 rooftop deck to address some of the neighbors' concerns.

13           So with that, I do believe that the applicant has  
14 met X 901.2(d). It will not tend to adversely affect the use  
15 of regulating problem in accordance with zoning regulations.  
16 And the zoning maps, I do believe that the applicant has  
17 presented a design, a concept that is in harmony with the  
18 general purpose and intent of the zoning regulations for this  
19 particular zone.

20           And I do not believe that we need to impose any  
21 special conditions on this property. I do believe the  
22 applicant has -- what they present is largely in keeping with  
23 what we want to see without any special conditions. So with  
24 that, I'll note that ANC is in support of this application.

25           The adjacent property is -- just to reiterate, is

1 to the left if I'm looking from the street -- is now in  
2 support of the application. And it seems that the property  
3 owner to the right who sold this property is in support of  
4 this application given they still own that property to the  
5 right from the street view. With that, I'll support the  
6 application.

7 CHAIRPERSON HILL: Thank you. Dr. Imamura?

8 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
9 I agree with everything that Board Member Smith said except  
10 for his word, tasteful. I think that was probably tactful  
11 than mine. So maybe I'll take it down and say it was  
12 pedestrian. But otherwise, I align myself with Board Member  
13 Smith. So thank you, sir, for a thorough review and  
14 explanation. That's all I have, Mr. Chairman.

15 CHAIRPERSON HILL: Thank you, Dr. Imamura. Mr.  
16 Blake?

17 MEMBER BLAKE: I am in support.

18 CHAIRPERSON HILL: Thank you. I also have nothing  
19 to add. I'm going to make a motion to approve Application  
20 No. 20718 as captioned and read by the Secretary and ask for  
21 a second. Mr. Blake?

22 MEMBER BLAKE: Second.

23 CHAIRPERSON HILL: The motion is made and second.  
24 Mr. Moy, if you could take a roll call, please.

25 MR. MOY: When I call your name, if you'll please

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1716 14TH ST., N.W. STE 200  
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 respond with a yes, no, or abstain to the motion made by  
2 Chairman Hill to approve the application for the relief  
3 that's being requested. The motion to approve was second by  
4 Mr. Blake. Zoning Commissioner Dr. Imamura?

5 COMMISSIONER IMAMURA: Yes.

6 MR. MOY: Mr. Smith?

7 MEMBER SMITH: --

8 MR. MOY: Mr. Blake.

9 MEMBER BLAKE: --.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: We have no other Board Member today.  
13 Staff would record the vote as 4 to 0 to 1. And this is on  
14 the motion made by Chairman Hill to approve, second by Mr.  
15 Blake. Also in support on the motion to approve Zoning  
16 Commissioner Dr. Imamura, Mr. Smith, Mr. Blake, Chairman  
17 Hill. Motion carries 4 to 0 to 1.

18 CHAIRPERSON HILL: Okay, great. Thank you. Mr.  
19 Moy, do we have anything else before us today?

20 MR. MOY: No, sir, not from the staff.

21 CHAIRPERSON HILL: Okay. Thank you all very much.  
22 And I hope Vice Chair John gets better. See you all next  
23 week. We are adjourned. Bye-bye.

24 (Whereupon, the above-entitled matter went off the  
25 record at 4:43 p.m.)

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: 06-15-22

Place: teleconference

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
true and accurate complete record of the  
proceedings.

  
-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1716 14TH ST., N.W., STE. 200

WASHINGTON, D.C. 20009-7831

(202) 234-4433

[www.nealrgross.com](http://www.nealrgross.com)