

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 14, 2022

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL H. BLAKE, Commissioner
ANTHONY HOOD, Zoning Commission Chairperson
PETER MAY, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

RYAN NICHOLAS, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on December 14, 2022.

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(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen and the Board of Zoning Adjustment. Today's date is 12/14/2022. The public hearing will please come to order. My name is Fred Hill, I'm the chairperson of the District of Columbia Board of Zoning and Adjustment. Joining me today is Vice Chair Lorna John, Board members Carl Blake and Chrishaun Smith, Zoning Commissioners Chairman Anthony Hood and Commissioner Peter May. 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 and is 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 we do not take any public testimony in our decision meeting sessions. If you're experiencing difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number at 202-727-5471 to receive Webex login or call-in instructions. Once again, 202-727-5471. And the number is listed on the screen.

At the conclusion of a decision meeting session I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order is

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

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

16 Once again, if you're experiencing difficulty accessing
17 Webex or with your call -- or your telephone call-in, or you'd
18 forgotten to sign up 24 hours prior to this hearing, then please
19 call our OZ hotline number, again, at 202-727-5471. All persons
20 planning to testify either in favor or in opposition should have
21 signed up in advance. They'll be called by name to testify. If
22 it is an appeal, only parties are allowed to testify. By signing
23 up to testify all participants complete the oath or affirmation
24 as required in Subtitle Y 408.7.

25 Requests to enter evidence at the time in online

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1 virtual hearings such as written testimony or additional
2 supporting documents, other than live video, may not be presented
3 as part of the testimony, may be allowed pursuant to Subtitle Y
4 103.13 providing that, one, the person making the request enter
5 an exhibit explain how, A, the proposed exhibit is relevant, B,
6 the good cause that justifies allowing the exhibit into the
7 record, including an explanation of why the requester did not
8 provide the exhibit prior to the hearing pursuant to Y 206, and
9 how the proposed exhibit would not unreasonably prejudice any
10 parties.

11 The order of procedures for special exception and
12 variances are pursuant to Y 409. At the conclusion of each case,
13 an individual who was unable to testify because of technical
14 issues may file a request for leave to file a written version of
15 the planned testimony to the record within 24 hours following the
16 conclusion of public testimony. In the hearing, if additional
17 written testimony is accepted, then parties will be allowed a
18 reasonable time to respond as determined by the Board. The Board
19 will then make its decision at its next meeting session, but no
20 earlier than 48 hours after the hearing.

21 Moreover, the Board may request additional specific
22 information to complete the record. The Board and staff will
23 specify at the end of the hearing exactly what is expected and
24 the date when persons must submit the evidence to the Office of
25 Zoning. No other information shall be accepted by the Board.

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1 Finally, District of Columbia Administrators (sic)
2 Procedures Act require that the public hearing on each case be
3 held in the open before the public. However, pursuant to Section
4 405(b) and 406 of that Act, the Board may, consistent with its
5 rules of procedures and the Act, enter into a closed meeting on
6 a case for purposes of seeking legal counsel on a case pursuant
7 to D.C. official code Section 2-575(b)(4) and or deliberate on a
8 case pursuant to D.C. official code Section 2-575(b)(13), but
9 only after providing the necessary public notice. In the case
10 of an emergency closed meeting, after taking a roll call vote.

11 Mr. Secretary, do we have preliminary matters?

12 MR. MOY: Morning, Mr. Chairman, members of the Board.
13 I do have a quick announcement regarding preliminary matters to
14 today's docket. First, Case Application No. 20840121 of
15 Gwendolyn Jackson was removed from the (indiscernible) review
16 calendar because there was no opposition from a party -- from a
17 property owner that's within 200 feet from the subject site, and
18 has been placed on the Board's public hearing session of December
19 21st, 2022.

20 Other than that, Mr. Chairman, we do have on today's
21 docket two case applications where there is a request for a
22 continuance. We also have an application today where there's a
23 request or a motion for party status. And other than that, I
24 think the Board can move forward on its first decision case in
25 its public session.

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1 CHAIRPERSON HILL: Okay. I don't know if it's just me.
2 Is Mr. Moy kind of choppy with you guys? Yes, no? Okay. Mr.
3 Moy, you might -- I mean, just we'll see how the day goes. You
4 might want to log off and log back on. Okay?

5 MR. MOY: Okay. All right. I'll keep that in mind.

6 CHAIRPERSON HILL: Okay. You can go ahead and call our
7 only meeting case today.

8 MR. MOY: Okay. Well, there's really two, but okay.
9 So this first one, which involves the participation of our Zoning
10 Commission Chair Anthony Hood. So this is Case Application No.
11 20813 of 401 K Street, LLC. It's a self-certified application
12 for a special exception pursuant to Subtitle X, Section 901.2,
13 Subtitle E, Section 206.4 from the rooftop and upper floor
14 requirements, Subtitle E, Section 206.1, or in the alternative
15 area variance pursuant to Subtitle X, Section 1002 from the
16 rooftop and upper floor requirements, Subtitle E, Section 206.1.
17 Property's located in the RF-1 zone at 401 K Street, N.E., Square
18 807, Lot 48. And again participating on this decision making is
19 the Zoning Commissioner Chair Anthony Hood, Chairman Hill, Vice
20 Chair John, Mr. Smith, and -- yeah, so the Board heard testimony,
21 heard the merits, closed the record from its hearing of last
22 week, December, the 14th. That's it, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Sorry,
24 I was thinking about the remand case that's coming up. Okay. So
25 I am going to rely on whoever wants to also help start discussing

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1 this. I can tell you kind of where I am on some of things --
2 some of the things. I really appreciate somebody actually
3 starting to speak about the special exception a little bit. Maybe
4 I'll start with the variance, which is where I want -- where I
5 feel pretty confident where I am with that. I think that -- oh,
6 what was I going to say -- I think that -- again, this was a --
7 this could be considered a matter of right project if it not for
8 the removal of the cornice, which is how it is before us in the
9 first place.

10 And so we were looking at the special exceptions in
11 terms of removing the cornice versus the variance to remove the
12 cornice. I mean, the variance argument to me seems fairly
13 straightforward in the way that I see it, that they received a
14 permit to remove the cornice. They removed the cornice. They
15 removed the cornice because they got the permit to remove the
16 cornice. There was, you know, a photograph that showed the
17 cornice. And when they submitted the plans that they had so that
18 they would see the building that -- not DCRA, and now the building
19 division is -- would have seen the cornice and that they were
20 removing the cornice. Now there is and could be more discussion
21 about how that process works in terms of being sure that
22 Department of Buildings sees the cornice. I don't know, I mean,
23 that's a different discussion, I suppose. But regardless, they
24 had approved plans to remove that cornice. They removed the
25 cornice. That to me makes the exceptional condition. Right?

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1 And so we could have some discussion as to whether or not you
2 all think that makes the exceptional condition or not. The
3 practical difficulty then is you've removed the cornice and now
4 you have to put it (audio interference), right, and you've also
5 built the building. So now you're going to tear the building
6 down, but the cornice back up? I mean, it doesn't make any sense
7 to me. Therefore, I see that as the practical difficulty. And
8 then as far as the public good, you could actually argue that
9 the removal of the cornice is a detriment to the public good. I,
10 in this particular case, I don't think so because the cornice was
11 on the end -- it was on an end unit and that cornice was not
12 matching up with other buildings in the block. It's not as if
13 that building were mid-block and the cornice went the whole block,
14 and then now it's disrupted the block and it, you know, it doesn't
15 look the way -- the block now doesn't look the way it did look.
16 I think that that being that -- that cornice was on a corner, it
17 was kind of a standalone, it was done -- so what I'm saying is
18 that I don't think it's a detriment to the public good that that
19 cornice is gone. So therefore I could be in support of the
20 variance argument. So I'm going to leave it there and ask
21 somebody -- actually, Mr. Smith, I love it, so Mr. Smith has
22 raised his hand.

23 So you can go, Mr. Smith, tell me what you think about
24 whatever I said and/or the special exception is where I'm kind
25 of not (indiscernible).

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1 COMMISSIONER SMITH: Can you hear me?

2 CHAIRPERSON HILL: Yeah, I can hear you.

3 COMMISSIONER SMITH: All right, then. This is a new
4 computer, so I know I'm having trouble with audio. So we got
5 two requests by the Applicant. One is for after the fact special
6 exception to allow legal removal of the roof corners of the
7 existing rowhome. And the second request is for an after the
8 fact area variance to remove said corners. In evaluating this
9 case, I reviewed the record against the criteria for both the
10 special exception and the area variance. I'll first begin with
11 the request by the Applicant for the special exception. But
12 before discussing my review, I did want to talk about some of
13 the comments that we heard at the hearing regarding Subtitle E
14 5207. I believe Subtitle E 5207 limits this Board to an
15 evaluation of adverse impacts of a change in architectural
16 elements above the roofline. Within this evaluation, we have the
17 authority to review changes that will affect the character,
18 scale, and pattern within the neighborhood above said roofline.
19 This section in and of itself does not grant the Board broad
20 authority to evaluate the design below the roofline of the
21 building or any area of the building that is not seeking relief
22 from the rooftop architectural feature development standard
23 purpose only regulations. Any discussion or redesign of the
24 facades of the building, not subject to the special exception
25 will only be tangential to our review of the area above the

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1 roofline.

2 So moving to the evaluation, based on the information
3 within the record and the criteria for us to evaluate the request
4 for special exception, I do not believe that the Applicant meets
5 all the criteria for special exception relief. While I believe
6 the request would meet the criteria of E 5207(a)(1) and (2), as
7 relates to light, air, and privacy for neighboring properties, I
8 don't believe that the neighboring property will be unduly
9 affected. And I want to stress unduly within my phrase. I do
10 not believe that the Applicant strongly demonstrated that the
11 construction above the previously existing cornice line does not
12 visually intrude upon the character, scale, and pattern of the
13 neighboring property, particularly that chimney-like portion of
14 the third-floor addition that rises above the primary entrance
15 to the building. I do believe that as it is designed now, it is
16 out of character, therefore I can't support the special
17 exception. But on the matter of the area variance request, I
18 believe the Applicant has met the burden of proof for us to be
19 able to grant the area variance. And by and large, Chairman
20 Hill, I agree with your position on the reasons why we could
21 support the variance, the three criteria for evaluation are: one,
22 exceptional or extraordinary situation; two, undue hardship; and
23 three, that this relief can be granted without extreme detriment
24 to the public good or substantially impairing the intent,
25 purpose, and integrity of the zone plan.

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1 On the first two points, completely agree with where
2 you're at, Chairman Hill. The Applicant relied in good faith on
3 the actions taken by DCRA in approving the application in the
4 first place. I do not find evidence within the record or, you
5 know, anything that the Applicant spoke to, that the Applicant
6 did not act in good faith in submitting the affirmative
7 application to DCRA. If information was missing from the
8 application, it was incumbent upon DCRA to request the missing
9 information in order for them to make a sound and proper decision
10 on whether the application met the zoning requirements before
11 they issue building permit. So they're in essence calling this
12 -- you know, calling this back late in the game after the project
13 has been substantially -- been substantial construction on the
14 project.

15 Lastly, I agree with your position on the question
16 about detriment to the public good. I believe that the removal
17 of that cornice, the cornice is slightly lower than the cornices
18 to the left of the building, if I'm looking at the building, and
19 I don't think that a material change would be of substantial
20 detriment to the public good on the face of a variance.
21 Therefore, I believe that the Applicant meets the burden of proof
22 as to grant the area variance and will support the variance
23 request, but not the special exception request.

24 CHAIRPERSON HILL: Okay. Thanks, Mr. Smith. Mr. Smith,
25 can you tell me again why you're against the special exception?

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1 Like I'm actually kind of agreeing with you, I just wanted to
2 hear you articulate it a little bit more.

3 COMMISSIONER SMITH: Okay. So I'm against it, you
4 know, just looking at the criteria, I think it meets the criteria
5 of (a)(1) where it says light and air available to neighboring
6 properties. (Audio interference) the use and enjoyment of
7 neighboring properties should not unduly be compromised. There
8 aren't any windows facing the neighboring property that would be
9 most affected. And I do not believe there is a roof deck facing
10 that neighboring property. So I don't believe that there would
11 be an undue issue with privacy here. But where I'm concerned is
12 5207(A)(3) (indiscernible) construction (indiscernible) from
13 street alley and the public way shall not substantially visually
14 intrude upon character of the adjacent properties. As designed,
15 I believe that turret chimney-like structure is completely out
16 of character with what we see along the block above the cornice
17 line. And, you know, if this is something that we saw as a
18 special exception not after the fact, then my position I would
19 probably recommend a redesign of that to be more in character
20 with what we see along that block.

21 CHAIRPERSON HILL: Right. But you would have been okay
22 with the removal of the cornice, it's just the character, scale
23 and pattern of the neighborhood with concern to the chimney,
24 you're speaking to?

25 COMMISSIONER SMITH: Yes.

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1 CHAIRPERSON HILL: Okay. Okay. Thanks, Mr. Smith.
2 Mr. Smith, your computer is breaking -- it's, I don't know, it's
3 choppy or something or the audio seems, you know. I don't know.
4 Just bear with us through this and maybe in between when Chairman
5 Hood leaves we'll try to log you back off and back on and maybe
6 Mr. Moy also.

7 Mr. Blake, you had your hand up?

8 COMMISSIONER BLAKE: Yeah. I'd like to just actually
9 get some clarification from Board Member Smith as well on the
10 special exception. When you -- the initial part of your
11 presentation you talked about the reason why you would apply it
12 to the roofline and above. Could you just kind of review again
13 for me how you looked at that and why you would look at it that
14 way?

15 COMMISSIONER SMITH: I was looking at Subtitle E, the
16 entirety of Subtitle E deals with special exception on
17 (indiscernible) being a criteria of changes above a roofline. So
18 I didn't look below the roofline of the building in question when
19 it came down to the design. I know that that was something that
20 was requested by the parties in opposition, that we should look
21 -- we shouldn't look at other properties along that block, but
22 we'll -- well, we -- we shouldn't look at other properties along
23 the block, we should look at properties to the left and right of
24 us, and wholistically their argument was an entire design focus
25 of the entire building, not necessarily what is above that

1 roofline. And I think Subtitle E 5207 is fairly clear that we
2 should just be looking at above the cornice. Does that answer
3 the question?

4 COMMISSIONER BLAKE: Yeah. Thank you. Thank you.

5 CHAIRPERSON HILL: Who wants to go next?

6 You can go, Mr. Blake, if you wanted to.

7 COMMISSIONER BLAKE: I'll just go ahead. I think that
8 the -- as Board Member Smith pointed out, the -- looking at
9 something in retrospect is difficult because when you see what
10 you see, you know, you probably may have done something a little
11 bit different than what you may see right now, because I agree
12 with what he's saying in terms of looking at the final product.
13 The question -- and does it actually fit in and does the cornice
14 itself relief really pertain to that. So it's difficult because
15 I think as we pointed -- as you pointed out, if you were to have
16 this building on a rendering and we saw it in the context of it
17 with the removal of the cornice, as this being the product, it
18 would be kind of like well, I don't know, maybe it needs to be
19 redesigned a little bit to fit in, but that's not what we do
20 here. But it would have caused us to think about it, maybe
21 perhaps caused me to think about it a little bit more as Board
22 Member Smith pointed out. But when I think about it -- so that's
23 what makes it so retroactive, being kind of difficult because now
24 you see it and you're going I don't know if I would have been
25 exactly satisfied with what we have as a product. But that said,

1 and based on the evidence presented in the case, including the
2 Applicant's statement, all the photos, I mean, I looked at the
3 property's streetscape, the information provided by the ANC's
4 report, the Office of Planning's report, the testimony in the
5 hearing, I think the Applicant has actually met the burden of
6 proof for the special exception.

7 The Applicant has demonstrated that the removal of the
8 cornice -- obviously it is in poor condition -- was in poor
9 condition and it didn't really affect light and air or compromise
10 privacy of the neighboring properties. But you really do have
11 some issues when it comes to the impact on neighboring character.
12 I think that -- clearly I recognize the fact that removal of the
13 cornice allowed for the construction of a building with a
14 materially different massing and facade, which by the way, as you
15 pointed out, Chair, was -- would be by matter of right had the
16 building been razed. However, the compatibility of the building
17 as a whole really is not the subject of the proceeding. It really
18 is the cornice itself. I agree with the Applicant and the Office
19 of Planning's view that the Board should focus only on the removal
20 of the cornice. And I disagree with ANC 6A's interpretation of
21 E 5207 to apply the removal of the cornice via 5207 to the project
22 as a whole, which is a matter of right in every respect except
23 removal of the cornice. The language in 5207 reads the proposed
24 construction, it differs from the language in E 5201 which is the
25 proposed additional or accessory structure together with the

1 original building or proposed new building construction. So
2 there it's kind of a looking at the whole project versus looking
3 at the construction itself. And while I agree it facilitated the
4 other project, it is not, in my opinion, the -- it is not what
5 we should look at.

6 So I agree with the Office of Planning's analysis that
7 the removal of the cornice itself from the property would not
8 substantially intrude on the character and scale and pattern of
9 houses along the street or along 4th Street or K Street as the
10 neighborhood includes a variety of row buildings and
11 architectural styles, the design of this building, including the
12 cornice, is distinct from the other properties along the street.
13 It's a different building height, different type of cornice, a
14 different type of window configuration, and different entry to
15 the building. It's a different type of building. I'd also agree
16 that the Office of Planning now has (indiscernible) history of
17 the building permits is a factor supporting the (indiscernible)
18 harmony and intent of the zoning regulations. So in that
19 perspective, I would be in support of the special exception.

20 As for the variance, I actually looked at it a couple
21 different ways. First of all, I felt that I was in support of
22 variance. I thought there was a confluence of factors, and I do
23 think it relies on good faith on the DCRA is a factor. They
24 issued a permit, they did the construction. After a lot of
25 construction was done they said hey, wait, you can't do it. And

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1 we recognize that when you're constructing a project like this,
2 you try to get it done quickly, you don't lollygag. So the amount
3 of time that lapsed between the withdrawal is this project was
4 essentially well on its way. The cornice had been long removed
5 and they were on to other phases of the project. So I think that
6 the practical difficulty in trying to unring this bell is very
7 substantial and clearly a practical difficulty. And again, I
8 would point to permitting history of the property as one of the
9 issues from a offsetting a substantial detriment to the public.
10 And as well it was a derelict property anyway. So this is a
11 positive development.

12 Because that was in support of the special exception,
13 I did an alternate view, which said I could deny the variance
14 because if the special exception was approved, you wouldn't have
15 a practical difficulty. All that said, I think it's best to look
16 at it in isolation. And I would be voting in favor of the
17 variance. That's my thought.

18 CHAIRPERSON HILL: Okay.

19 Mr. Smith, where -- I'm just trying to find something
20 in the record that -- and I'm just now curious, what is it that
21 -- or where is the chimney thing that you kind of had issue with,
22 and/or what do you think you might have talked about in terms of
23 character, scale, and pattern if this were before us originally?

24 COMMISSIONER SMITH: You can see it -- and can you hear
25 me, I'm still trying to --

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1 CHAIRPERSON HILL: Yeah.

2 COMMISSIONER SMITH: You can see it in the ANC's report,
3 Exhibit 29.

4 CHAIRPERSON HILL: Yeah, I see it in Exhibit 29. So
5 you're talking about the gray, like -- what at the top --

6 COMMISSIONER SMITH: The brick portion above the
7 primary entrance.

8 CHAIRPERSON HILL: Uh-huh.

9 COMMISSIONER SMITH: It's the little narrow inset
10 windows?

11 CHAIRPERSON HILL: Uh-huh.

12 COMMISSIONER SMITH: I would have asked them to
13 consider a redesign of that portion above the where they removed
14 the cornice there to be more in character or it speak more to
15 the character of the (indiscernible) to the left (indiscernible).

16 CHAIRPERSON HILL: Okay. Okay. All right. Thanks,
17 Mr. Smith.

18 Chairman Hood?

19 ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman. I went
20 back and looked at the area variances as well as the special
21 exception, and again long story short, and I appreciate both my
22 colleagues who went first in total detail, I am more inclined
23 with Board Member Smith. The character for me has always been
24 the problem. Matter of fact, Commissioner Eckenwiler must be
25 getting a lot of gray hair because I'm noticing that it's a lot

1 of is after the fact stuff that comes to this Board, and I'm
2 starting to have serious problems with it and it's starting to
3 be the same, you know, let me go ahead and do it and ask for
4 permission later. And I know they did rely on, especially with
5 the area variance, they relied on DCRA giving them approval from
6 October to May. And as Board Member Blake mentioned, that's a
7 long time to go ahead and get started and get things moving. And
8 then he give a stop work order in June. So, you know, and then
9 Board is being asked to do after the fact decision making. So I
10 know the ANC 6C Commissioner Eckenwiler and his ANC are starting
11 to get tired of this. But I do agree wholeheartedly with Board
12 Member Smith's articulation, I cannot see the special exception
13 for the very reason of the character. I really focus on the
14 character as I believe he did. And again, after the fact decision
15 making, it's a bigger problem than this hearing in front of the
16 BZA. So I will not be supporting the special exception, but I
17 will -- I can support the variance. So I appreciate Board Member
18 Smith outlining that in that fashion. But again, this after the
19 fact stuff -- and it's not on the Board, but I don't know -- I
20 know DCRA has been going through some changes over the past few
21 years, but we've got to do better. And the Board should not
22 continue to be dealing with after the fact. SO I want to align
23 myself also with ANC -- the ANC as well. So that's all I have
24 on that. Thank you.

25 CHAIRPERSON HILL: Thanks, Chairman Hood.

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1 Vice Chair John? Vice Chair John, you're on mute I
2 think and/or --

3 VICE CHAIR JOHN: I am on mute.

4 CHAIRPERSON HILL: Oh, there we go.

5 VICE CHAIR JOHN: So I'm taking a slightly different
6 view of the special exception, and I would support the special
7 exception in this case, because the building itself is a matter
8 of right construction and all of the other criteria have been
9 met. And the only issue is the cornice. And as Mr. Smith says,
10 issue is whether or not removal of the cornice substantially
11 visually intrudes upon the character, scale, and pattern. So it
12 does intrude on the character, scale, and pattern, but the
13 question is whether or not it's substantially intrusive. And I
14 think that that particular building was never entirely consistent
15 with the other houses. It would have stood out because it's a
16 corner store and the whole front presents differently from the
17 other buildings. So for me, that makes a difference. Had this
18 not been a corner store, I might have been inclined to say that
19 the -- there's a substantial visual intrusion, but the building
20 does not present the same as others on the street.

21 And I agree with Commissioner Hood in terms of not
22 encouraging after the fact approvals. So I don't want to send
23 the message that the Board is always going to allow folks to just
24 go ahead and make changes hoping not to be caught. So that's
25 not the message I'm sending. I just think that this particular

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1 store, this particular building, because it was a corner store
2 at the end of the street, it makes a difference. And there is
3 also another similar building, I believe, on the opposite side
4 where the cornice has been removed. So I agree with OP's analysis
5 with respect to the special exception, and of course I agree that
6 there's no impact on light and air and privacy from removal of
7 the cornice.

8 Now, I also agree that the application meets the
9 standard for the variance because of the unique zoning history
10 that in this case the Applicant applied for permit, there was a
11 photograph of the building with the cornice intact in the record.
12 I agree with Mr. Smith that it's DCRA, now DOB's, responsibility
13 to make sure that the application is complete and that the
14 appropriate information is provided. And the photograph should
15 have been -- should have put DOB on notice that a zoning issue
16 would be presented by removing the cornice. So I believe that
17 creates an exceptional condition.

18 And also that the stop work order was issued at a time
19 when the construction was substantially -- well, I don't know if
20 it was substantially complete, but the Applicant had been moving
21 ahead with the project and had incurred significant expenses and
22 provided information in the record to show that removal of the
23 cornice to comply with the regulations would cost approximately
24 \$500,000.

25 Now in terms of substantial harm to the zoning

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1 regulations or the zoning plan, I think that -- and here I take
2 a little different view. I think that the fact that the cornice
3 is aa -- removal of a cornice is allowed by special exception is
4 that the regulations allow the removal of the cornice. And so I
5 -- you know, assuming that the conditions are met. So I would
6 then be in support of the application.

7 CHAIRPERSON HILL: Okay.

8 Mr. Smith, I'm looking at those photos. And so what
9 -- how could that have been -- and now again we sometimes go --
10 and it's funny, the chairman of the Zoning Commission is here,
11 as design and those type of things is not what we talk about as
12 much. There are sometimes we do it. But what -- how would it
13 be done in a way that you think might be more compatible? I'm
14 just curious. I'm just curious how you think it might be done
15 in a way that might be more compatible and if that would be cost
16 prohibitive, that would then be an argument again towards the
17 variance?

18 COMMISSIONER SMITH: I think some of the points raised
19 by other Board members that (audio interference) that some of
20 these after the fact special exceptions, it is a little diff-
21 -- more difficult to evaluate. But like to your question about
22 (audio interference) it may be cost prohibitive at this point to
23 redesign that, but to me that speaks more to the variance more
24 so than special exception argument. As far as redesigning it, I
25 -- you know, I don't (audio interference), sorry. Historically,

1 you know, (audio interference) air and (audio interference) not
2 speaking to what I would say they need to redesign but more so
3 speak to the regulation. You know, there could have been a
4 situation that they possibly could have stepped it back a little
5 bit more, the original cornice, at least in that portion, and
6 mimic the -- at least in that particular portion so, you know,
7 (audio interference) that character that you see to the left over
8 into the design of the new building, but kept the bay window in
9 essence, but just kind of bring that range -- that architectural
10 range over into this building. They may not could have kept the
11 original cornice, because the original cornice was shorter than
12 what we see to the left than the one of the corner store, as Ms.
13 John stated. But I do believe that if we did see that cornice
14 prior to the construction that I would have at least communicated
15 (audio interference) but I get the point that this is after the
16 fact. I do believe it would be cost prohibitive, but again that's
17 to me speaking to the second prong and the reason why I support
18 a variance.

19 CHAIRPERSON HILL: Okay. Yeah. And we -- feel free
20 to -- and then after we break here, I'm going to ask Mr. Smith,
21 if you could log on and log back in, but I want to just mention
22 a couple of things here as a Board that I wanted to comment upon.
23 The -- I mean, it sounds as though the votes are there for a
24 variance. And I think that the argument has been made for that
25 because primarily the permit was issued and they built the

1 building. I think that if we had wanted to and if there were
2 enough interest from the Board, we could ask the person to come
3 back and -- because I'm not in favor of the special exception
4 actually. I'm going to vote with Mr. Smith and Chairman Hood on
5 this. And the reasons why again is what I think Mr. Smith had
6 just articulated better, is that had we had an opportunity to see
7 this as a special exception, it might have been (audio
8 interference) there might have been more discussion about that
9 cornice.

10 I do want to make one point on the after the fact, at
11 least give you my opinion on the after the fact question. I
12 think that -- and I'm also speaking to the ANC -- that I think
13 that this -- and I don't mean any disrespect to my Board members,
14 I think the after the fact stuff like that, I think that's just
15 a crazy bet. Like I don't think anybody's betting on after the
16 fact. Right? Like I mean if -- in some cases, I think they are,
17 but in this particular case like, you know, to create this much
18 building in the hopes that basically you're going to be -- you
19 could have been able to do it more or less matter of right anyway,
20 so I think that in this particular case, it wasn't necessarily a
21 bet by the developer that they were going to get away with the
22 removal of the cornice. There are times where maybe that's the
23 case, but in this it's not. I guess what I'm just trying to get
24 at is I hope the people aren't trying to do this after the fact
25 stuff because that's not -- this Board is more than capable of

1 upholding the regulations the way the Board thinks that the
2 regulations should be upheld and send them back to the drawing
3 board, regardless of what I guess they had done. That's what I'
4 just kind of mentioning.

5 But, okay, so I'm going to vote against the special
6 exception. I'm going to vote for the variance for the reasons
7 that were all stated. And I'm going to see if anybody has
8 anything else to add or say before I make some motions.

9 Go ahead, Chairman Hood.

10 ZC CHAIRPERSON HOOD: Yeah, Mr. Chairman, I think that
11 this Board has seen enough after the fact to get the points, but
12 I'm not going to belabor the point because it sounds like you're
13 in agreement with the direction I would go. But I think it needs
14 -- and I understand what Vice Chair John had mentioned about the
15 after the fact. But I can tell you, I don't come on the Board
16 but every so many weeks, and it seems like I -- one of the
17 commissioners, I'm actually going to have a conversation about
18 all this with my other colleagues who come on the Board, and I'm
19 putting that on notice. Not that I'm going to do it sua sponte,
20 whatever happens here, but I just want you to know that that
21 conversation needs to be had because I see Commissioner
22 Eckenwiler coming out here all the time saying the same things
23 about after the fact. And to me, I've seen enough. And I think
24 that the record is clear. And I'm not saying people intentionally
25 do it, but people know they can come in front of a board or a

1 the commission and get a grace period, oh, I'll get forgiveness
2 later. I mean, it seems like they know the regulations -- some
3 of them a lot -- know the regulations a lot better than we do,
4 and we do this quite often. So since this is going the way I
5 think it should go, the way I would like for it to go I believe,
6 I'm going to leave that alone. But I think it needs to have
7 discretion because I think Commissioner Eckenwiler and his
8 commission needs some relief and I'll just leave it at that.
9 Thank you.

10 CHAIRPERSON HILL: Yep, sure. Oh, go ahead, who is,
11 Mr. Smith?

12 COMMISSIONER SMITH: Yeah, I just want to piggyback off
13 of what Chairman Hood stated. This year alone we've seen I
14 believe about three or four after the fact requests to this Board
15 within this neighborhood because of a, you know, uh-oh situation.
16 And I mean, as you stated, I've seen enough of them. And I
17 recognize or I believe that the ANC -- the way that they see it
18 is the developer is -- it seem that they hold more the developer
19 at fault trying to slip, you know, pull a fast one over someone.
20 But to me the onus is on the developer and DCRA or now the
21 Department of Building, to catch a lot of these issues. And,
22 you know, so I thank Chairman Hood for reaching out to his won
23 commission to, you know, have some more (audio interference)
24 what's being done because I think it is -- everyone knows the
25 regulation (audio interference) regulations and it would seem to

1 me that something needs to be tightened up a little bit more
2 because it's just too casual to me that they can just come to
3 the Board and get an after the fact on by special exception.
4 It's kind of a shrug onto everyone I think involved, development
5 maybe (audio interference). So I do believe that the process in
6 some way, shape, or form needs to be tightened up. The process
7 needs to be tightened up at DOB to be able to catch some of these.
8 And, you know, that -- let me get off of my soapbox, but we've
9 seen enough of them, especially in this ANC. And it seems maybe
10 some of them the ANC's catching, not DOB. They're catching it
11 after the fact. So I just want to put that out there that the
12 -- that there needs to be internal discussion at DOB about
13 tightening up (audio interference).

14 CHAIRPERSON HILL: Okay. And I'll -- go ahead, Ms.
15 John.

16 VICE CHAIR JOHN: Yeah. Just a couple comments. So I
17 may have made reference to 5201 in my discussion, but the correct
18 section is E 5207.1, which gives the standard for relief from E
19 206.1. So I think that in that case, we're looking at the
20 construction, not the addition. In this case to address Chairman
21 Hood, this is a little different from some of the after the fact
22 cases. We see this Applicant got a permit, and it's during the
23 permitting process that the mistake was made. So there would
24 have to be some affirmative showing or something that's
25 persuasive in the record that shows that the Applicant intended

1 to deceive DCRA in obtaining this permit. We didn't have that
2 here. And the other distinction I see is that this project was
3 a matter of right. It didn't require HPRB approval. So it's
4 understandable, I think, that may have slipped. I'm not trying
5 to convince anybody to go with my view, but just wanted to add
6 that to the record because citing the correct provision is
7 important, which is 5207.1. That's it, Mr. Chairman.

8 CHAIRPERSON HILL: Go ahead, Chairman Hood.

9 ZC CHAIRPERSON HOOD: Yes, I'm going to take personal
10 privilege, and I appreciate all of this, and I understand the
11 different nuances of the different cases. And I agree, Vice
12 Chair John, with you. I'm not disagreeing, but I'm seeing all
13 types of formalities and all types of nuances that come into the
14 specific cases within this area. That's what I'm talking about
15 looking at. And I know there -- they were -- and I mentioned in
16 my comments that they were given a go ahead, and the government
17 should be predictable. And in this case, it wasn't. But there
18 are some other nuances that are going on in ANC 6C, and it just
19 needs to be evaluated and looked at and see if anything we can
20 do within the Office of Zoning, the Zoning Commission or BZA, to
21 deal with it. We can't direct DCRA what to do, anybody else,
22 but I want to make sure our stuff is shipped tight. So those
23 are my comments. And I thank you all for the discussion. Thank
24 you.

25 CHAIRPERSON HILL: Okay. I guess commenting to my

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1 fellow Board members again, like I don't think that we look at
2 something, even if it's after the fact, we look at it as though
3 it hasn't happened yet. That's the way we're charged with looking
4 at it, and that's the way I believe we've looked at all of the
5 things that have been before us. However, I would stress to my
6 Board members if they think that, regardless of whether it's
7 after the fact, it should not be approved, I don't think we should
8 approve it, and I don't think that we've done that. But I
9 encourage my fellow Board members if they think that they're
10 being swayed because it's already been done, that they should
11 look at the regulations purely as if it hasn't been built. So
12 I'll go ahead and make a motion to first of all --

13 ZC CHAIRPERSON HOOD: Mr. Chairman, I have a question
14 for you. I've heard that from legal folks for 20 something years.
15 It sounds good. I know that's what we're supposed to do, but
16 the reality is just reality. Okay. So I hear that, but, you
17 know, I hear what you're saying of how we're supposed to look at
18 it, and not just the BZA, I do that on the Zoning Commission too,
19 but the reality is we're all human, and it's been done. So that's
20 just -- I wanted to put that out there that, you know, I don't
21 necessarily agree with that statement. I've heard it from others
22 as well, and I have never agreed with that statement. So I'll
23 just leave it at that.

24 CHAIRPERSON HILL: Okay.

25 All right. I'm going to go ahead and make a motion to

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1 deny special exception in 20813 and ask for a second, Chairman
2 Hood?

3 ZC CHAIRPERSON HOOD: Oh, I get to second. I'll second
4 it.

5 CHAIRPERSON HILL: Why not? Okay. The motion made and
6 second, although Mr. Smith did all the arguing there at the
7 beginning for it, I should have let you, Mr. Smith, but we'll
8 let Chairman Hood second.

9 And, Mr. Moy, you can take a roll call?

10 MR. MOY: Thank you, Mr. Chairman.

11 When I call your name if you'll please respond to the
12 motion made by Chairman Hill to deny the request for a special
13 exception relief. The motion was second by Zoning Commission
14 Chair Anthony Hood.

15 Mr. Smith?

16 COMMISSIONER SMITH: Yes to deny.

17 MR. MOY: Mr. Blake?

18 COMMISSIONER BLAKE: No.

19 MR. MOY: Vice Chair John?

20 VICE CHAIR JOHN: No.

21 MR. MOY: No to the motion to deny?

22 VICE CHAIR JOHN: Yes.

23 MR. MOY: Okay.

24 Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. MOY: Zoning Commission Chair Anthony Hood?

2 ZC CHAIRPERSON HOOD: Yes to deny.

3 MR. MOY: Staff would record the vote as three to two
4 to zero, and this is on the motion made by Chairman Hill to deny
5 a request for a special exception. This motion was second by
6 Zoning Commission Chair Anthony Hood. Also in support of the
7 motion to deny the special exception is Zoning Commission Chair
8 Anthony Hood, Mr. Smith, Chairman Hill. Opposed to the motion
9 to deny is Mr. Blake and Vice Chair John. The motion carries
10 though on a vote of three to two to zero.

11 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

12 On a separate motion, I will make a motion to approve
13 the area variance in Application 20813 as captioned and read by
14 the secretary, and ask for a second, Chairman Hood?

15 ZC CHAIRPERSON HOOD: I'll second it.

16 CHAIRPERSON HILL: Motion has been made and second, Mr.
17 Moy, if you'll take a roll call?

18 MR. MOY: When I call your name, if you'll please
19 respond to the motion made by Chairman Hill to approve or grant
20 the request for variance relief. The motion to grant the variance
21 was second by Zoning Commission Chair Anthony Hood.

22 Mr. Smith?

23 COMMISSIONER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 COMMISSIONER BLAKE: Yes.

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1 MR. MOY: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill?

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: Zoning Commission Chair Anthony Hood?

6 ZC CHAIRPERSON HOOD: Yes.

7 MR. MOY: Staff would record the vote as five to zero
8 to zero, and this is on the motion made by Chairman Hill to grant
9 the request for variance relief. The motion was second by
10 Chairman Hood. Also in support of the motion to grant the
11 variance relief is Mr. Smith, Mr. Blake, Vice Chair John, and of
12 course Chairman Hill and Zoning Commission Chair Anthony Hood.
13 The motion carries on a vote of five to zero to zero, sir.

14 CHAIRPERSON HILL: Okay. Thank you.

15 All right. Chairman Hood, thanks for the long
16 discussion, and I hope you enjoy your day.

17 ZC CHAIRPERSON HOOD: All right. Y'all have a good
18 one, take care.

19 CHAIRPERSON HILL: All right.

20 Is Commissioner May with us? Okay. Good, great,
21 wonderful.

22 ZC COMMISSIONER MAY: I do have a question though.

23 CHAIRPERSON HILL: Sure.

24 ZC COMMISSIONER MAY: Are we going to be done by 2:00?

25 CHAIRPERSON HILL: Unlikely.

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1 ZC COMMISSIONER MAY: There's a certain sporting event
2 that some people want to watch.

3 CHAIRPERSON HILL: I thought that was 1:00.

4 ZC COMMISSIONER MAY: No, 1:00 is when the coverage
5 starts; 2:00 is the game.

6 CHAIRPERSON HILL: We'll try. And if you seem a little
7 distracted, we'll understand why.

8 ZC COMMISSIONER MAY: No, no, no, I'm not going to
9 watch the game while I'm -- all right. I'm just -- I'm looking
10 out for Mr. Moore (sic).

11 CHAIRPERSON HILL: I'm trying. I mean, like, it's not
12 looking good. That first one didn't go smoothly. And then
13 there's, you know, one, two, three, four, five, six, seven, eight,
14 nine issues before us. Ten issues before us.

15 ZC COMMISSIONER MAY: Yes, I'm aware.

16 CHAIRPERSON HILL: My vote is not. But you know --

17 ZC COMMISSIONER MAY: Right.

18 CHAIRPERSON HILL: -- far as I can tell, neither one
19 of you speak French or are from Morocco.

20 ZC COMMISSIONER MAY: You know, it's the world's game.

21 CHAIRPERSON HILL: It's not a real sport. It's not a
22 real sport

23 ZC COMMISSIONER MAY: Oh, now you're really --

24 CHAIRPERSON HILL: I'm just kidding. Yeah, it'd be
25 great to be done, I agree. Okay. Well, I'm talking too much.

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1 Go ahead, Mr. Moy, call our next one please? I'll
2 hurry. I'll do the best I can.

3 MR. MOY: For the record, Mr. Chairman, I'm fine. I've
4 got my smart phone so I can track the game.

5 So I believe what's before the Board, Mr. Chairman, is
6 to address the request for party status to Case 20825, am I
7 correct?

8 CHAIRPERSON HILL: Yep.

9 MR. MOY: Okay, great. So --

10 CHAIRPERSON HILL: No, no, 19689-A.

11 MR. MOY: Oh, okay. All right. All right. Okay. All
12 right. I was a little bit off. I was a bit out of step.

13 Okay. Before the Board then, and we're in the Board's
14 meeting session, this is Case Application No. 19689-A of MIC9
15 Owner, LLC. This is a request for a Board's action on the remand.
16 This application was a self-certified application pursuant to
17 Subtitle X, Section 901.2 for special exceptions from the private
18 school regulations under Subtitle X, Section 104.1 that would
19 allow modifications of an existing private school plan and from
20 the bulk extension regulations under Subtitle, A Section 207.2.
21 Property's located in the RA-2 and RA-4 at 2300 16th Street,
22 N.W., Square 2568, Lots 806, 808, and 809. And participating are
23 the members present today. Thank you, sir.

24 CHAIRPERSON HILL: Okay, thanks.

25 Just for the record, Mr. Blake and Mr. Smith are not

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1 on it. Mr. Smith, if you can hear me, do you want to log off
2 and log back on and see if that helps your computer?

3 COMMISSIONER SMITH: Yeah, that's what I'm doing now.

4 CHAIRPERSON HILL: Okay. All right.

5 So before this Board was -- this case was remanded so
6 the Board could make additional findings to support a
7 determination that Meridian is a private school that was eligible
8 to apply for a special exemption under X 104. However, the Board
9 did not make a determination about whether Meridian was operating
10 a private school when deciding this application. Instead, the
11 Board's consideration of the request for a special exemption for
12 private school use required only a plausible basis to conclude
13 the relief requested in the self-certified application was the
14 necessary relief to achieve the Applicant's purpose.

15 In this case, the Board, I believe, had a plausible
16 basis to find that approval of a special exemption for a private
17 school was the correct relief for the Applicant to request. The
18 permanent use of the subject property is a private school for
19 adults. The special exception for private school was first
20 granted in 1960 and was modified in 1987 and 2003. The Applicant
21 has certified as -- I'm sorry, the Applicant has certificates of
22 occupancy authorizing the use of this property as a private
23 school. The Applicant proposed to continue the permitted private
24 school use in the two existing buildings and in a portion of the
25 new apartment house. The Applicant proposed the modification of

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1 an existing private school use, the same use permitted at the
2 subject property since 1960 by the same Applicant at the same
3 property. Under these circumstances, the finding of a plausible
4 basis to conclude that the future use of the property will be as
5 a private school did not require a detailed examination of the
6 Applicant's daily operations because it had that existing use.

7 The Board did need to make a determination about the
8 Applicant's actual use of the property for purposes of its
9 decision on this application for a special exemption. A request
10 for a special exception must be decided based on the criteria
11 contained in the zoning regulations, in this case under Subtitle
12 X 104 and Subtitle X 901.2. These criteria primarily require an
13 examination of whether the Applicant's proposal would tend to
14 create adverse impacts on the use of the neighboring properties,
15 and especially these will be located so that it is not likely to
16 become objectionable to adjoining and nearby properties because
17 of noise, traffic, number of students, or otherwise objectionable
18 conditions, which is in Subtitle X 104.2. I believe the Board
19 looked at that.

20 The criteria does not require an applicant to prove
21 eligibility for a new special exception. The requirements for
22 submitting an application for a special exception are stated in
23 Subtitle Y 300. An application must be filed by the owner of a
24 property and must contain certain information primary about the
25 property and the planned buildings or uses. In deliberating on

1 a request for a special exception, the Board cannot base its
2 decision on factors not listed in the zoning regulations,
3 including allegations of noncompliance with past approvals.
4 Allegations an applicant is operating out of compliance with past
5 approval raise questions about enforcement that are outside the
6 Board's jurisdiction. An allegation that the actual use of a
7 property has evolved into something other than the permitted use,
8 essentially a question of whether the actual operation is outside
9 the scope of the private school use authorized by a certificate
10 of occupancy, raised an issue of enforcement that cannot be
11 decided by the Board in its deliberation on an application for
12 approval of a special exception. Even if the Board can make such
13 a determination, it lacks the enforcement authority necessary to
14 address potential violations appropriately.

15 So I wanted to walk you through my thoughts of this and
16 let you know what I believe we should do. I know that we were
17 on this case before, and so it's something that is fresh,
18 relatively fresh, in our minds. And actually I still remember
19 it, I drive by that location all the time. I would motion that
20 the Board reaffirms -- I'm not making a motion yet, I'm telling
21 you what my plan is -- to make a motion to decision to grant the
22 -- reaffirm the Board's decision to grant the application for
23 special exemption under X 104 and A 207.2 subject to the
24 conditions of approval stated in the original order for the
25 reasons stated in the original order, and direct OZLD to prepare

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1 an order on remand explaining why the Board declined to make a
2 determination about the Applicant's actual use of the property
3 before making a decision on this application.

4 Mr. Commissioner, May, do you have anything you'd like
5 to add to this?

6 ZC COMMISSIONER MAY: I do not. I think you summarized
7 things fairly well. Very well.

8 CHAIRPERSON HILL: Thank you.

9 Vice Chair John?

10 VICE CHAIR JOHN: I think you summarized the issue very
11 well. I -- you know, this was an existing private school
12 previously authorized under a certificate of occupancy and the
13 Applicant was simply trying to amend the school plan to -- yeah,
14 the school plan to add a building that would include a private
15 school, a private school. So any allegations in the record as
16 to how the school was actually operating is an enforcement issue.
17 And so that was not something the Board needed to decide. So I
18 believe that the Board had a plausible basis to make its decision.
19 And I would affirm -- reaffirm the original order as well.

20 CHAIRPERSON HILL: Okay. Then I will make a motion to
21 reaffirm the Board's decision to grant the application for
22 special exceptions under X 104 and A 207.2, subject to the
23 conditions of approval stated in the original order for the
24 reasons stated in the original order and, B, direct OZLD to
25 prepare an order on remand explaining why the Board declined to

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1 make a determination about the Applicant's actual use of the
2 property before making a decision on this application, and ask
3 for a second, Ms. John?

4 VICE CHAIR JOHN: Second.

5 CHAIRPERSON HILL: Mr. Moy, motion made and second, if
6 you could take a roll call?

7 MR. MOY: Yes. Thank you, Mr. Chairman.

8 When I call your name, if you'll please respond to the
9 motion made by Chairman Hill to essentially reaffirm the Board's
10 original decision. The motion was second by Vice Chair John.

11]Zoning Commissioner Peter May?

12 ZC COMMISSIONER MAY: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: And we have two Board members not
18 participating in this decision. Staff would record the vote as
19 three to zero to two. And this is on the motion made by Chairman
20 Hill to reaffirm the Board's decision. The motion the second by
21 Vice Chair John, also in support of the motion, as well as Zoning
22 Commissioner Peter May, and of course Chairman Hill. Motion
23 carries, sir, on a vote of three to zero to two.

24 CHAIRPERSON HILL: Thank you.

25 All right. If it's okay with you guys, let's try to

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1 get through the preliminary matters and then we'll take a break.

2 Mr. Moy, you want to call that first case about the
3 party status request? And what's the number on that one?

4 MR. MOY: The number is Case No. 20825.

5 CHAIRPERSON HILL: Okay. 20825?

6 MR. MOY: Yes, it's 20825 of SNH Medical Office.

7 CHAIRPERSON HILL: Okay. Great, great.

8 All right. You want to call that first please for our
9 preliminary matters?

10 MR. MOY: Yes, sir. For the record, this is Case
11 Application No. 20825 of SNH Medical Office Properties Trust.
12 And for the record, it's a self-certified application for a
13 special exception pursuant to Subtitle X, Section 901.2, Subtitle
14 C, Section 1506, from the penthouse setback requirements of
15 Subtitle C, Section 1504.1. Let me stop there. The property's
16 located in the D-5 zone at 2141 K Street, N.W., Square 73, Lot
17 79. And as already mentioned, there's a request for party status
18 in opposition from the West End Condo Association, as well as an
19 individual by the name of Florence Harmon under Exhibit 26.

20 CHAIRPERSON HILL: Okay.

21 Ms. Harmon, are you here?

22 Is the Applicant here.

23 MR. MOY: Mr. Hill, I see a telephone symbol on the
24 panel.

25 CHAIRPERSON HILL: I see Mr. Epting, I don't know --

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1 MS. HARMON: Can you hear me? Can you hear me?

2 CHAIRPERSON HILL: Yeah, are you Ms. Harmon?

3 MS. HARMON: Yes.

4 CHAIRPERSON HILL: Oh, hi, Ms. Harmon. Just hang on
5 one second.

6 Mr. Epting, is that you?

7 ZC COMMISSIONER MAY: Mr. Epting is muted.

8 CHAIRPERSON HILL: I guess Mr. Young's still trying to
9 bring in people. I'm just trying to find the Applicant. If the
10 Applicant would wish to speak up.

11 MR. EPTING: So this is John Epting with Goulston &
12 Storrs. I'm representing the Applicant.

13 CHAIRPERSON HILL: Okay. Great. Thank you. Oh, you
14 just introduced yourself, great.

15 Ms. Harmon, could you introduce yourself for the
16 record please?

17 MS. HARMON: Yes, my name's Florence Harmon. I don't
18 know if people remember me, I was an ANC commissioner in this
19 area for 13 years, and I also have lived in West End Place
20 Condominium for 23 years. We support the project. We are just
21 -- we filed for party status to make sure that we were able to
22 enter into a construction management agreement similar to other
23 projects that we've done on the block. But we plan to work
24 collaboratively with the Applicant.

25 CHAIRPERSON HILL: Okay. So Ms. Harmon -- I'm sorry

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1 -- Ms. Harmon and -- yeah, thanks for being a commissioner for
2 when you were. The -- your party status application -- you're
3 the building adja- -- you are the representative for the
4 association, correct?

5 MS. HARMON: I filed for both myself as an individual
6 and the condominium association.

7 CHAIRPERSON HILL: Right. And the condominium
8 association, the building is the building that's adjacent to the
9 development -- to the property that's being developed, correct.

10 MS. HARMON: We are one building. There is the EU
11 building in between us at the corner of K and 22nd, but we are
12 very, very close with -- the 2141 is the next building over. And
13 our residents face, directly face, that building from 40 to 50
14 feet away.

15 CHAIRPERSON HILL: Okay. And then you're applying
16 separately as an individual just in case the association didn't
17 get party status and/or how do you think you're being affected
18 differently as an individual?

19 MS. HARMON: Well, I think, for example, we are
20 negotiating a construction management agreement. If for some
21 reason the association, and I do not anticipate this at all, but
22 if, for example, they were unreasonable in agreeing to the terms,
23 I would be able to enter into an agreement that protected myself
24 because my bedroom window faces the building directly.

25 CHAIRPERSON HILL: Okay.

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1 All right. Let's see. Mr. Epting -- okay.

2 Well, sorry to -- so Ms. Harmon, I guess what we're
3 going to do is after we -- I'm going to hear what Mr. Epting has
4 to say about this party status one way or the other. And then
5 I'm going to excuse you, Ms. Harmon, while the Board deliberates
6 on your party status. If you are granted party status, either
7 as the representative of the association or an individual, we're
8 going to put this case at the end of the day so that you have an
9 opportunity to get your thought process together. And then if
10 there's any further discussions you may or may not be able to
11 have with Mr. Epting in the meantime, that might be helpful. But
12 if you or your association is granted party status, then you
13 would become a party, which means that you'll have the same amount
14 of time as the Applicant for the presentation, you'd be able to
15 ask questions, you'd be able to ask questions of the Applicant,
16 you'd be able to ask questions of the Office of Planning, you're
17 treated as a party. Do you have any questions from me about what
18 I just said?

19 MS. HARMON: No, but I don't think anything that I
20 really have to say at this point would be very time consuming
21 because we are working very collaboratively with the Applicant
22 and I anticipate that we have an agreement in principle.

23 CHAIRPERSON HILL: Okay. Well, sure.

24 Go ahead, Commissioner May.

25 ZC COMMISSIONER MAY: Ms. Harmon, I just want to ask a

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1 question. So you basically stated that the reason you're seeking
2 party status is so that you would have a stronger case to
3 negotiate a construction management agreement with the Applicant.
4 What I'm wondering is what is it about the relief that is being
5 requested that is affecting you more uniquely? What is it about
6 the relief as opposed to just the fact that there's a construction
7 project one building away?

8 MS. HARMON: Well, the relief would be extremely noisy
9 if it were done overnight when people were sleeping. So we have
10 to have some cooperation and standards set out. We have -- for
11 example, I just adopted a foster child who has severe ADHD and
12 other problems. I cannot have a lot -- she needs to sleep at
13 night. We have numerous small children in the building. We have
14 people who work. We've always -- we anticipate having a very
15 collaborative and -- relationship with the Applicant. I don't
16 see issues. But until the agreement is signed on the dotted
17 line, I think it would be good for us to maintain party status.

18 ZC COMMISSIONER MAY: Okay. So you are aware that
19 hours of construction are guided by other regulations than
20 zoning, right, and that people will not be constructing things
21 on the outside of this building in the middle of the night, right?

22 MS. HARMON: Actually, it doesn't exactly work that way
23 because we've had experiences where the ANC, for whatever reason,
24 never checks with us anymore. When I was an ANC commissioner, I
25 always checked with the residents affected by overnight

1 construction. We really don't get that as much. So you know,
2 they can pull an overnight permit and we'd never know about it.

3 ZC COMMISSIONER MAY: Okay. Well, you know that that
4 doesn't really relate to zoning, but all right. That's enough.
5 I've asked my questions. Thank you.

6 CHAIRPERSON HILL: Okay, thanks.

7 Anybody else have any questions for the witness -- or
8 I'm sorry, for the party status applicant?

9 Mr. --

10 VICE CHAIR JOHN: Mr. Chairman, along the same lines
11 that Commissioner May requested.

12 So Ms. Harmon, how is the fact that your window faces
13 the construction, how does that affect you? We're only looking
14 at the relief for the penthouse. So how is that going to help
15 -- to affect you?

16 MS. HARMON: Well, they're planning to do construction
17 on the penthouse. We need to have some type of agreement in
18 place for the entire project, but for the penthouse, you know,
19 it is -- my bedroom window, the -- I face the alley and my window
20 and an entire, you know, most of the residents on the backside,
21 of which there are numerous, directly face where the construction
22 is going to be done. We -- I guess we could say that there are
23 shadow implications. We are within a certain prescribed number
24 of feet to object to this. And we would like to see, you know,
25 being able to work collaboratively with the Applicant, which to

1 date they have.

2 VICE CHAIR JOHN: And so the alley is 15 feet wide?

3 MS. HARMON: No, I think it's a little -- well, where
4 I am, it seems to be about 40 feet, that I'm about 40 feet -- or
5 30 to 40 feet from where the construction work would be done. I
6 can directly see the rooftop from my bedroom window.

7 VICE CHAIR JOHN: Okay. All right. Thank you very
8 much.

9 CHAIRPERSON HILL: Ms. Harmon, you guys are right
10 around the corner, right?

11 MS. HARMON: Not in the alley, we're right there.

12 CHAIRPERSON HILL: No, no, you're directly across from
13 the alley. I'm just trying to make sure I have -- because I know
14 that neighborhood, and, right, if you walk out your front door,
15 you kind of walk around the corner to get to their front door,
16 right?

17 MS. HARMON: To front doors, yes, but half the residents
18 in these buildings do not face 22nd Street. And so when you go
19 around the corner, that's not where half the residents in this
20 building live.

21 CHAIRPERSON HILL: Okay. Okay.

22 Does anybody have -- oh, Mr. Epting, do you have any
23 comments or -- okay.

24 MR. EPTING: No. We have no objection.

25 CHAIRPERSON HILL: Okay. All right.

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1 All right. Does the Board have any questions for the
2 party status person? Again, I'm seeing none.

3 All right. Ms. Harmon, we're going to -- you're able
4 to go ahead and watch and see how the deliberations go. Okay?

5 MS. HARMON: Thank you.

6 CHAIRPERSON HILL: Thank you, Ms. Harmon.

7 MR. EPTING: Thank you.

8 CHAIRPERSON HILL: Mr. Young, if you could excuse
9 everyone.

10 Well, I don't know where we are with this. I'm going
11 to -- who wants to go first? Commissioner May, you want to go,
12 you had some questions?

13 ZC COMMISSIONER MAY: Yeah. I mean, Mr. Chairman, I,
14 you know, I appreciate that there's a proximity argument in this
15 circumstance, but the concerns that were raised specifically by
16 Ms. Harmon and her, you know, her -- the building association, I
17 don't think really relate to the relief. It's -- and I feel
18 like, you know, that they are just trying to use the potential
19 party status as a -- as leverage to force greater cooperation on
20 the part of the Applicant. And I just -- I feel like that's a
21 misuse of the party status provision in the regulations. So I
22 am not inclined to support this application.

23 CHAIRPERSON HILL: Okay.

24 Who wants to go next?

25 VICE CHAIR JOHN: Mr. Chairman, I'm not in support of

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1 the application for party status as well because I don't believe
2 that the applicant met requirement to show that either the
3 association or Ms. Harmon -- the applicant for party status,
4 which is Ms. Harmon or the association have shown that their
5 interest would likely be more significantly distinctively or
6 uniquely affected in character and kind. And the proposed
7 construction of the penthouse would take place 30 to 40 feet away
8 from Ms. Harmon's rear window. And the other similarly situated
9 residents of the condominium are also considerably separated from
10 the project. So even though she's within the 200-foot radius,
11 there still has to be an additional showing that there is a
12 substantial interest that would be affected. And the fact that
13 Ms. Harmon can see that construction doesn't really meet the
14 standard. And I also agree with Commissioner May that using
15 party status to -- as a wedge to negotiate a construction
16 agreement, is not a good use of the party status process, and
17 the construction agreement is outside of the scope of the Board's
18 jurisdiction anyway. The Board would just refer to it if the
19 Board were to approve the application. So I would not approve
20 the party status in this case.

21 CHAIRPERSON HILL: Okay.

22 Who'd like to speak next?

23 COMMISSIONER SMITH: I'll speak. I'm going to belabor
24 the point, I agree with both Ms. John and Mr. May on their
25 positions on granting party status. I do believe that the person

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1 requesting party status has not sufficiently demonstrated to me
2 that they meet the criteria for us to grant their party status.
3 Given the testimony that was provided, a lot of the concerns more
4 so relate to things that are beyond the purview of what we can
5 do as the BZA. So I will not support party status.

6 CHAIRPERSON HILL: Mr. Blake?

7 COMMISSIONER BLAKE: I agree that the Applicant -- the
8 person requesting party status does not meet the criteria of Y
9 404.13, having then not demonstrated they are significantly
10 distinctively uniquely affected by the activity -- by the zoning
11 action requested. So for that reason I would not be in favor of
12 granting party status.

13 CHAIRPERSON HILL: Okay.

14 I'm probably going to get -- I'm going to vote against
15 one of my motions here in so far as I would have been in favor
16 of granting the party status for the association. They might not
17 have articulated some of the reasons why -- they're really kind
18 of over that building that's being built across the alley and
19 maybe some of the light and air issues might have taken place
20 that they could have -- but at the same -- well, anyway, we'll
21 see how this goes and how this is going to go.

22 So I'm going to go ahead and make a motion to deny the
23 party status application of the West End Condo Association and
24 ask for a second, Ms. John?

25 VICE CHAIR JOHN: Second.

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1 CHAIRPERSON HILL: The motion having been made and
2 second, Mr. Moy, you want to take a roll call?

3 MR. MOY: Yes, thank you, sir. When I call your name
4 if you'll please respond to the motion made by Chairman Hill to
5 deny the request for party status. The motion to deny was second
6 by Vice Chair John.

7 Mr. Smith?

8 COMMISSIONER SMITH: Yes.

9 MR. MOY: Mr. Blake?

10 COMMISSIONER BLAKE: Yes to deny.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes to deny.

13 MR. MOY: Zoning Commissioner Peter May?

14 ZC COMMISSIONER MAY: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: No.

17 MR. MOY: Staff would record the vote as four to one
18 to zero. And this is on the motion made by Chairman Hill to deny
19 the request for party status. The motion to deny was second by
20 Vice Chair John. Also in support of the motion to deny are
21 Zoning Commissioner Peter May, Mr. Smith, Mr. Blake, Vice Chair
22 John. And Chairman Hill votes to -- in opposition to the motion
23 to deny. So the motion carries on a vote of four to one to zero.

24 CHAIRPERSON HILL: Okay.

25 And I also agree with my fellow Board members that I

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1 don't think that Ms. Harmon meets the qualifications for us to
2 grant her party status. I think that just because she's in that
3 building and even adjacent, I think there are other people in
4 that same situation as her that doesn't make it any more uniquely
5 qualified. So I'm going to make a motion to deny Ms. Harmon's
6 individual party status and ask for a second, Ms. John?

7 VICE CHAIR JOHN: Second.

8 CHAIRPERSON HILL: The motion has been made and second,
9 Mr. Moy, if you'd take a roll call?

10 MR. MOY: When I call your name, if you'll please
11 respond to the motion made by Chairman Hill to deny the request
12 for individual party status to Ms. Florence Harmon. And the
13 motion to deny is second by Vice Chair John.

14 Zoning Commissioner Peter May?

15 ZC COMMISSIONER MAY: Yes to deny.

16 MR. MOY: Mr. Smith?

17 COMMISSIONER SMITH: Yes.

18 MR. MOY: Mr. Blake?

19 COMMISSIONER BLAKE: Yes to deny.

20 MR. MOY: Vice Chair John?

21 VICE CHAIR JOHN: Yes to deny.

22 MR. MOY: Chairman Hill?

23 CHAIRPERSON HILL: Yes to deny.

24 MR. MOY: Staff would record vote as five to zero to
25 zero. And this is on the motion made by Chairman Hill to deny

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1 Ms. Florence Harmon's request for party status. The motion to
2 deny was second by Vice Chair John. Also in support of the motion
3 to deny, Zoning Commissioner Peter May, Mr. Smith, Mr. Blake,
4 vice Chair John, and of course Chairman Hill. Motion carries,
5 sir, five to zero to zero.

6 CHAIRPERSON HILL: Okay.

7 All right. We're going to put this again still at the
8 end of the day. If Ms. Harmon and the Applicant are still
9 listening, I would encourage the Applicant and Ms. Harmon to
10 speak with each other. Ms. Harmon, you will have an opportunity
11 as a member of the public to give your testimony at the public
12 testimony portion, which will give you three minutes to testify
13 as well as you will get time, five minutes, to testify as a member
14 of your association, representing your association. So that will
15 also happen at the public testimony portion. And anything you
16 and the Applicant can get done before then, that would be also
17 helpful to the Board to hear where you are with your discussions
18 with the Applicant. If the Applicant needs to get in touch with
19 Ms. Harmon and doesn't have that information, please contact the
20 Office of Zoning.

21 Mr. Moy, you want to go ahead and call our two other
22 preliminary matters and then we'll take a break? Or call the
23 first one first, sorry.

24 MR. MOY: Yes, sir. Both of the next two applications
25 are requests for continuance. The first is Case Application No.

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1 20766 of Konah Duche, I believe, D-U-C-H-E, if I'm pronouncing
2 that correctly. This is an application for relief from special
3 exception pursuant to Subtitle X, Section 901.2 and Subtitle E,
4 Section 5201 from the minimum pervious surface requirements,
5 Subtitle E, Section 204.1, area variance, Subtitle X, Section
6 1002 from the lot occupancy requirements, Subtitle E, Section
7 304.1, and finally maximum permitted building area, Subtitle E,
8 Section 5003.2. Subject site located in the RF-1 zone at 1313
9 West Virginia Avenue, N.E., Square 4064, Lot 81. And the, let
10 me think, and this is the Applicant's second request for a
11 postponement, sir.

12 CHAIRPERSON HILL: Okay.

13 Could the Applicant please introduce themselves for the
14 record? I think you're on mute. Now, I think you're off mute.
15 Can the Applicant speak? I don't know if it's Ms. Or Mr.
16 Nathaniel? Hello? Oh, I see a picture. Now you're on mute,
17 Mr. Nathaniel. Now you're not on mute. Now you are muted, at
18 least that's what it shows me on the screen. Can you speak right
19 -- just try to say something right now. No, can't hear you.
20 That's okay. Mr. Nathaniel, I can see you, just give me a second.
21 For the record, Mr. Nathaniel is with us and on the screen, and
22 he is the representative of the postponement request.

23 Mr. Moy, when could we reschedule this?

24 MR. MOY: Mr. Chairman, the earliest that I -- my
25 suggestion that we could reschedule this, because of the caseload

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1 and of course we have that other concern the Board is aware of
2 which refers to changes in the -- boundary changes of the SMDs
3 and the SMDs and to allow the new SMD new SMDs that require public
4 notice number of days, the earliest I could set this for would
5 be March 22nd, 2023. For March 22nd, sir, we have eight cases.
6 Yeah. If you ask me for the following week, which would be March
7 29th, we would have seven cases.

8 CHAIRPERSON HILL: Well, we've got another postponement
9 coming up. Let's see.

10 So Mr. Nathaniel, I know that you're on mute or you
11 were unable to speak, but I can see you. Your application is in
12 one of the new SMDs, and so you're going to have to go back before
13 the ANC, and so get the new, you know, the new SMD's weigh in on
14 this proposal. So we're going to put you on March 22nd. You
15 can nod if you can hear me and understand. Okay. For the record,
16 the Applicant has nodded and given me the thumbs up.

17 So Mr. Moy, we're going to go with March 22nd. Okay?

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

19 CHAIRPERSON HILL: Okay. You want to -- goodbye, Mr.
20 Nathaniel, thank you.

21 You can call the next one.

22 MR. MOY: This would be Case Application No. 20824 of
23 Rupsha 2011, LLC. For the record, this application is amended
24 as a self-certified application pursuant to Subtitle X, Section
25 901.2 for special exceptions under Subtitle U, Section 421, which

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1 would allow new residential development, the new alley record lot
2 requirement Subtitle C, Section 306.1(a), area variance pursuant
3 to Subtitle X, Section 1002 from the lot occupancy requirements,
4 Subtitle F, Section 304.1, maximum height requirements, Subtitle
5 F, Section 5100, and a use variance pursuant to Subtitle X,
6 Section 1002. The property's located in the RA-1 zone at 4226
7 in the rear 6th Street, S.W., Square 6208, Lot 823.

8 CHAIRPERSON HILL: Mr. Blake, can you hear me, and if
9 so could you introduce yourself for the record?

10 MR. BLAKE: Yes, I can hear you. My name is Michael
11 Blake from Bestudio Architecture, representing the owner.

12 CHAIRPERSON HILL: Okay. Mr. Blake, why do you need a
13 postponement?

14 MR. BLAKE: We got a few reasons. Opposition from the
15 Office of Planning that we wanted to respond to and work through.
16 We also were unable to get a response from the ANC. So we would
17 like to continue those efforts and present the project and
18 hopefully gain their support.

19 CHAIRPERSON HILL: Okay. Mr. Blake, when would you
20 hope that you would come back?

21 MR. BLAKE: Well, similar to the last case, my
22 understanding is that we're in a new SMD, and so my understanding
23 was that it was going to be later in March.

24 CHAIRPERSON HILL: Okay.

25 So Mr. Moy, I guess -- you said March 22nd there was

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1 eight cases, then on the next hearing, there was seven; is that
2 correct?

3 MR. MOY: That's correct, sir.

4 CHAIRPERSON HILL: Can you put us on the next one then
5 which is March what?

6 MR. MOY: It would be March 29. March 29 we have seven
7 cases, so this one would give you eight cases.

8 CHAIRPERSON HILL: Okay. Okay, great.

9 Mr. Blake, we're going to put you on March 29th, okay?

10 MR. BLAKE: Okay.

11 CHAIRPERSON HILL: Okay. All right. We'll see you
12 then.

13 Mr. Young, please excuse --

14 MR. BLAKE: Thank you.

15 CHAIRPERSON HILL: Thank you.

16 All right. Everybody, let's take a ten-minute break,
17 come back, and see where we are. Okay? Thank you.

18 (Whereupon, there was a brief recess.)

19 CHAIRPERSON HILL: All right. Mr. Moy, you can call
20 our next case.

21 MR. MOY: Thank you, Mr. Chairman. The Board has
22 returned to its public hearing session, and the time is at or
23 about 11:22 a.m. The next case before the Board is Application
24 No. 20819 of Foulger Pratt Development, LLC. This is a self-
25 certified application for special exception pursuant to Subtitle

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1 X, Section 901.2 and Subtitle C, Section 1501.1(d) from the
2 penthouse use requirement, Subtitle C, Section 1501, to allow an
3 eating and drinking establishment in the habitable space.
4 Property located at -- in the D-6 zone at 1133 19th Street, N.W.,
5 Square 140, Lot 908. Thank you, sir.

6 CHAIRPERSON HILL: Thank you.

7 Could the Applicant please introduce themselves for the
8 record?

9 MS. SHIKER: Good morning, Chairman Hill, members of
10 the Board. My name is Christine Shiker with the law firm of
11 Holland & Knight, representing the Applicant. We also have John
12 Oliver on the line, who is from Holland & Knight. We have Josh
13 Etter who is a representative of the Applicant, and then we have
14 Siti Abdul-Rahman, who is the architect from WDG Architects.

15 CHAIRPERSON HILL: Okay. Ms. Shiker, we're in a bit
16 of a -- we're trying to stay focused today. Please go ahead and
17 give us your client's application and we'll see where we get.
18 You can begin whenever you're ready.

19 MS. SHIKER: Yes, we have a PowerPoint presentation and
20 I will do a very brief summary.

21 Mr. Young, if you could please bring that up. Thank
22 you. If you could go to the next slide please? There you go,
23 thank you.

24 So the site that is the subject of the application is
25 located at 1133 19th Street, N.W. It's on the east side of 19th

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1 Street between L and M, and as the caption read, it is zoned D-
2 6. The site is currently improved with an office building that
3 was constructed back in the early 1980s. The building will be
4 converted to a residential building as part of this project.
5 It'll have approximately 175 to 187 residential units. The
6 conversion includes things like redoing the interior of the
7 building to accommodate ground floor retail as well as the
8 residential use, recutting the exterior of the building, making
9 some ground floor modifications, importantly inserting a
10 courtyard into the south side of the building in order to have
11 some light and air for those residential uses. And then the
12 subject of this application is that we're going to reconfigure
13 the existing penthouse and expand it to incorporate a penthouse
14 habitable space and amenity space. If you could go to the next
15 slide please?

16 Again what we are here for today is a special exception
17 to allow a eating and drinking establishment. This is going to
18 be a residents-only eating and drinking establishment. So it is
19 not a publicly accessible restaurant, but will rather be part of
20 the amenity space on the roof. Next slide please?

21 Here you can see the penthouse plan. The private cafe
22 is located on the west side and has some really nice exterior
23 space as well. It's approximately 1600 square feet. And the
24 Applicant really envisions this as like a coffee bar, you know,
25 beverages in the evening. The space will really operate in the

1 same way as any typical community amenity space, but with the
2 added benefit of having food and beverage service for the
3 residents and their guests. Next slide please?

4 We're pleased to have the Office of Planning's support.
5 Office of Planning did ask for one condition, which is consistent
6 with past cases in which we've proffered a residents-only café
7 and that's -- the limitation on that. We have agreed to that as
8 I indicate here on this slide. DDOT had no objections and the
9 ANC we presented back to them in September and they supported the
10 project. Next slide please?

11 Here is just a summary of how we comply with the special
12 exception standard. As to the first prong, the residential cafe
13 use is consistent with the D-6 zone, which is intended to permit
14 high density mixed use development. The use itself is permitted
15 as a matter of right and it will serve as an attractive amenity
16 for the residents of the building. As to the second prong, it's
17 exclusive to the residents, so it will not generate any additional
18 impacts compared to traditional amenity space. And there are no
19 residential uses in the immediate area, so even if there were,
20 this would be operated in such a way as to be appropriate to
21 those because we are converting this to a residential building.
22 We want our residents to be well accommodated as well. Finally,
23 the project itself, as well as the penthouse, meet all the zoning
24 requirements, so no other relief is needed. To the extent that
25 any conditions are needed, we've agreed to the one from the Office

1 of Planning. Next slide please?

2 And here's just a version of the existing building on
3 the right-hand side, and you can kind of see what it's going to
4 look like with being reclad. And at this point, I would conclude
5 our presentation. We do have the architect and the representative
6 from the Applicant if there any questions for them, and questions
7 for me, but we appreciate the Board's time this morning. Thank
8 you.

9 CHAIRPERSON HILL: Thanks, Ms. Shiker

10 I'm going to come back to the Board. I'm going to
11 first turn to the Office of Planning.

12 MR. COCHRAN: Thank you, Mr. Chair. Let me try that
13 again. Okay. I'm Steve Cochran, representing the Office of
14 Planning on this case. OP is very happy to be able to stand on
15 the record and in support of the application and recommend you
16 approve the special exception.

17 CHAIRPERSON HILL: Okay. Mr. Cochran, you got all
18 kinds of feedback going on, so let's just see what happens.

19 Does the Board have any questions of the Office of
20 Planning?

21 All right. Mr. Young, is there anyone here wishing to
22 speak?

23 MR. YOUNG: I do not.

24 CHAIRPERSON HILL: Ms. Shiker, is there anything you'd
25 like to add at the end?

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1 MR. COCHRAN: Mr. Chair --

2 CHAIRPERSON HILL: Oh, sorry.

3 MR. COCHRAN: -- I don't know whether you can hear me
4 or not.

5 CHAIRPERSON HILL: I did hear you and I heard your
6 comments, Mr. Cochran.

7 MR. COCHRAN: Okay. I can't hear you, but that's all
8 right. Thank you.

9 CHAIRPERSON HILL: Okay.

10 All right. I'm going to close the hearing and the
11 record.

12 I didn't have any issues with this application. I
13 believe that the Applicant is meeting the criteria for us to
14 grant the relief requested. I would agree with the Office of
15 Planning's report as well as that of the ANC as well as that of
16 DDOT. I am also comfortable with the condition that the office
17 of Planning is recommending concerning how the adverse impact
18 concerning if it were a public drinking establishment, it being
19 private. And so I'm in favor of this application.

20 Mr. Smith, do you have anything you'd like to add?

21 COMMISSIONER SMITH: No, I agree with your assessment
22 of this application and I will support the special exception with
23 the condition as proposed by the Office of Planning.

24 CHAIRPERSON HILL: Thank you.

25 Mr. Blake?

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1 COMMISSIONER BLAKE: I agree with the analysis of you
2 and Board Member Smith. I would not instantly be comfortable
3 including the condition from ANC 2B, but otherwise I'm very
4 comfortable with the condition from the Office of Planning.

5 CHAIRPERSON HILL: Thank you for mentioning that
6 condition, Mr. Blake.

7 Mr. Ma -- Commissioner May?

8 COMMISSIONER SMITH: You're on mute.

9 CHAIRPERSON HILL: Oh, thank you, Mr. May (sic).

10 ZC COMMISSIONER MAY: Yes. All right. So I have
11 nothing to add. Apparently almost no sound either. Nothing to
12 add and I'm in support of the application. Thank you.

13 CHAIRPERSON HILL: Thank you.

14 Vice Chair John?

15 VICE CHAIR JOHN: I have nothing to add, Mr. Chairman,
16 and I'm also in support of the application.

17 CHAIRPERSON HILL: Thank you.

18 I'm going to go ahead and make -- oh, Mr. Smith, did
19 you go? Yes, you did go, right? Okay.

20 Go ahead and make a motion to approve Application No.
21 20819 as captioned and read by the secretary, including the
22 condition as recommended by the Office of Planning that the
23 facility shall be limited to only building residents, their
24 guests, and attendees of resident-sponsored event, and ask for a
25 second, Ms. John?

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1 VICE CHAIR JOHN: Second.

2 CHAIRPERSON HILL: The motion's been made and second,
3 and Mr. Moy, if you'd take a roll call?

4 MR. MOY: Thank you, sir. When I call your name, if
5 you'll please respond to the motion made by Chairman Hill to
6 approve the application for the relief requested along with the
7 stated OP condition. The motion was seconded by Vice Chair John.

8 Zoning Commissioner Peter May?

9 ZC COMMISSIONER MAY: Yes.

10 MR. MOY: Mr. Smith?

11 COMMISSIONER SMITH: Yes.

12 MR. MOY: Mr. Blake?

13 COMMISSIONER BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: Then staff would report the vote as five to
19 zero to zero. And this is on the motion made by Chairman Hill
20 to approve with the conditions recommended by the Office of
21 Planning. The motion was second by Vice Chair John also in
22 support of the motion as well. Others in support of the motion
23 to grant the relief is Zoning Commissioner Peter May, Mr. Smith,
24 Mr. Blake, Vice Chair John, and Chairman Hill. Motion carries
25 on a vote of five to zero to zero, sir.

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1 CHAIRPERSON HILL: Thank you, Mr. Moy. You can call
2 our next one, Mr. Moy.

3 MR. MOY: The next case before the Board is Application
4 No. 20820 of 4008 7th Street, N.E., LLC. This is a self-certified
5 application pursuant to Subtitle X, Section 901.2. This is for
6 a special exception under Subtotal U, Section 421, which would
7 allow a new residential development. I believe it's a six-unit
8 apartment house. Property's located in the RA-1 zone at 4008 7th
9 Street, N.E., Square 3820, Lot 814.

10 CHAIRPERSON HILL: Thank you.

11 Could the Applicant please introduce themselves for the
12 record if they can hear me?

13 MR. CRAIN: Hi, my name's Adam Crain, architect with
14 2Plys. Joining me is Stefan Rosu representing the ownership
15 entity.

16 CHAIRPERSON HILL: Okay. Mr. Crain, if you could walk
17 us through your application and what you're trying to do and why
18 you believe you're meeting the criteria for us to grant the relief
19 requested. I'm going to put 15 minutes on the clock and you can
20 begin whenever you like.

21 MR. CRAIN: Sure thing. This is -- we're adding a
22 couple of units in the RA-1 zone, thus requiring special exception
23 for that approval. It's an existing four-unit project over two
24 levels, first floor and second floor. So we're basically doing
25 a cellar excavation and adding two additional units entirely

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1 below grade. There's no building volumetric changes in addition.
2 So it's almost entirely unseen from the exterior other than window
3 wells and access area-ways. We do have OP suggesting approval.
4 DDOT has non-objection. ANC is supporting.

5 CHAIRPERSON HILL: Okay, Mr. Crain.

6 All right. I'm going to let my colleagues think about
7 the record, and I'm going to turn to the Office of Planning for
8 a minute. I don't see the Office of Planning.

9 Mr. Young, do you see the Office of Planning?

10 MR. YOUNG: I am trying to figure out who is on this
11 case. I had Crystal Myers, but I don't see her on currently.

12 MR. CRAIN: Crystal was the one we were working with.

13 CHAIRPERSON HILL: Okay. I'm going to pull that report.

14 Mr. Young, do you have anyone here wishing to speak?

15 MR. YOUNG: No, we do not.

16 CHAIRPERSON HILL: Okay. Give me a second, I'm just
17 pre-reading the report.

18 MR. MOY: Mr. Young, this is Cliff, are there any other
19 Office of Planning planners who are within the panel who might
20 be able to speak for Crystal Myers by chance?

21 MR. YOUNG: Yeah. I can bring someone up, I'm just not
22 sure they are the right person. I'll bring up Mr. Kirschenbaum
23 first.

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

25 MR. KIRSCHENBAUM: Yes, I can. Sorry, my camera -- let

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1 me just fix my camera.

2 CHAIRPERSON HILL: That's okay. I can see you. Can
3 you just introduce yourself for the record?

4 MR. KIRSCHENBAUM: Jonathan Kirschenbaum with the
5 Office of Planning.

6 CHAIRPERSON HILL: Yeah, we see everything on the
7 Office of Planning's report, Mr. Kirschenbaum. Does anybody have
8 any questions for Mr. Kirschenbaum?

9 Okay. Mr. Young, is there anyone here wishing to speak?

10 MR. YOUNG: We do not.

11 CHAIRPERSON HILL: Okay. I'm going to go ahead and
12 close the hearing on the record.

13 Okay. There was a request for the waiver of the grade
14 plan, by the way, and I didn't have any issues with the waiver
15 of the grade plan in this situation. I also do believe that
16 they're meeting the criteria based upon the record for the relief
17 being requested. I will also agree with the analysis the Office
18 of Planning has provided and as well as the support of the ANC
19 and DDOT, and I'll be voting in favor.

20 Mr. Smith, do you have anything to add?

21 COMMISSIONER SMITH: I don't have anything to add. I
22 agree with waiving the grading plan as well, given the situation,
23 and I support your analysis of this case and will support the
24 special exception.

25 CHAIRPERSON HILL: Thank you.

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1 Mr. Blake?

2 COMMISSIONER BLAKE: Yes, I agree with the request --
3 the application. This area is really a group -- area of small
4 multiple unit dwellings. The properties in this area typically
5 were built before the zoning regulations and typically are
6 nonconforming in a lot of different ways, either from a FAR
7 prospective or lot occupancy. As a result, this type of project
8 is fairly common. We've had actually three similar cases this
9 year alone. Well, I don't believe that the granting of this
10 relief will affect adversely any neighboring properties and is
11 definitely in harmony with the zoning regulations and map. The
12 footprint doesn't change, proposal doubles the amount of parking
13 on the site, which is beyond the requirement, and the property
14 will be screened with a 48-inch privacy fence 'cause it's right
15 on the street. OP recommends approval. DDOT has no objections.
16 And the ANC is in support. So I would be in support as well.
17 I'll be voting in favor of the application. I'd also like to
18 note that there was a construction management report that was
19 requested by the ANC, and I would argue that we can reference
20 that in the report.

21 CHAIRPERSON HILL: Say that last part again, Mr. Blake.

22 COMMISSIONER BLAKE: Sure. There is a construction
23 -- the ANC recommends approval with the construction management
24 agreement under 21A and my comment was that I would recommend
25 referencing the construction management (indiscernible)

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1 incorporate (indiscernible).

2 CHAIRPERSON HILL: Okay.

3 All right. Commissioner May?

4 ZC COMMISSIONER MAY: Yeah, this case is very
5 straightforward and I don't think I need to recap any of the
6 merits of approval. I would just comment that I think this is a
7 very nice clean simple project and it gives -- or adds housing
8 without having any significant visual impact or other impacts on
9 the neighborhood. So it's well worth approval. So I really
10 appreciate the efforts of the developer to do something positive
11 and very consistent with the neighborhood. Thank you.

12 CHAIRPERSON HILL: Thank you.

13 Vice Chair John?

14 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have
15 nothing to add. I'm in support of the application as well.

16 CHAIRPERSON HILL: Great. Thank you.

17 I'll make a motion to approve Application No. 20820 as
18 captioned and read by the secretary and reference the
19 construction management agreement the ANC had spoke about in
20 Exhibit 21A and ask for a second, Ms. John?

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: The motion is made and second, Mr.
23 Moy, if you'd take a roll call please?

24 MR. MOY: When I call your name if you'll please respond
25 to the motion made by Chairman Hill to approve the application

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1 for the relief requested along as a directive to reference the
2 construction management plan in the order. The motion was second
3 by Vice Chair John. Also in supp- -- oh, yes, so.

4 Zoning Commissioner Peter May?

5 ZC COMMISSIONER MAY: Yes.

6 MR. MOY: Mr. Smith?

7 COMMISSIONER SMITH: Yes.

8 MR. MOY: Mr. Blake?

9 COMMISSIONER BLAKE: Yes.

10 MR. MOY: Vice Chair John?

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: Chairman Hill?

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: The staff would record the vote as five to
15 zero to zero. And this is on the motion made by Chairman Hill
16 to approve. Motion to approve was second by Vice Chair John,
17 who is also in support of the motion. Others in support of the
18 Motion: Zoning Commission Peter May, Mr. Smith, Mr. Blake, of
19 course Vice Chair John, and Chairman Hill. Motion carries, sir,
20 on a vote of five to zero to zero.

21 CHAIRPERSON HILL: Thank you, Mr. Moy.

22 If you can please call our next case please?

23 MR. MOY: The next case is Application No. 20822. This
24 is of the Brentwood, LLC self-certified application pursuant to
25 Subtitle X, Section 901.2, special exceptions under Subtitle U,

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1 Section 421. This would allow a new residential development, a
2 six-unit apartment house. The property's located in the RA-1
3 zone at 1228 Brentwood Road, N.E., Square 3938, Lot 18. Thank
4 you, sir.

5 CHAIRPERSON HILL: Thank you.

6 Ms. Wilson, if you could hear me, could you introduce
7 yourself for the record please?

8 MS. WILSON: Alex Wilson from Sullivan & Barros on
9 behalf of the Applicant in this case. And excuse my voice.

10 CHAIRPERSON HILL: Thank you. That's all right, Ms.
11 Wilson. If you could please go ahead and walk us through the
12 application and why you believe your client is meeting the
13 criteria necessary for us to grant the relief requested. I see
14 that there was a lot of outreach to the ANC in your PowerPoint
15 presentation. If you could be somewhat brief and highlight the
16 points necessary, and if we have to go back to the plans to ask
17 any questions, we will. And you can begin whenever you like.

18 MS. WILSON: Great, thank you. Yes, we did not plan
19 on walking through the whole set of plans. If Mr. Young could
20 please pull up the presentation? Could you go to the next slide
21 please? Thank you.

22 The property is located in the R-1 zone and the
23 Applicant is proposing to raze the existing single-family
24 dwelling and construct a new six-unit residential building. The
25 proposal meets all development standards and the Office of

1 Planning is recommending approval and DDOT has no objection.

2 Next slide please?

3 This is just to demonstrate the significant ANC
4 outreach. We still have not heard back from the ANC, even after
5 emailing them every two weeks since we filed in August. We do
6 have a letter in support from one of the other owners along this
7 block though. There are about five houses along this block.
8 We've reached out twice, mailed outreach directly from the owner
9 to those five neighbors on this block and emailed twice and have
10 not heard any response except for one neighbor. Next slide
11 please?

12 These are just some photos of the block and subject
13 property. Next slide please?

14 With respect to the general special exception
15 requirements, the proposal meets the general purpose and intent
16 of the RA-1 zone. The proposal is for a residential apartment
17 use in a moderate density residential apartment zone, and it will
18 not adversely affect the use of neighboring properties. It is
19 only for six units. They are proposing two side yards where only
20 one is required and more parking than is required and will
21 otherwise conform with the development standards of the RA-1
22 zone. Next slide please?

23 The proposal also meets the specific requirements of
24 the infrastructure in the area, including area schools, public
25 streets, and services can accommodate the increase of six

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1 residential units and the requisite materials have been provided
2 to OP to recommend approval of the project. The architect, Mr.
3 Linam, is here if you have any questions, but that concludes my
4 portion of the presentation. Thank you.

5 CHAIRPERSON HILL: Thank you, Ms. Wilson.

6 I'm going to turn to the Office of Planning.

7 MS. THOMAS: Good morning, Mr. Chair, members of the
8 Board, Karen Thomas with the Office of Planning. We will rest
9 on the record in support of this application. Thank you.

10 CHAIRPERSON HILL: Thank you.

11 Does my fellow Board members have any questions of the
12 Applicant or the Office of Planning?

13 COMMISSIONER BLAKE: I have one question, Mr. Chair.

14 CHAIRPERSON HILL: Go ahead, Mr. Blake.

15 COMMISSIONER BLAKE: I just want to revisit the
16 neighborhood outreach one just quickly. I understand there's
17 some issues with trying to reach the ANC 5C, but you mentioned
18 that you've contacted most of the neighboring properties. Did
19 you -- that include the church on Saratoga and also the adjacent
20 neighbors at 120 -- or was it 20 -- 1226 and 1230? And you had
21 no response from either of them?

22 MS. WILSON: Correct. I have to ask about the church,
23 1226 we've mailed letters to twice and emailed twice, I know
24 that. And we've mailed two letters to 1230.

25 COMMISSIONER BLAKE: And the next question for you, is

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1 1224 the same developer, is it the same owner as this property?

2 MS. WILSON: No, it's not the same owner. We would
3 have put that in the record.

4 COMMISSIONER BLAKE: Okay.

5 MS. WILSON: I wouldn't -- yeah.

6 COMMISSIONER BLAKE: Okay. Thank you.

7 MR. MOY: Mr. Chairman, before you go to Commissioner
8 May, I neglected to mention that we did receive a letter in
9 opposition that was within the 24-hour blocks, but I haven't had
10 a chance to read that, so if you would wish to allow that in the
11 record, then that may go to some of these questions.

12 CHAIRPERSON HILL: Yeah, thank you. If you could go
13 ahead and drop that into the record, Mr. Moy, unless the Board
14 has any issues, I want to see it. We'll go ahead and put it in
15 the record, Mr. Moy, and let us know when it's in there.

16 And let's see, give me a minute here now.

17 Ms. Wilson, do you know about this opposition letter?

18 MS. WILSON: No, I'm unaware. I've not been served.

19 CHAIRPERSON HILL: Okay. I see it now. Okay. I'm
20 reading the letter. It seems to be some zoning issues in terms
21 of, I guess, density, but primarily they seem to be about
22 construction that are not really within our purview.

23 You, Ms. Wilson, will be adhering to all of the building
24 requirements that is put forth before the Department of
25 Buildings, correct?

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1 MS. WILSON: Of course the owner will adhere to those,
2 and the person in opposition has been emailed by the owner and
3 does have his information, so they'll be able to communicate
4 about those issues.

5 CHAIRPERSON HILL: Thank you. I would encourage the
6 Applicant to reach out to that person.

7 All right. Does the Board have any final questions?

8 Ms. Wilson, do you have anything you'd like to add at
9 the end?

10 All right. Mr. Young, I did ask if anybody was here
11 to testify, correct?

12 MR. YOUNG: I do not have anyone.

13 CHAIRPERSON HILL: Okay. I'm going to close the hearing
14 on the record.

15 I did think this is relatively straightforward. I
16 mean, they're here before us because all new residential
17 developments need to come before us. And so -- in this particular
18 way. And I believe they're meeting the criteria for us to grant
19 the relief requested. I have seen that the Office of Planning
20 has given their analysis and approval, and I would agree with
21 that analysis. As far as the outreach goes, I think that the
22 outreach for the ANC has been significant and they have had an
23 opportunity to take a look at it. And then in terms of the person
24 in opposition, I believe that those things are more construction
25 management related than zoning related. However, I do see that

1 the Applicant is able to reach out to that person to help
2 facilitate some communication. I'm satisfied with the
3 application and I'll be voting in support.

4 Mr. Smith, do you have anything you'd like to add?

5 COMMISSIONER SMITH: I agree with your analysis of this
6 particular application. I would, you know, like to thank Mr.
7 Blake for asking the question of the Applicant on their outreach
8 to the neighboring properties. Given the fact that, you know,
9 the ANC seems to be going through some transition out there, so
10 it's great that the Applicant did reach out to everyone
11 surrounding them so we could get some level of feedback on the
12 development that is occurring here. And there's a lot of
13 development that's occurring within, you know, 500 or 1,000 feet
14 of this, given the case history here. But other than that, I do
15 give OP's staff report great weight and I'll also support the
16 special exception.

17 CHAIRPERSON HILL: Thank you.

18 Mr. Blake?

19 COMMISSIONER BLAKE: Yes, I'll be voting in favor of
20 the application. I would credit the Office of Planning's analysis
21 on how the Applicant has met the criteria for approval under U
22 421 and pursuant to the general standards. We've had several
23 cases this year and last along Rhode Island Avenue and the area,
24 so change is evident. And that said, we've had community pushback
25 in the past with regard to parking, density, and neighborhood

1 character. This project obviously will tower over the next-door
2 neighbor's property, Mr. Jackson, who has actually complained
3 about other -- who has had issues with other developments along
4 this row of five houses, but I do not believe that the granting
5 of relief will affect adversely the use of neighboring properties
6 and is in harmony with the zoning regulations, the maps. This
7 type of building is relatively common. It meets the development
8 standards and provides more parking than is required. I'll be
9 voting in favor.

10 CHAIRPERSON HILL: Thank you.

11 I was just notified that the ANC commissioner is
12 actually here. So what I'd like to do is go ahead and reopen
13 the record unless the Board has any issues and bring in the ANC
14 commissioner.

15 If you could please do that, Mr. Young, as well as the
16 Applicant?

17 MR. YOUNG: I believe that was actually for a previous
18 case that the ANC commissioner was here. I don't think it was
19 this one.

20 CHAIRPERSON HILL: Oh, okay.

21 So, Mr. Moy, that's correct?

22 MR. MOY: Well, I was told it was for this one, but
23 maybe I was mistaken, but nonetheless, if it was the previous
24 case, I mean, you've already adjudicated that application.

25 CHAIRPERSON HILL: No, that one -- I'm talking about

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1 this one. Is it for -- we're sure that it's not -- can somebody
2 just ask the ANC commissioner?

3 MR. MOY: Yeah, let me get that -- let me do that if
4 you can -- I'll just confirm. Yes, if we can pause for a second.

5 CHAIRPERSON HILL: Yeah.

6 (Pause.)

7 MR. MOY: Yeah, I'm sorry, Mr. Chairman, Mr. Young was
8 correct, that was for the previous case that you've already heard
9 and made your decision.

10 CHAIRPERSON HILL: Okay.

11 Well, I'm sorry that the ANC commissioner missed their
12 opportunity for that. If the ANC commissioner obviously feels
13 strongly enough, they can file something in the record -- or I'm
14 sorry, file something that asks to reopen the record to allow
15 that testimony. And so we were in the deliberations currently
16 for 20822. I had been speaking with Mr. Blake, and we'll move
17 to Mr. Commissioner May.

18 ZC COMMISSIONER MAY: I don't have anything else to
19 add. I think (indiscernible) --

20 CHAIRPERSON HILL: Okay.

21 ZC COMMISSIONER MAY: -- (indiscernible) other Board
22 members. I would comment that the design of the building itself
23 is not a great fit for that neighborhood and I kind of would have
24 liked to see something better, but that's not a reason to deny
25 this relief. Thank you.

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1 CHAIRPERSON HILL: All right. Thank you.

2 Vice Chair John?

3 VICE CHAIR JOHN: Thank you. I have nothing to add to
4 the comments so far. I'm in support of the application.

5 CHAIRPERSON HILL: Thank you.

6 I'm going to go ahead and make a motion to approve
7 Application No. 20822 as captioned and read by the secretary and
8 ask for a second, Vice Chair John?

9 VICE CHAIR JOHN: Second.

10 CHAIRPERSON HILL: The motion been made and second, Mr.
11 Moy, if you'd take a roll call?

12 MR. MOY: Yes. Thank you, Mr. Chairman.

13 When I call your name, if you'll please respond to the
14 motion made by Chairman Hill to approve the application for the
15 special exception relief that's requested. The motion to approve
16 was second by Vice Chair John.

17 Zoning Commissioner Peter May?

18 ZC COMMISSIONER MAY: Yes.

19 MR. MOY: Mr. Smith?

20 COMMISSIONER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 COMMISSIONER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Staff would record the vote as five to zero

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1 to zero. And this is on the motion made by Chairman Hill to
2 approve the application for the relief requested. The motion to
3 approve was second by Vice Chair John. Also in support of the
4 motion to approve, Zoning Commissioner May, Mr. Smith, Mr. Blake,
5 Vice Chair John, of course Mr. -- or Chairman Hill. Motion
6 carries, sir, five to zero to zero.

7 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy, you
8 can call our next one when you get a chance.

9 MR. MOY: The next case before the Board is Application
10 No. 20823 of 5427 Georgia, LLC. This is a self-certified
11 application for a special exception pursuant to Subtitle X,
12 Section 901.2, and under the Subtitle C, Section 703 from the
13 minimum vehicle parking requirements of Subtitle C, Section 701
14 and under Subtitle G, Section 1201 from the lot occupancy
15 requirements of Subtitle G, Section 404.1. Property's located
16 in the MU-4 zone at 5427 Georgia Avenue, N.W., Square 2996, Lot
17 808. The only preliminary matter here, Mr. Chairman, is that the
18 Applicant is asking for expert status to a David Bagnoli in
19 architecture, and he is not currently in our witness book.

20 CHAIRPERSON HILL: Okay.

21 Mr. Kadlecek, if you can hear me, if you could go ahead
22 and introduce yourself for the record please?

23 MR. KADLECEK: Good morning, Chairman Hill and members
24 of the Board. Cary Kadlecek from the law firm of Goulston &
25 Storrs on behalf of the Applicant.

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1 CHAIRPERSON HILL: Okay. Do you have Mr. Bagnoli's
2 resume in here somewhere?

3 MR. KADLECEK: Yes, it's in --

4 CHAIRPERSON HILL: Oh, I see the resume.

5 MR. KADLECEK: -- 17A. Exhibit 17A.

6 CHAIRPERSON HILL: Gotcha.

7 MR. KADLECEK: I believe he's been qualified as an
8 expert before the Zoning Commission.

9 CHAIRPERSON HILL: Okay. I don't have any issues with
10 asking -- I don't think we're going to get to Mr. Bagnoli
11 necessarily, but just to go ahead and go through this for the
12 record and for the Board's help in the future, I don't have any
13 issues with Mr. Bagnoli being introduced as an expert witness.

14 Does the Board have any issues, and if so, please raise
15 your hand?

16 Commissioner May, do you have any comments since you've
17 been with Mr. Bagnoli probably or seen him?

18 ZC COMMISSIONER MAY: You know, we see many, many
19 architects at the Zoning Commission, and I honestly do not recall
20 what case he was on, so.

21 CHAIRPERSON HILL: Okay. Well, that's good I guess.

22 All right. Okay. Mr. Kadlecek, if you want to go
23 ahead and walk us through the application as to why you believe
24 your client is meeting the criteria for us to grant the relief?
25 There are some questions about the bicycle parking I guess that

1 you can kind of address that has been brought up, and you can
2 begin whenever you like.

3 MR. KADLECEK: Yeah.

4 Mr. Young, if you could pull up our PowerPoint
5 presentation at Exhibit 23 please? And Mr. Bagnoli, he emailed
6 me and said he's having trouble getting on, although I see his -
7 -

8 CHAIRPERSON HILL: We'll see what happens, Mr.
9 Kadlecek, it's okay.

10 MR. KADLECEK: All right.

11 So once the presentation's up, I'll start and just give
12 a brief overview. And if Mr. Bagnoli needs to speak.

13 Great, thanks.

14 So again, thank you. Carey Kadlecek on behalf of the
15 Applicant. We're seeking special exception relief for the
16 construction of a new mixed use multi-family residential on
17 ground floor retail building in the MU-4 zone in the Brightwood
18 Park neighborhood. Next slide please?

19 Just to orient you very quickly, the property is shown
20 in yellow on the right, it's bounded on three sides by streets
21 and then on the south by other properties. So in order to
22 construct the proposed 22-unit building with some ground floor
23 retail we're requesting a special relief -- special exception
24 relief from lot occupancy for only the ground floor level and
25 from the parking requirements from the required parking spaces.

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1 We're pleased to have the support of the Office of Planning,
2 DDOT, ANC 4D, as well as the Uptown Community Initiative. We
3 are aware, Chairman Hill, of DDOT and OP's condition regarding
4 the bicycle parking. To be clear, we're not seeking relief from
5 the bicycle parking and that condition is just with respect to
6 the required bike parking. We know that's required and the bike
7 parking will be provided in the permit plans. It's just that
8 the interior configurations haven't been exactly finalized and
9 so those haven't been shown yet. But we are aware that the bike
10 parking is necessary and required and will be shown appropriately
11 on the permit plan, since we are not seeking any relief from
12 that. Mr. Young, if you could go to Slide 11, just to -- I could
13 go to the conclusion with respect to the standards? There we
14 go.

15 So just to summarize, with respect to relief from the
16 parking requirement, as noted on the site plan, the property has
17 no alley access. And just based on the size of the property and
18 the street frontages, there's no curb cut that can be more than
19 60 feet from an intersection, which is the DDOT standard for
20 providing a curb cut. So it would be in violation of DDOT policy.
21 Even providing one parking space would require a curb cut in
22 violation of that policy. So the number of spaces has to be all
23 of them, which is three, the relief that we're seeking.
24 Nevertheless, the property is near transit and services that are
25 easily accessible. And then finally, because of those facts of

1 the easily accessible transit and services, the relief will be
2 consistent with the intent of the zoning regulations and will not
3 result in any neighborhood parking congestion. Next slide
4 please?

5 With respect to the special exception relief from the
6 lot occupancy requirement, again, as stated, that's only with
7 regard to the first floor. That's also replicating the current
8 condition. Although the current condition is a one-story retail
9 building that will be demolished, it does occupy a hundred percent
10 of the lot. The proposal here is for the same thing. And the
11 reason is because there are some residential units on the ground
12 floor that will face Illinois Avenue to be more consistent with
13 the residential character of that type of building, therefore
14 necessitating relief from the ground floor. The upper floors are
15 within the lot occupancy limit. No specific conditions or
16 criteria allow or apply rather. And then finally, the relief
17 does allow for a better designed building, as mentioned, with the
18 mix of retail fronting on Kennedy and Georgia Avenue, with the
19 residential part of the building fronting on Illinois Avenue to
20 create a better mix of uses for the building. With that, I will
21 conclude and happy to answer any questions.

22 CHAIRPERSON HILL: Okay. I'm going to come back to the
23 Board in a moment. I'm going urn first to the Office of Planning.
24 Can the Office of Planning hear -- oh, good, yeah.

25 MR. MORDFIN: Good afternoon, I'm Stephen Mordfin with
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1 the Office of Planning. And the Office of Planning recommends
2 approval of this application, which requests two areas of relief,
3 one for parking because, as the Applicant stated, parking cannot
4 be provided on this site, and also for the lot occupancy on the
5 first floor. And that's in deference to the existing land uses
6 within the square surrounding this property. So because of that,
7 the Office of Planning recommends approval of this application
8 and is available for questions.

9 CHAIRPERSON HILL: Okay.

10 Does anybody have any questions for the Office of
11 Planning or the Applicant, and if so, raise your hand?

12 Vice Chair John? You're on mute, Vice Chair John, I
13 believe.

14 VICE CHAIR JOHN: That's the third time today. So this
15 is for the Applicant. If the building is razed, so there's --
16 there would be no existing condition of a hundred percent lot
17 occupancy on the first floor; did I get that right?

18 MR. KADLECEK: That's right. We're essentially saying
19 what we'll be doing is recreating what exists there now, which
20 is a hundred percent lot occupancy. But the existing building
21 will be razed, that's right.

22 VICE CHAIR JOHN: Okay. Thank you.

23 CHAIRPERSON HILL: All right. Anyone else?

24 Okay. Mr. Young, anyone here wishing to speak?

25 MR. YOUNG: We do not.

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1 CHAIRPERSON HILL: Mr. Blake, did I see you raise your
2 hand?

3 COMMISSIONER BLAKE: Yeah, I just wanted a
4 clarification, how many IZ units are being provided?

5 MR. KADLECEK: It's not finalized exactly yet because
6 the interior layouts aren't finalized, but it's roughly two or
7 three.

8 COMMISSIONER BLAKE: Okay, thank you.

9 CHAIRPERSON HILL: Mr. Young, is there anyone here
10 wishing to speak?

11 MR. YOUNG: We do not.

12 CHAIRPERSON HILL: All right. Mr. Kadlececk, anything
13 you'd like to add at the end?

14 MR. KADLECEK: Nothing to add, thank you.

15 CHAIRPERSON HILL: Okay. I'm going to go ahead and
16 close the hearing and the record.

17 I've been speaking for a while, would someone else like
18 to speak? Nobody raising their hand then I'll continue to speak.

19 And Mr. May, you can speak on the next one. You can
20 get yourself all ready. So I'm going to go ahead -- I actually
21 didn't have any issues with this. I didn't agree with the Office
22 of Planning's recommendation for the conditions because those are
23 conditions that are already necessary and I believe that the
24 Applicant has stated that they will be complying with the bike
25 parking. They're not asking for bike parking relief. That's how

1 much I have spoken today. And also then we are -- I would agree
2 with the analysis of the Office of Planning, however, concerning
3 the parking relief then that there isn't access really for the
4 parking, and then the other relief that's being requested, as
5 well as again the Applicant's argument, as I said. I am going
6 to be voting in favor of this application.

7 Mr. Smith, do you have anything you'd like to add?

8 COMMISSIONER SMITH: I don't have anything to add. I
9 agree with your analysis of this particular case and will support
10 the application.

11 CHAIRPERSON HILL: Thank you.

12 Mr. Blake?

13 COMMISSIONER BLAKE: I agree. I support this
14 application as well. The conditions for (indiscernible) parking
15 relief and lot occupancy have been met and I agree with the
16 analysis provided by the Office of Planning for that. This is a
17 very busy corner and this will be an interesting and welcome
18 improvement. I have no -- I'll be in support.

19 CHAIRPERSON HILL: Thank you.

20 Commissioner May?

21 ZC COMMISSIONER MAY: Thank you, Mr. Chairman. I think
22 you're doing an excellent job of speaking today, so I'm happy to
23 hear you, you know, keep -- have you keep going. I agree with
24 everything that's been said so far. I am quite relieved. I
25 think the only concern I had was the bicycle parking and I am

1 relieved to hear from the Applicant that they will comply with
2 that requirement because it's not that hard to do. So I'm in
3 favor and ready to move forward.

4 CHAIRPERSON HILL: Thank you.

5 Vice Chair John?

6 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have
7 nothing to add, and I'm in support of the application.

8 CHAIRPERSON HILL: Thank you.

9 I'm going to make a motion to approve Application No.
10 20823 as captioned and read by the secretary and ask for a second
11 --

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: Caption (sic) has been made and
14 second, Mr. Moy, if you'd take the roll call please?

15 MR. MOY: Thank you, Mr. Chairman.

16 When I call your name, if you'll please respond to the
17 motion made by Chairman Hill to approve the application for the
18 relief that's being requested. The motion to approve was second
19 by Vice Chair John.

20 Zoning Commissioner Peter May?

21 ZC COMMISSIONER MAY: Yes.

22 MR. MOY: Mr. Smith?

23 COMMISSIONER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 COMMISSIONER BLAKE: Yes.

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1 MR. MOY: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill?

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: Then staff would record the vote as five to
6 zero to zero and this is on the motion made by Chairman Hill to
7 approve. The motion to approve was second by Vice Chair John,
8 who is also in support of the motion as well as Zoning Commission
9 Peter May, Mr. Smith, Mr. Blake, Vice Chair John, and Chairman
10 Hill. Motion carries, sir, at a vote of five to zero to zero.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. Give me one
12 second, Mr. Moy. Okay. Mr. Moy, you can call our next case if
13 you like.

14 MR. MOY: The next case is Application No. 20832. This
15 is of 501 K Street Property Owners, LLC. It's self-certified for
16 special exceptions under -- pursuant to Subtitle X, Section 901.2
17 under Subtitle I, Section 203.3 from the front build-to line
18 requirements Subtotal I, Section 203.1 and under Subtitle C,
19 Section 1506.1 from the penthouse setback requirements, Subtitle
20 C, Section 1504.1, as well as the penthouse wall enclosure
21 requirements, Subtitle C, Section 1503.1. Property is in the D-
22 5R zone at 1001 6th Street, N.W., Square 483, Lot 9. And as to
23 preliminary matters, sir, we do have a request for expert
24 witnesses, one of which is not currently in the witness book
25 under the name of Devon Patterson for expert status in

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1 architecture.

2 CHAIRPERSON HILL: Okay.

3 Okay. Could the Applicant please introduce themselves
4 for the record if they can hear me?

5 MR. AVITABILE: Yes, David Avitabile with Goulston &
6 Storrs. Good afternoon.

7 MR. CHAIRPERSON: Good afternoon, Mr. Avitabile. I'm
8 just trying -- I had an issue with your record here. Let me just
9 pull that up. The resume of your expert status person, where is
10 that, Mr. Avitabile?

11 MR. AVITABILE: I think it's Exhibit 22C of the record,
12 and you'll see Ms. Milanovic's resume and then Mr. Patterson's
13 resume.

14 CHAIRPERSON HILL: Got it. Ms. Milanovic been with us
15 plenty of times. Mr. Patterson, okay, I don't have any issues
16 with Mr. Patterson being accepted as an expert in architecture.

17 Does the Board, and if so, please raise your hand?

18 No one has such an issue. Then we will go ahead and
19 add him to our book.

20 Mr. Avitabile, if you can go ahead and walk us through
21 your application as to why you believe your Applicant is meeting
22 the criteria for us to grant the relief requested? I'm going to
23 put 15 minutes on the clock just so I know where we are, and you
24 can begin whenever you like.

25 MR. AVITABILE: Wonderful. Thank you.

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1 And Mr. Young, if you could bring up, I think, Exhibit
2 28A of the record, which is our presentation please? And we'll
3 do a brief presentation today in the interest of time.

4 So we're here today requesting three areas of special
5 exception relief to facilitate the development of the property
6 located at 10001 6th Street, N.W. I'm here today with my
7 colleague, Lee Sheehan of Goulston & Storrs, as well as Sean
8 Sullivan as a representative of the Applicant, and then our two
9 experts. The property is located in the Mount Vernon Triangle
10 neighborhood, about one block east of the convention center. If
11 we can move up two slides please?

12 And here's the property. And the property is currently
13 vacant and improved with a surfaced parking lot. The subject
14 property is in the D-5R zone. This is a downtown zone that
15 permits high density development and also has a residential
16 requirement. The property is also located in two sub areas of
17 the downtown zone, the Mount Vernon Triangle sub area and the
18 Mount Vernon Triangle principal intersection sub area. Go to the
19 next slide please?

20 These requirements mandate not only vehicular access
21 locations and ground floor retail requirements, but also require
22 a fairly complicated step down in height at the intersection of
23 5th and K Streets, which is the principal intersection at the
24 heart of the Mount Vernon Triangle neighborhood. Next slide
25 please?

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1 So the Applicant proposes here to construct a new mixed
2 use building that will be either primarily residential over
3 retail or a mix of residential and hotel use over retail. And
4 to construct the building will need three areas of relief which
5 I'll summarize in a minute. And we've also requested two areas
6 of flexibility. First, to modify certain design elements such
7 as bay windows. And then the second to be able to phase the
8 project, given the scale of this block-wide project.

9 CHAIRPERSON HILL: Hey, Mr. Avitabile?

10 MR. AVITABILE: Yes?

11 CHAIRPERSON HILL: I remember going through this with
12 the record. I mean, if you could -- you seem to be asking for a
13 variety of different options and then some flexibility for those
14 options. The way that -- if you could kind of talk through this
15 in terms of like A, B or whatever, you know, make it so the Board
16 can separate what it's trying to think about, and then the Board
17 may have to think about this for a while to try to figure out
18 where it is. But the clearer you can explain the different things
19 you're trying to propose and the arguments for those different
20 things, the easier it will be for me.

21 MR. AVITABILE: I understand completely.

22 CHAIRPERSON HILL: Go ahead, Mr. Avitabile.

23 MR. AVITABILE: Sure. So there are really three basic
24 areas of flexibility. First, whether the project is residential
25 only or a mix of residential with some hotel use. That's

1 flexibility one. Flexibility two is whether or not we can modify
2 or remove a couple of design elements, the bay windows and the
3 upper story bridge connection. And then the third area of
4 flexibility is the ability to phase the project, essentially
5 where we would build the one tower and then a couple of years
6 later build the other tower. So those are the three areas of
7 flexibility. And we just wanted to be clear about sort of that
8 -- those pieces of it. Given the scale of this project on a
9 relatively large city block, we wanted to carveout some ability
10 to adjust. So again, it's either residential only or residential
11 hotel hybrid one; two, the ability to modify the bay windows and
12 the upper story bridge connection; and then three, the ability
13 to phase the project. So those are the three areas of
14 flexibility. And then we've got three areas of relief which I
15 can go through once you all are ready. But I'm happy to pause
16 here if you had questions about the flexibility.

17 CHAIRPERSON HILL: Vice Chair John has her hand up.

18 VICE CHAIR JOHN: I just have one request that in
19 describing the relief that you're seeking, if you would discuss
20 how the relief affects each alternative because ordinarily we
21 don't see this type of application at the Board. And so the
22 clearer you can make it, the better it would be for me.

23 MR. AVITABILE: Absolutely.

24 COMMISSIONER BLAKE: I have one question as well.

25 CHAIRPERSON HILL: Go ahead, Mr. Blake.

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1 COMMISSIONER BLAKE: Is it possible that you could just
2 help clarify to me how the Board has the authority to grant the
3 requested flexibility that you have here? You have -- like you
4 said, you have two different requests. I just want to try to
5 understand how we have the authority to do the time extension
6 essentially? And also, as we look at the modification of the
7 bay windows, is there anything in there that could cause the need
8 for additional relief or change in the relief that you may be
9 granted today?

10 MR. AVITABILE: Certainly. So that actually gets right
11 to, Mr. Blake, the reason why the flexibility would be okay here
12 and why you have the authority. None of the flexibility that
13 we're requesting modifies the areas of relief we're requesting.
14 So whether or not we include those bay windows, all elements of
15 the project remain compliant with the zoning regulations and they
16 don't alter the areas of relief we're asking for, which are really
17 related to the ground floor and the penthouse. I do believe the
18 Board has the authority to grant this flexibility. And this is
19 in part a function of the evolution of the Board's approval over
20 the years. There was a time not too long ago where the
21 understanding was when the Board approved a certain set of plans
22 really all you were locked into were the elements tied to the
23 areas of relief, and you had flexibility to otherwise modify the
24 design of the building as long as it was permitted by right. As
25 the Board and as of the Zoning Commission have tightened up the

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1 Board's authority, we're now more locked into the plans that the
2 Board approves. And so with that I think becomes more and more
3 important for us to flag when there might be some area of
4 flexibility where things might change. And this is just again,
5 so we're being really clear and transparent, that, you know, for
6 example, that upper story bridge element, we haven't fully
7 studied that from a structural or other perspective, and to the
8 extent that it might prove to be infeasible and we'd want to
9 remove it, we'd like to retain the flexibility to do that. With
10 respect to phasing, that's a fairly common area of flexibility
11 for large scale projects and it's been customary for both the
12 Board and the Zoning Commission to grant that approval over the
13 years.

14 COMMISSIONER BLAKE: Okay. Thank you.

15 MR. AVITABILE: Thank you. So if there aren't any
16 other questions about the flexibility, I can quickly walk through
17 the special exceptions.

18 CHAIRPERSON HILL: Go ahead, Mr. Avitabile.

19 MR. AVITABILE: Great. And if we could bring back up
20 the presentation please? Thank you. Okay. Well, I don't see
21 it yet, but I'll start talking.

22 CHAIRPERSON HILL: Mr. Young, can you bring back up
23 this presentation? I think it was on Slide 5.

24 MR. AVITABILE: Yes, I think that's right.

25 CHAIRPERSON HILL: Thank you.

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1 MR. AVITABILE: So the first area of relief we're asking
2 for is a special exception from the -- there it is, perfect. So
3 there's a requirement in this particular zone that 75 percent of
4 the building street wall at the ground floor be constructed within
5 4 feet of the property line. And it's essentially to ensure
6 there's a consistent urban edge. Our building's primary
7 residential entrance is located on 5th Street and 5th Street's a
8 narrower right of way with a narrower sidewalk than the
9 surrounding streets on the other sides of the property. We're
10 proposing a recess in the ground floor of the building facade for
11 that residential entrance, which amounts to about 32 percent of
12 the linear frontage, so it exceeds that 25 percent. We've done
13 this to break up the block-long facade, and create a more engaging
14 entrance that will complement rather than impinge on the 5th
15 Street public realm. As we've set forth in the application, we
16 submit that this meets the requirements because it will not erode
17 the integrity of the overall street wall along 5th Street and we
18 included images that give you a sense of what this will look
19 like, both from the north and the south. You'll still have that
20 sense of a real urban edge along 5th Street, and this area will
21 also look and feel as if it's part of the public streetscape so
22 it will be open to the public. That's the first area of
23 flexibility. If we can go to the next slide please?

24 Oh, and I should add to Board Member John's question,
25 that relief would be present for both the residential only and

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1 the residential hotel options. So then the next area of relief
2 is related to the penthouses. What I have on the screen now is
3 the residential scheme. For the residential scheme we're asking
4 for flexibility to have multiple penthouse enclosures. This is
5 a fairly common area of flexibility that's requested. By breaking
6 up the penthouse into multiple enclosures we're able to reduce
7 the overall mass of the penthouse and make it less visually
8 intrusive. It also creates some space on the roof for a gathering
9 and circulation that allows us to activate and use that rooftop
10 space. And this image gives you a sense of where that break is
11 in the penthouse mass that we're requesting here. If you switch
12 to the next slide.

13 This is the residential hotel hybrid scheme and the
14 hotel is the piece that's in that connecting bar on the south
15 side. And in this scheme we need both relief from the multiple
16 enclosures and from the setback requirement. Again here, relief
17 from the -- relief to allow multiple enclosures, I should say,
18 allows us to break up the mass of the penthouse, create areas
19 for gathering and circulation, as you can see on this image. And
20 then if you look at the inset image on the lower left-hand corner
21 of the screen, you can see there's a portion of the penthouse
22 facing the interior of the site where we don't comply with the
23 -- fully comply with the one-to-one setback requirements. And
24 that's the last area of relief. That last area of relief is only
25 required for the residential hotel version. And this relief is,

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1 you know, is necessary because when we do the residential hotel
2 hybrid, there's additional mechanical requirements because you
3 have two different uses in the building. We need more space to
4 enclose and accommodate that equipment. And because the nature
5 of this building is relatively slender building form, that leaves
6 you with relatively slender and narrow places where you can
7 enclose that mechanical equipment. And given the dimension of
8 that segment of the building if we did a fully compliant penthouse
9 with the one-to-one setback on both sides, the area that you're
10 left with to be enclosed is not wide enough to accommodate the
11 mechanical equipment plus its various circulation and otherwise
12 that would be needed around it. So that's hence the request for
13 the relief for that piece of it. So those are the three areas
14 of relief. All of these special exceptions are also subject to
15 the general special exception standards. And we've addressed in
16 our written materials how we've met those standards of approval.
17 We're happy to report that we're here today with full support of
18 the Office of Planning. DDOT also had no objection to the
19 project. DDOT requested, as you heard in the last case, some
20 clarification on our long-term bicycle parking plan. And this
21 package that we submitted includes an updated set of plans that
22 show the compliant bike room with the details that DDOT has
23 requested. And additionally, we're here with support from the
24 ANC 6E, which submitted a resolution in support of the project.\

25 With that, I'm happy to rest. We are certainly happy

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1 to provide a more detailed presentation on the building design,
2 but we can also just move and answer questions. Thank you.

3 CHAIRPERSON HILL: Okay. I actually do think we're
4 going to have a bunch of questions, but before we get to them,
5 let me just go ahead and bring the Office of Planning in.

6 MR. KIRSCHENBAUM: Good afternoon, Chairman Hill and
7 members of the Board of Zoning Adjustment, I am Jonathan
8 Kirschenbaum in the Office of Planning, and we recommend approval
9 of the three special exceptions for both of the schemes proposed
10 by the Applicant. And we'd rest on the record. Please let me
11 know if you have any questions. Thank you.

12 CHAIRPERSON HILL: Okay.

13 Who has a question for whom? Who would like to go
14 first?

15 Commissioner May?

16 ZC COMMISSIONER MAY: So Mr. Avitabile, I know you know
17 what I'm going to say, right? Penthouse setback relief is a
18 problem, and I don't understand why this is not possible. And
19 one of the reasons I'm going to say that this is -- I don't
20 understand why it's not possible to meet the setback requirements
21 is that you included in a statement that the positioning of the
22 rooftop pool further reduces available room on the roof to locate
23 both amenity space and mechanical equipment, most importantly
24 mechanical equipment, and given the benefits of the design, would
25 be unreasonable and unduly restrictive to locate mechanical

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1 equipment in a way that complies entirely with all the setback
2 requirements. So I first of all, mechanical equipment setbacks
3 come first. And then there's a rare circumstance where I'm
4 willing to support waiving that for the sake of amenity space.
5 And this goes way back, right, these are the rules that we set
6 down when the Zoning Commission first, because of the changes in
7 the Height Act, started to allow these a greater use of amenity
8 spaces on the roof. And people started coming in with lots of,
9 you know, setback relief requests. And you know, we took a very
10 hard line at the Zoning Commission and I certainly took a very
11 hard line at the BZA, and I think my fellow zoning commissioners
12 did the same because we think that the setback relief is not
13 something to be waived in this manner unless it is absolutely
14 essential or completely undiscernible from the public
15 perspective, so where it could be seen from the streets. So I
16 need to understand why it is essential for mechanical needs and
17 why you cannot move mechanical equipment out of the way, even if
18 it takes up amenity space to do that.

19 MR. AVITABILE: All right.

20 You want to speak, Devon?

21 MR. PATTERSON: Sure. Which slide is that?

22 MR. AVITABILE: So if we can go to, I think it would
23 be, Page 17 of our presentation?

24 MR. PATTERSON: All right. So this plan illustrates
25 the connection when the hotel is present in this concept design

1 here, and the linkage that we're looking to create between the
2 two bars of the building. And so we've met the setback
3 requirement on the street facing side, towards K there. We're
4 looking for the relief on the courtyard facing side. And so I
5 think we're -- we thought this would be an acceptable location
6 to reduce that setback because it's not street facing, it's
7 actually quite a bit back from New York Avenue there. So we
8 thought this would be the best location to put this relief here.
9 It allows us to create a connection between the two buildings
10 there.

11 ZC COMMISSIONER MAY: I want to stop you for a second.
12 I understand why you want to do it. I understand what the
13 benefits of the project are. What I want to know is why it is
14 not possible to accommodate or to comply with the regulations
15 because that's what you're asking us to do, it's not possible in
16 this circumstance to meet that requirement for the setback. Tell
17 me why it's not possible.

18 MR. PATTERSON: Well, we're just trying to create
19 interior space that's usable space. I think once we make that
20 thinner, it becomes very unusable space. That's --

21 ZC COMMISSIONER MAY: So in other words, you could
22 accommodate the mechanical space -- or I'm sorry, you could meet
23 the setback requirements and push things around, but it would
24 reduce some of the indoor amenity space?

25 MR. AVITABILE: I think that's accurate, Commissioner

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1 May. I think we're leaning on the fact that the regulations talk
2 about whether the restrictions would be unreasonable or unduly
3 restrictive, not necessarily necessary, understanding full well
4 that -- your interpretation of that language and you're the one
5 who approved it is different. But you know, this is -- let me
6 -- I think to put it this way, if we had to drop this area of
7 relief, we could certainly do that and we would figure out how
8 to make it work. It would compromise some of the amenity parts
9 of the program, but we would figure out how to make it work. So
10 if that is the direction that the Board wants to take, that is
11 certainly the direction we could take.

12 ZC COMMISSIONER MAY: Okay. So I appreciate that
13 frankness. And yes, I mean, I know I'm taking a much harder line
14 than probably the Zoning Commission regulations allow, but it's
15 for a reason, right, because it's the slippery slope. And I
16 just, you know, I'm always going to take that hard line. I
17 haven't even had to take it for years because, you know, after a
18 while with us beating on this issue, applicants backed away from
19 requesting this relief willy-nilly and only really did it when
20 it was essential. So now that's where I stand, I mean, I don't
21 know where the rest of the Board stands. And certainly it is,
22 you know, I'm one of five and we'll see if others agree with me
23 or they're willing to grant that relief. But it's helpful to
24 understand that it is possible for you to execute the project
25 without requesting that. The other ones, I mean, I don't really

1 understand like the separate structures business. I don't think
2 that there's a significant difference in the visual impact when
3 you create these gaps between them. And I, you know, you can
4 always, you know, connect them using some sort of arbor or other
5 feature and be consistent with the regulations. So the fact that
6 you think it looks better, I -- you know, this is a -- it's a
7 big penthouse on top of a big building. I don't think that those
8 gaps are beneficial to the design at all, and the Zoning
9 Commission and the zoning regulations are set up to encourage a
10 single enclosure because it's less disruptive to the roofscape
11 than having a whole bunch of buildings or a whole bunch of
12 penthouses, separate penthouses. So I don't really even
13 understand that one. So I'm not inclined to support that one
14 either, because I think it's easily addressed. So I mean, the
15 other relief, the streetfront relief, makes sense to me, and the
16 flexibility I don't have any problem with. I do want to just
17 add that I, like probably a few people who remember back that
18 far, lament the loss of the Stuart Motor Company warehouse
19 building that was on this site. I'm pretty sure this was the
20 site. That was a great old building and it was a sad day when I
21 saw that start coming down how many ever decades ago that was,
22 which sort of tells you how old I am.

23 Anyway, that's it for me, Mr. Chairman. Thank you very
24 much.

25 COMMISSIONER SMITH: Mr. Chairman?

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1 CHAIRPERSON HILL: Yeah, who's next?

2 Oh, Mr. Smith?

3 COMMISSIONER SMITH: I don't have a question, but I
4 want to drive the hammer a little bit more in the way that Mr.
5 May put the nail in the wood on this one. I completely agree
6 with Mr. May's comments on all of this. A lot of these special
7 exception considerations, as far as the penthouse is concerned,
8 to me is driven more so by a want of design and additional amenity
9 space than a need. And to me, that's proven by the fact that
10 you're coming here with two different concepts for development
11 here. So I, you know, I -- everything that he stated I completely
12 agree with. I think that this is premature at this point in time
13 that you're coming to this Board asking for special exception
14 relief for what I see as more of a desired consideration, less
15 so any hindrance of the zoning regulations as far as what I've
16 seen that you have presented. So I'm just going to go on the
17 record right now and say that I'm, as presented, I'm not in
18 support of those two special exceptions for penthouse relief from
19 the wall enclosures and the setback requirements. But I do
20 welcome your frankness earlier in this presentation to say that
21 you're amenable to dropping that relief. And, you know, I would
22 like to hear more from the rest of my Board members. Granted
23 that I believe that this is premature, I would recommend that we
24 revisit this particular -- the special exemption request if you
25 need to redesign this to remove those penthouse special exception

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1 considerations.

2 CHAIRPERSON HILL: Okay. I'll give you a chance, Mr.
3 Avitabile, with your respond to that.

4 Anybody have any more questions?

5 Mr. Blake, you had your hand up?

6 Yeah, Vice Chair John?

7 VICE CHAIR JOHN: So I think that the application before
8 the Board is premature at this point because the Applicant hasn't
9 really decided what it wants to build, and typically we approve
10 applications with the plans that are before the Board at this
11 time. And so that would be my reasons for not wanting to support
12 the application at this time. And the other thing that I'm
13 concerned about is the request for flexibility to phase the
14 project, and typically again we approve an application for the
15 two-year period of time and if the Applicant needs more time, for
16 whatever reason, the Applicant returns to the Board to request
17 an extension of time. And so that's what I would like to see us
18 do. I don't have any objection to flexibility to vary the design
19 of the windows because if there is need for additional zoning
20 relief, the Applicant would have to come back to the Board, so
21 we would attach that condition. So those are my two thoughts.
22 I will defer to the resident architect on the Board from the
23 Commission, but I am -- I didn't have a problem with the penthouse
24 setback relief towards the courtside, but I understand Mr. May's
25 history with that particular provision and will defer to his

1 suggestions on that. That's it for me, Mr. Chairman.

2 CHAIRPERSON HILL: Okay, thanks.

3 All right. Mr. Avitabile, before I get to you, I guess
4 -- yeah, I know you got your hand up -- did I turn to the Office
5 of Planning on this one yet?

6 VICE CHAIR JOHN: Yes.

7 CHAIRPERSON HILL: I did? Okay. All right. My
8 goodness. Okay.

9 Mr. Avitabile, I guess what I'm hearing, and you're
10 kind of starting to hear is that -- let's see if I'm summarizing
11 correctly, and I'll give you my two cents real quick. This is
12 the most we've had in terms of a lot of different options for a
13 project this size. Right? And so, you know, there might be --
14 at the Zoning Commission I don't know what they do, you know,
15 they might have a variety of different things that they're able
16 to do. With us, we usually see whatever it is the applicant's
17 trying to propose and then decide what they want to do -- or I'm
18 sorry, and determine whether or not, you know, they're meeting
19 the criteria for us to grant the relief request. We do sometimes
20 offer some flexibility, but it hasn't been to this large an
21 extent. It seems as though I guess you can kind of -- I might
22 send you back to the drawing board to a certain extent just to
23 see where -- and you can decide what you think right now. I
24 mean, from my part, like I also -- I'm not as hard and fast as
25 Commissioner May is on the penthouse if there is like the

1 courtyard side, like I might be able to understand what undue is.
2 We might be bringing a little bit more undue into it here that
3 like, you know, you're like it's an area, it's a street that the
4 public can't really see, you know, and then have that little bit
5 of an argument, undue being you have to lose some, you know,
6 whatever space up there, right? And B, I just want to make a
7 point that I also have been here before the penthouse were
8 allowed, right? So I understand that this was something that
9 then you could do, but you had to do it according to what the
10 regulations stated. And when the regulations were put forward,
11 they were very strict about the penthouse setback. And I'm just
12 realizing that, you know, there is maybe -- I don't want to be
13 part of the -- well -- the undue portion is an interesting new
14 argument that I haven't heard yet for the penthouse in so far as
15 if it's from a street that nobody sees, a courtyard, that is a
16 good argument to try to play. I don't know if you -- present.
17 I don't know if you have enough votes for it or if you want to
18 try and do something different. That's kind of up to you. It
19 seems like regardless, you're going to have to come back because
20 this may be too many different things for the Board to kind of
21 get its head around and feel comfortable with. And so you can
22 go ahead and kind of ask some questions also. Or the other only
23 other thing I was going to put forward, and we haven't even gotten
24 to the public yet, is some way to summarize this in a more
25 digestible manner that, you know, this is option A, this is option

1 B -- I mean, even your options, you had residential and hotel as
2 part of your option A. So you really have four options or four
3 things that I'm trying to kind of look at, it seems like. And
4 so some way to make it more digestible for the Board in an exhibit
5 that we could take a look at. That's at least something I wanted,
6 regardless of what happens, if you were to move forward with this
7 proposed process. If you think you want to change your process
8 and come back, then that's also up to you. I'll let you chew on
9 it for a second while I see who's here.

10 Mr. Young, is there anyone here wishing to speak?

11 MR. YOUNG: We do not.

12 CHAIRPERSON HILL: Okay. Mr. Avitabile, do you have
13 any response?

14 MR. AVITABILE: Yes. And thank you very much, we
15 appreciate it. And this -- you know, when we filed this project
16 four months ago, we were at one place, the project design has
17 continued to advance significantly, as has the programing for it.
18 And in doing so there were pieces that, you know, for example,
19 this residential versus residential hotel option, at the time
20 that we filed the application, the hotel was very much a viable
21 piece, and we thought that might have been the direction we were
22 going to go. In the ensuing four months, that has become less
23 viable to X point that we -- at this point we really can do
24 without it. We kept it in as an area because we filed the
25 application that way initially, but we would be comfortable

1 removing the residential hotel option and going with the
2 residential only option. If we do that, that also has the benefit
3 of removing the request for the setback relief. So now we've
4 really narrowed things down to residential only. And now there's
5 only two -- sorry --

6 CHAIRPERSON HILL: That's okay. Mr. Avitabile, why
7 don't you do this? Why don't you come back, okay, go ahead and
8 see what you -- I know where this parcel is, I did -- I thought
9 I knew a lot of things, I don't know what the fricking thing is
10 that Mr. May is talking about. And I saw Mr. Blake nodding. But
11 they're older than I am. I'm just a little bit, you know. And
12 so, you know. And that section of town, like I wasn't over there
13 that much, you know? So when that -- I didn't have a car. I
14 don't know what that is, I'm going to look it up. But the --
15 and then come back, okay? Because this just -- you're just -- I
16 think there's too much going on here and I think my fellow Board
17 members will agree as I'm kind of looking. So how when -- I'm
18 trying to think what you have -- you've already been to the ANC,
19 right?

20 MR. AVITABILE: Correct.

21 CHAIRPERSON HILL: And the ANC was comfortable with all
22 of the different options that you propose. So you wouldn't have
23 to go back to them.

24 MR. AVITABILE: Correct.

25 CHAIRPERSON HILL: When would you like to come back to

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1 us after you've heard everything you've now heard?

2 MR. AVITABILE: I mean, I do think that we can come
3 back fairly quickly. You know, honestly, we could probably caucus
4 and come back to you later today. We could file something later
5 and then come back next week or we can come back next month. I
6 mean, it's sort of at your discretion, but I think we can narrow
7 things down. The one thing I would like us to better understand,
8 because I do think the one thing that is tough is the phasing.
9 The phasing is really important. The ability to be able to
10 construct this project, the scale and scope of this project, a
11 full city block, you know, you have 500 units, there -- it is
12 not uncommon to at least ask for that flexibility, particularly
13 given the challenging environment for going out and financing
14 construction. There is a desire, a strong desire in order to
15 meet market demands, to be able to phase this. That would be
16 the one piece that is tough, so we would like to at least maybe
17 better understand a little bit to the extent the Board has
18 reservations about that element of it, what those reservations
19 are because at least in my experience, it hasn't been uncommon
20 at both the Board and the Zoning Commission to phase projects.
21 Admittedly, my experience with the Board, I think, you know, has
22 been, you know, not as recently, so we understand you all have a
23 -- perhaps a different perspective.

24 CHAIRPERSON HILL: Okay. Well, the phase thing -- and
25 I guess -- and I'll let my fellow Board members speak to this,

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1 we haven't had a lot of phasing before us, right, in so far as
2 like the applicant might come back and ask for a time, you know,
3 further time for the permit if -- go ahead and build whatever
4 you're going to build, and ask for everything, and then if you
5 don't do everything you're going to do, you come back and ask
6 for a time extension, three years, whatever that may be. I'm
7 not opposed to the phasing argument some of my fellow Board
8 members might be. I'd just like to hear more about it, I guess,
9 as to what exactly that means, what phase is what, like, you
10 know, what is it that you think you're going to do now versus
11 what you think the next phase is and when? But that's just me.
12 I might not have everybody else. Vice Chair John is the one I
13 know had some comments upon it, so I'll let her speak to it. But
14 that's my initial thought.

15 Vice Chair John?

16 VICE CHAIR JOHN: So I think I said what I thought, but
17 I'll try to say it again. I think the remedy if the Applicant
18 is not able to complete the project within the time specified is
19 to request an extension when it's, you know, when it's clear that
20 the second phase can't be built. So I have not, to my -- as far
21 as I recall, I have not reviewed any application that required
22 this type of phasing since I've been with the Board some several
23 years now. So this is not normal for us. So that's just my two
24 cents.

25 CHAIRPERSON HILL: Okay. That's great.

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1 So Mr. Avitabile, you see where you are there?

2 Commissioner --

3 VICE CHAIR JOHN: Commissioner May has --

4 ZC COMMISSIONER MAY: Yeah, no, I just want to add, you
5 know, this sort of phasing requirement and what they're asking
6 for is a two-year, you know, having a two-year window once the
7 first phase is constructed, yeah, within two years of the CFO for
8 the first phase they would do the second phase. That's a very
9 common thing for PUDs that are reviewed at the Zoning Commission.
10 But I, you know, I agree with the rest of the Board, it's a pretty
11 uncommon thing. I don't remember when it's been an issue before
12 the BZA, and it would actually be interesting to know if in fact
13 the BZA has done that in the past. That might be helpful for
14 Mr. Avitabile's argument if you were to explain that this has
15 been done at, you know, even if it was done ten years ago, it
16 would be I think useful to know that. I think we would want to
17 take a look at that ourselves from a legal and regulatory
18 perspective to see if it makes sense. So I think I want to ask
19 our lawyers about that one. So that's just my two cents on it.
20 I'm happy to -- I mean, I completely understand the why, right,
21 it is a very big project. And so the idea that you'd need to do
22 it in phases, I completely understand.

23 VICE CHAIR JOHN: I think we've done big projects here
24 since I've been here. I don't know if this is the largest one,
25 but I think, you know, people request a time extension and we

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1 grant it if it's reasonable. You know, economic conditions
2 change, funding changes. We were quite, I don't want to say,
3 generous, but understanding that things change.

4 MR. AVITABILE: I really appreciate all of this, it's
5 very helpful to understand the perspective. We didn't think it
6 was as big an ask, but we'll do a little bit of our own homework
7 and see if we can find something that's helpful or adjust our
8 plans accordingly. I think otherwise of timing, we're happy to
9 come back as soon as you'll have us.

10 CHAIRPERSON HILL: Yeah, Mr. Avitabile, so again, I
11 still think that the arguments you need to try to make are clear.
12 And, you know, again, the phasing argument is another one that
13 you can make. And I don't know where my other two Board members
14 are also, Mr. Blake or Mr. Smith, and so you can see where you
15 are when you come back with that, unless Mr. Blake or Mr. Smith,
16 you want to offer some kind of insight as to where you are on
17 that issue. And if not, that's also fine.

18 COMMISSIONER SMITH: I mean, I'll just note -- go on
19 the record and say that I am aware that that is more so handled
20 by the Zoning Commission, but I am of the mindset of Ms. John
21 where they can request an extension and we have periodically done
22 that, we've granted extensions and with the -- and, you know, had
23 more discussion about it, and even with that extension maybe
24 there was an application that came through to modify different
25 portions of it after that extension was granted and they realized

1 that we need to make changes. We've been extremely flexible in
2 that regard. So I'm not completely sold on the need for phasing.
3 But I do agree with Mr. May, I would like to hear more, you know,
4 in the interim between now and when you come back, which I don't
5 advise within a week, but -- you probably want to give it a little
6 bit more time than that. We'll talk with our counsel about
7 approving phasing.

8 CHAIRPERSON HILL: Okay.

9 Mr. Blake?

10 COMMISSIONER SMITH: That's happened in the past.

11 COMMISSIONER BLAKE: Yeah, no, I was going to say my
12 initial question was to Ms. -- was the question about the
13 authority, which we had to grant that, and it was hinting at this
14 very issue. It would be helpful to see if we've done it in the
15 past and to be comfortable with how we would handle it going
16 forward.

17 CHAIRPERSON HILL: All right.

18 Well, we'll see. I guess we can talk to legal also at
19 some point in time and find clarity. Again, my position is that
20 if Mr. Avitabile can make an argument for it, I think it's another
21 tool that can be -- could perhaps be put in the BZA's toolkit,
22 but that is my opinion based upon the size of this project. But
23 that's -- you know, we're all -- we all have our opinions and so
24 there's nothing wrong with us having different opinions.

25 So Mr. Avitabile, you, I think, have all of your issues

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1 outlined, and I will let you ask any questions before we end. I
2 do think that it is too early to come back here. I think that
3 this needs to be as tidy as possible, otherwise you might get
4 kicked way down the road.

5 So Mr. Moy, when could -- I mean, it seems like you
6 need a little bit of work, Mr. Avitabile, to kind of figure out
7 -- talk to your client and see what they want to do. I mean, I
8 mean, what are your time constraints, when are you actually
9 thinking this might actually start to move?

10 MR. AVITABILE: Well, I mean, we wanted to get these
11 areas of relief sort of buttoned down so that we could then
12 continue to advance the design, which we're in that stage of the
13 design process, and move forward towards construction. I do
14 think -- we had thought about whether or not some of these areas
15 of flexibility were too much to ask, so we were to some degree
16 prepared for some of your questions. And so I do think we can
17 get back to you all relatively quickly and spend --

18 CHAIRPERSON HILL: Mr. Avitabile, I'm sorry, I'm just
19 going to interrupt you one second. Like I'm kind of looking at
20 -- I'm looking at -- and again, I know the big lot, right, that's
21 there right now. Right? And it is a big lot, right? And so,
22 you know, you kind of ask for a whole bunch of stuff, right? And
23 so I don't know -- which is fine, like I mean, I think it looks
24 like a beautiful project, I hope it happens. But it seems as
25 though you need to get back to your client and be like what do

1 you guys want to do, you know, and kind of figure that out and
2 then come back to us, you know. And it might take your client
3 more than a day to be like oh, wow, we might want to kind of
4 figure out what exactly we want to do, you know.

5 MR. AVITABILE: I think sometime in January would be
6 fine.

7 CHAIRPERSON HILL: Okay.

8 All right. I don't know where we are, Mr. Moy, with
9 scheduling, particularly I don't know when Mr. May -- if he's
10 even scheduled again, even though I know we don't really do that,
11 meaning announce that, but.

12 I can't hear you, Mr. May.

13 ZC COMMISSIONER MAY: Yeah. I'm doing -- in on the
14 11th for -- if I'm BZA.

15 CHAIRPERSON HILL: Okay. That's a problem that you all
16 don't -- no, maybe that's still okay. All right.

17 The 11th, Mr. Moy, what is the -- that's our first day
18 back, correct?

19 MR. MOY: Yes, sir. I have the other complication
20 where after January 2nd we have a new single member district.

21 CHAIRPERSON HILL: Oh, yeah, that's -- it's too late.

22 MR. MOY: So as we discussed earlier in the day, the
23 earliest I can bring them back would be March 22nd.

24 CHAIRPERSON HILL: Right.

25 MR. MOY: Unless you want to bring them back next week,

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1 I would still be within 2022.

2 MR. AVITABILE: I mean, I will say my client is here,
3 we can absolutely come back next week.

4 CHAIRPERSON HILL: How many cases have we got next
5 week, Mr. Moy?

6 MR. MOY: Next week, all right, that's January -- not
7 January, December 21st. Yeah. And the Board currently has seven
8 cases.

9 CHAIRPERSON HILL: Okay. And then that's our last
10 hearing by the end of the year, right?

11 MR. MOY: That's correct, sir. Unless you want a
12 special public hearing.

13 CHAIRPERSON HILL: No. All right. I'm sorry about the
14 Board, but like I just don't want to create -- well, I want to
15 be a good citizen. Right? And so and I know my fellow Board
16 members do. Okay. This is the problem for Mr. May now.

17 So Mr. May, are you available next Wednesday?

18 ZC COMMISSIONER MAY: Well --

19 CHAIRPERSON HILL: We'd do it first.

20 ZC COMMISSIONER MAY: Yeah, I can I can do next
21 Wednesday. I was going to be on leave, but I'm not traveling
22 anywhere, so it's not a big problem for me to come in for a little
23 bit for one case.

24 CHAIRPERSON HILL: Okay. I don't -- let's just -- I'm
25 not promising you anything, Mr. Avitabile. Like if -- you might

1 be kicked to the curb again next week if you don't have all
2 everything answered by the Board. Right? So go ahead and we'll
3 see you first thing next week. And I apologize to the Board,
4 but it is a big -- there's a lot of things that are changing once
5 the ANC changes and the SMD changes, and it's a big project. So
6 I'd rather go ahead and hear from the Applicant on the 21st at
7 the very beginning of the day and see if we can get somewhere.
8 And if not, then we'll just push him back to after it's all over,
9 and then we'll be back here in March, you know, whatever. End
10 of March really. And so does any -- do you, Mr. Avitabile, have
11 any questions of the Board so that you can make your best case
12 for us next week?

13 MR. AVITABILE: I do not. I'm very clear and we can
14 simplify this greatly.

15 CHAIRPERSON HILL: Okay. I would get all -- I wouldn't
16 take any risk then, Mr. Avitabile, if you can get rid of that
17 phasing, I'd get rid of that phasing. If you can get rid of that
18 penthouse, I'd get rid of that penthouse. You know, whatever you
19 can do to get this thing, if you want it done, otherwise it's
20 the end of March. And if your client's listening, I'm doing
21 everything I can.

22 MR. AVITABILE: We hear you.

23 VICE CHAIR JOHN: And this is a residential only, no
24 hotel option?

25 CHAIRPERSON HILL: Correct.

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1 VICE CHAIR JOHN: Okay. So that seems doable to me.

2 CHAIRPERSON HILL: Okay. Okay. Does the Board members
3 have any other comments before we let Mr. Avitabile go? Okay.
4 You remember us on your holiday with us, Mr. Avitabile. Okay?
5 Not that that's a real statement I'm making. Okay. All right.
6 Okay. I'm going to close this portion of the hearing, we'll see
7 you next week first thing, Mr. Avitabile.

8 MR. AVITABILE: Thank you so much.

9 CHAIRPERSON HILL: Bye-bye. 12 -- what was that, 12
10 --

11 MR. MOY: 12/21, sir.

12 CHAIRPERSON HILL: Thank you.

13 Okay. Okay. It's up to y'all, I can keep going or we
14 can take a quick break. How badly do we need a quick break?

15 ZC COMMISSIONER MAY: Well, just a restroom break.

16 CHAIRPERSON HILL: Yep, that's what I'm talking about
17 too, quick break. Okay. Some of us take longer than others,
18 Mr. May. Okay. All right.

19 ZC COMMISSIONER MAY: Got it.

20 CHAIRPERSON HILL: We'll be back.

21 (Whereupon, there was a brief recess.)

22 CHAIRPERSON HILL: Okay. We can call our next case,
23 Mr. Moy.

24 MR. MOY: All right. After a quick recess, the Board
25 has returned to its public hearing session and the time is at or

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1 about 1:14 p.m. The next case before the Board is Application
2 No. 20554, Sasha Bruce Youthwork, Inc. This is an amended self-
3 certified application pursuant to Subtitle X, Section 901.2 for
4 a special exception under Subtitle U, Section 320.1(h). This
5 would allow a youth residential care home for 15 individuals.
6 The property's located in the RF-1 zone at 1022 Maryland Avenue,
7 N.E., Square 961, Lot 803.

8 CHAIRPERSON HILL: All right. Could the Applicant
9 please introduce themselves for the record?

10 MS. PRINCE: Certainly. Allison Prince of Goulston &
11 Storrs and I'm here on behalf of Sasha Bruce Youthworks.

12 CHAIRPERSON HILL: Okay, Ms. Prince, thank you. Ms.
13 Prince, if you could go ahead and walk us through the application
14 and why you believe your client is meeting the criteria for us
15 to grant the relief requested. I'm going to 15 minutes on the
16 clock, and you can begin whenever you like.

17 MS. PRINCE: Good morning, Chairman. Op, good
18 afternoon, Chairman Hill and members of the Board. I'm here
19 today for Sasha Bruce. I'm here with Deborah Shore, the executive
20 director, and Dan Rico, who's chief of development. Very, very
21 brief presentation here. Our request involves no new
22 construction, no alteration, and no change in the current
23 operation of the facility that's been located in the building for
24 over 40 years. Your action today will allow Sasha Bruce to secure
25 a proper C of O for the current characterization of the use under

1 the amended 2016 zoning regulations. There's been a long
2 procedural history. I'm not going to go into it unless you'd
3 like me to. Let's just focus on impacts for now. The lot is
4 15,000 feet. The building, the existing building, occupies just
5 a fraction of that. So there's ample buffering between this
6 building and neighboring properties. There's no other youth
7 residential care home within 500 feet. This is the RF-1 zone so
8 the lot is almost ten times the minimum lot size required. From
9 an impact standpoint I think the best evidence of the lack of
10 adverse impacts is the support of the Advisory Neighborhood
11 Commission, unanimous support. The commission did ask us to
12 request a condition in the order requiring quarterly meetings
13 with an advisory group, and we already know -- we have three
14 members already that the ANC has suggested to us. There
15 historically have been advisory committee meetings. They were
16 stopped during the pandemic, and they'll be resumed again. I
17 think that's really at the heart of why there have not been any
18 issues.

19 And we were also asked to provide contact information
20 to the residents of the square, so if they have any kind of issue,
21 they know exactly who to contact and to contact them quickly.
22 Deborah is here, she is the founder of the organization. She's
23 an incredible resource and does such important work. But if you
24 -- if we're standing between you and the World Cup, it's your
25 call whether you'd like to hear from her.

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1 CHAIRPERSON HILL: No, I got you, Ms. Prince.

2 Ms. Shore, why don't you tell us a little bit -- I
3 mean, I know a little bit about your group, but if you want to
4 tell us a little bit about your group, that'll be nice. You're
5 on mute, Ms. Shore.

6 MS. SHORE: Thank you. I am the founder and executive
7 director of Sasha Bruce, which has been in existence since 1974.
8 During that time, our organization has served over 5,000 young
9 people each year and their families. Our clients reach us at an
10 incredibly vulnerable time in their lives, and we do everything
11 we can to provide safe and stabilizing environment. We partner
12 with the District in this way in meeting this profound need. I
13 am very proud of the work that we are providing, respite for
14 young people and supports to their families. Our role becomes
15 especially important as winter approaches. I want to make sure
16 you know that Sasha Bruce House is the only emergency shelter for
17 minors in the District.

18 We have operated continuously in the building since
19 1980. We took over a youth rehabilitation home. We make every
20 effort to operate with minimal impacts on our neighbors. Over
21 the years, we have met regularly with our neighbors to make sure
22 that there are no issues or concerns that need to be addressed.
23 Some of the issues that we confronted in our early years have
24 been fully addressed. While our use has not changed since we
25 began at the property, the zoning category was accidentally

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1 omitted from the 2016 regulations, which you all know. We are
2 here today to secure a proper approval as a youth residential
3 care home. We worked collaboratively with the zoning
4 administrator to make sure that we take the proper approach
5 procedurally, and we think we have. Thank you for your time
6 today, and I hope that you will support us.

7 CHAIRPERSON HILL: Thank you, Ms. Shore. Good luck
8 with you and your continued mission.

9 MS. SHORE: Thank you.

10 CHAIRPERSON HILL: All right. Does anybody have any
11 questions for the Applicant or Ms. Shore at this time before I
12 turn to the Office of Planning?

13 Okay. Turning to the Office of Planning.

14 MR. MORDFIN: Good afternoon, Chair and members of the
15 Board. I'm Stephen Mordfin with the Office of Planning. And
16 the Office of Planning is in support of this application, finding
17 that it is in conformance with the specific criteria necessary
18 for a youth residential care home. Therefore, we recommend
19 approval, and I'm available for questions. Thank you.

20 CHAIRPERSON HILL: Okay. Does anybody have any
21 questions for the Office of Planning?

22 COMMISSIONER SMITH: I think I have just one question.
23 Previous requests -- previous special exceptions it said that one
24 had a sunset. Can you -- was there a reason why there were
25 sunsets on this?

1 MR. MORDFIN: Oh, when it was approved previously?

2 COMMISSIONER SMITH: Yeah.

3 MR. MORDFIN: I would have to go back and look at the
4 record from that application. I did not do that. I can get back
5 to you on that if you would like that information.

6 COMMISSIONER SMITH: I mean, I can do it --

7 MS. PRINCE: I can address that if you'd like, I do
8 have an answer to that.

9 COMMISSIONER SMITH: Sure.

10 MS. PRINCE: I believe back in 2000, so almost 23 years
11 ago, there were operational issues. And I think the Board was
12 concerned about the operational issues. So they put a short fuse
13 on the approval.

14 COMMISSIONER SMITH: Okay. And it was just -- how long
15 was it previously? It was just three years and?

16 MS. PRINCE: It was three years. And then that -- it
17 was a long complicated procedural history that we've been over
18 with the zoning administrator. But it was three years and then
19 it was -- it ultimately lapsed and they thought they were
20 operating pursuant to the earlier C of O for a youth
21 rehabilitation home. So my goal, when I got involved, was to
22 get this all cleared up for once and for all. And that's why
23 we're here today.

24 COMMISSIONER SMITH: Okay. Okay. Perfect. Thank you.

25 CHAIRPERSON HILL: All right. Anyone else for the

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1 Office of Planning?

2 Mr. Young, is there anyone here wishing to speak?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: All right.

5 Ms. Prince, anything you'd like to add at the end?

6 MS. PRINCE: Nothing, but thank you for your time today.

7 CHAIRPERSON HILL: Thank you.

8 I'm going to go ahead and close the hearing on the
9 record. Please excuse everyone, Mr. Young. Goodbye, Ms. Shore.

10 Okay. I didn't have any issues with the application.
11 I thought that, you know, they're meeting the criteria for us to
12 grant the relief. The Office of Planning is in favor, and I
13 would agree with their recommendation. I just don't have any
14 issues with the application, but I'll let somebody else speak
15 more effectively to it, if they'd like to.

16 Mr. Smith?

17 COMMISSIONER SMITH: I don't think I have anything more
18 technical to add than what you stated. I agree with everything
19 that the Office of Planning stated within their staff report on
20 the reasons why we can approve this special exception. The reason
21 why I asked about the sunset is just to get a history of the lay
22 of the land here. But I would note that we -- I'm comfortable
23 with what was stated on the record and I'd also state that we
24 have a letter of support from the ANC for the continued operation
25 of this facility. And it seems to me that we're just allowing

1 this to operate, you know, continue to operate legally with the
2 required special exception that it seems to have needed to have
3 for almost 20 years. Being that it has operated for 20 years
4 and it doesn't seem to have even been an issue within the ANC,
5 you know, I have no issues with granting the special exception
6 without any type of sunset. Seems to be -- seems to me that
7 Sasha Bruce's operation of this facility has, you know, is in
8 tiptop shape and the ANC has no issues with this operation as
9 well. So I give OP's staff report great weight noting that the
10 ANC is in support, DDOT has no objections, and will support the
11 special exception.

12 CHAIRPERSON HILL: Thank you.

13 Mr. Blake?

14 COMMISSIONER BLAKE: I would agree with Board Member
15 Smith's analysis of this case. I do believe it meets the
16 standards of U 320, and I would be voting in favor of the
17 application.

18 CHAIRPERSON HILL: Thank you.

19 Vice Chair John?

20 VICE CHAIR JOHN: I'm also in favor of the application.
21 It's fairly straightforward. And the facility has operated for
22 a very long time with satisfactory results and no apparent impact,
23 adverse impact, to the neighborhood, so I am in support.

24 CHAIRPERSON HILL: Thank you.

25 I'm going to go ahead and make -- did I get Commissioner

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1 May?

2 All right. Commissioner May? I got out of order,
3 sorry. Commissioner May?

4 ZC COMMISSIONER MAY: I don't really have anything to
5 say, but for some reason I missed the ANC report. And when I
6 try to pull it up out of Z docs, it's not coming up for me. So
7 but I can look at it in IZIS (phonetic) I guess. If you could
8 just bear with me a second while I do that.

9 CHAIRPERSON HILL: Yeah. Okay.

10 (Pause.)

11 CHAIRPERSON HILL: Yeah, mine is Exhibit 43,
12 Commissioner May.

13 ZC COMMISSIONER MAY: Yeah, I have the exhibit number,
14 but for some reason it was not -- when I click on it I get a
15 different document. So I have it now in IZIS -- okay. Okay.
16 That's good. That was the one question in my mind. Thank you.

17 CHAIRPERSON HILL: Okay. Thank you.

18 I'm going to go ahead and make a motion to approve
19 Application No. 20554 as captioned and read by the secretary and
20 ask for a second, Ms. John?

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: The motion's been made and second,
23 Mr. Moy, if you'd take a roll call please?

24 MR. MOY: Thank you, sir. When I call your name, if
25 you'll please respond to the motion made by Chairman Hill to

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1 approve the application for the relief requested. The motion to
2 approve was second by Vice Chair John.

3 Zoning Commissioner Peter May?

4 ZC COMMISSIONER MAY: Yes.

5 MR. MOY: Mr. Smith?

6 COMMISSIONER SMITH: Yes.

7 MR. MOY: Mr. Blake?

8 COMMISSIONER BLAKE: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: Staff would record the vote as five to zero
14 to zero. And this is on the motion made by Chairman Hill to
15 approve the application for the relief requested. The motion to
16 approve was second by Vice Chair John, who is also in support of
17 the motion, as well as support from Zoning Commissioner Peter
18 May, Mr. Smith, Mr. Blake, Vice Chair John, Chairman Hill. Motion
19 carries five to zero to zero.

20 CHAIRPERSON HILL: Thank you, Mr. Moy. You want to
21 call our last case?

22 MR. MOY: This would be Application No. 20825 of SNH
23 Medical Office Properties Trust. And for the record, again, this
24 is a self-certified application for a special exception pursuant
25 to Subtitle X, Section 901.2, Subtitle C, Section 1506 from the

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1 penthouse setback requirement, Subtitle C, Section 1504.1.
2 Property located in the D-5 zone at 2141 K Street, N.W., Square
3 73, Lot 79.

4 CHAIRPERSON HILL: All right. If the Applicant could
5 hear me, if they could please introduce themselves for the record?

6 MR. EPTING: Sure. Good afternoon, Chairman Hill and
7 members of the Board. I'm John Epting with Goulston & Storrs.
8 Dave Lewis is also with me today.

9 CHAIRPERSON HILL: Hi, Mr. Epting, welcome back.

10 MR. EPTING: Thank you.

11 CHAIRPERSON HILL: If you want to go ahead and walk us
12 through your application and why you believe your client is
13 meeting the criteria for us to grant the relief requested? I'm
14 going to put 15 minutes on the clock there so I know where we
15 are and you can begin whenever you like.

16 MR. EPTING: Sure. So I'm going to summarize and we
17 do have representatives who are here and from Leo A Daly, but
18 I'm going to start. And Mr. Young, if you could bring up the
19 second slide?

20 So this is 2141 K Street. It's a medical office
21 building that many of you probably know of. The reason we're
22 here today is that we're proposing to convert this office building
23 to residential. So most of the conversion is matter of right.
24 Mr. Young, could you go to Page 8?

25 We're here before you today because the existing

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1 building's penthouse is nonconforming with respect to the setback
2 is on the east side abutting the alley. So Mr. Young, go to Page
3 8.

4 So here is our existing condition. The existing
5 penthouse is not setback from the alley, the east side of the
6 property. And we need penthouse setback relief under Subtitle
7 C, Section 1506.1 because we're proposing to add a green wall
8 assembly to the east side of the penthouse, which further
9 increases the nonconformity. And you can see an example of what
10 a green screen would look like. That's the entirety of our
11 request for relief. If you could go to Page 9, the next page?

12 Here we've summarized how we believe we meet the
13 setback requirements of 1504. -- actually 1506.1. We've made all
14 reasonable efforts to comply with the regulations. We comply
15 with -- on three of the four sides. We can't comply strictly
16 with the regs because it's an existing condition. We believe
17 that the green clad design is preferable to the existing cladding.
18 It's also less visually intrusive. It's in harmony with the
19 regs, and it helps meet the sustainability goals of the
20 regulations. And this is to -- the green screen does help us
21 comply with the District's sustainability regulations and the
22 relief does not affect the neighboring property. It faces an
23 alley next to a similar size office building. And Mr. Young, if
24 you could skip all the way down to Slide No. 20?

25 So this shows the building and this shows where the

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1 special exception is on the east side of the penthouse, facing
2 the adjacent office building and the alley. And I think with
3 that, I'll stop and see if you have questions either for me or
4 for RMR or for Leo A Daly. And two more things -- three more
5 things to add. We do have support from the Office of Planning.
6 We have no opposition from DDOT, and we have support from the
7 ANC. And as we discussed earlier today, we are committed to
8 working a construction management agreement with Florence Harmon
9 and the condo. I know that's not in your purview, but it's
10 something that we intend to do. And I think with that, I'll stop
11 and see if you have questions.

12 CHAIRPERSON HILL: Okay. Mr. Epting, I think I got you
13 guys confused with an earlier case. Again, you're here -- the
14 penthouse is the way the penthouse is, and you're going to propose
15 a green wall on that penthouse to make it better than it was
16 before, correct.

17 MR. EPTING: Well, it makes it less visible and helps
18 with sustainable development goals. So I think it does make it
19 make it better, but, you know, to --

20 CHAIRPERSON HILL: It is existing now?

21 MR. EPTING: It's existing now and it does not meet the
22 setback requirements now.

23 CHAIRPERSON HILL: Right. I understand.

24 MR. EPTING: So the green wall makes that existing
25 nonconformity slightly worse than the way it is.

1 CHAIRPERSON HILL: So I'm just curious on a different
2 -- just 'cause I'm curious of it, I know the city's been pushing
3 for -- or not pushing, has been trying to make more attractive
4 conversions. And do you know is that kind of -- did that have
5 something to do with your client's decision?

6 MR. EPTING: I think I'd rather let Irena address that.

7 CHAIRPERSON HILL: Okay. Just 'cause I'm curious. Go
8 ahead Ms. Vocca --

9 MS. SAVAKOVA: Savakova.

10 CHAIRPERSON HILL: Savakova.

11 MS. SAVAKOVA: Good afternoon to the Board.

12 CHAIRPERSON HILL: Introduce yourself please.

13 MS. SAVAKOVA: Irena Savakova from Leo A Daly
14 representing the design team on behalf of RMR, our client. The
15 particular requirements for green area ratio and for our team to
16 be able to meet the percentage requirement, there is a combination
17 of horizontal surface green roof that is added to the roof
18 structure. This combination paired with planters down --

19 CHAIRPERSON HILL: I'm sorry to interrupt you. It's
20 okay. I was just trying -- I was just curious if the city had
21 incentivized any of this to where it's --

22 MS. SAVAKOVA: It's a requirement. It's actually a
23 requirement of overall green area, yes.

24 CHAIRPERSON HILL: No, that's not what I mean. What I
25 mean is that the city is -- and Mr. Epting, you know this, what

1 I'm trying to ask, I was just curious --

2 MR. EPTING: I don't think there's like -- I don't
3 think the city's give us any -- I mean, the city's -- the DOE
4 regs require us to do -- you know, meet certain sustainability
5 regs. And that's what we're trying to do. I think under the
6 special exception regs, I think --

7 CHAIRPERSON HILL: That's okay. The fact that this is
8 not jumping out at you means that I guess it didn't matter to
9 either 'cause I don't know.

10 Mr. EPTING: I think under the special exception regs,
11 one of the things is to make it less visible, to try to comply
12 with zoning as best we can. And that's what we're trying to --

13 CHAIRPERSON HILL: Mr. Epting, it's okay. And
14 Commissioner May is smiling because this is what they do at the
15 Zoning Commission. I was just curious, separate from everything
16 else, they city, I understood, was trying to incentivize
17 residential conversion from offices. My question was did
18 anything that the city had to do factor in with your client's
19 decision to do this? If nobody knows the answer, that's okay.
20 I was just curious.

21 MR. EPTING: So no, this conversion started several
22 years ago and basically --

23 CHAIRPERSON HILL: Okay. Pre-pandemic?

24 MR. EPTING: Yes.

25 CHAIRPERSON HILL: Okay. All right. Okay. Well,

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1 there you go. I was looking for some ray of sunshine, but no.
2 All right. Okay.

3 All right. Go ahead, Mr. Blake.

4 COMMISSIONER BLAKE: One question for the Applicant.
5 Just like just -- again, more of a curiosity. How long does it
6 take in the process to create that wing wall, is it a big
7 construction project or is this more just a fairly
8 straightforward landscape, I don't know?

9 MR. EPTING: Chad, do you think you want to answer
10 that?

11 MR. BOJANOWSKI: Sure. Good afternoon, my name is Chad
12 Bojanowski, I'm with the RMR group on the ownership side for this
13 project. I think the green roof construction piece, as it relates
14 to the screening of the existing penthouse, is not a large project
15 in and of itself, but we also have to take into consideration
16 green roof requirements that we will have to do, which will
17 require some shoring up of the existing superstructure to
18 accommodate the weight. So this isn't a month long process, but
19 it doesn't happen, you know, in a day. If that answers your
20 question.

21 COMMISSIONER BLAKE: Okay. I think it does. But aside
22 from that portion of it, the green screen itself would take how
23 long, just give me just a sense of it? Is it a -- it's a
24 relatively short process I'm --

25 MR. BOJANOWSKI: It's a short process. Yes, sir.

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1 COMMISSIONER BLAKE: Okay. Thank you.

2 CHAIRPERSON HILL: Anyone else?

3 Vice Chair John? Vice Chair John, you're on mute, I
4 think, I'm sorry.

5 VICE CHAIR JOHN: Sorry. I'd like to take a look at
6 that presentation again to see if I can figure out where the
7 condominium is, the West End Condo Association.

8 MR. EPTING: Mr. Young, could you bring up Page 21,
9 because we actually outlined it for you, Commissioner.

10 VICE CHAIR JOHN: Thank you.

11 MR. EPTING: Sure. So actually the one before -- go
12 back to the one right before please. Thank you. So this is the
13 aerial view. So in yellow is 2141 K Street. The penthouse is
14 shown there. And the green screen is on the east side of the
15 penthouse. And then the condo is shown in red. And then the
16 next slide, if you go down, Mr. Young, next slide too. Here's a
17 different view. So basically again 2141 K Street is in front of
18 you and the condo is the red in back. Again the relief is on
19 the east side of the penthouse.

20 VICE CHAIR JOHN: Okay. Thank you.

21 MR. EPTING: You're welcome.

22 CHAIRPERSON HILL: All right. I'm going to turn to the
23 Office of Planning.

24 MR. JESICK: Thank you, Mr. Chairman and members of the
25 Board, my name is Matt Jesick, presenting OP's testimony in this

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1 case. And the Office of Planning is happy to rest on the record
2 in support of the requested relief. But I can take any questions
3 that the Board may have.

4 CHAIRPERSON HILL: Does the Office of Planning -- I'm
5 sorry. Does the Board have any questions of the Office of
6 Planning?

7 All right. Mr. Young, is there anyone here wishing to
8 speak?

9 MR. YOUNG: Yes, we do, we have Ms. Harmon.

10 CHAIRPERSON HILL: Okay. You want to bring Ms. Harmon
11 in?

12 Ms. Harmon, can you hear me? Ms. Harmon? Ms. Harmon,
13 can you hear me?

14 MS. HARMON: Hi, can y'all hear me?

15 CHAIRPERSON HILL: Yes, yes, yes. Can you please
16 introduce yourself for the record?

17 MS. HARMON: Okay. Great. Yeah. My name is Florence
18 Harmon. I'm on the condominium board and their designated
19 representative in this proceeding. And also I am the most
20 adjacent condominium owner, the entire tier that you see in that
21 overview where the condominium juts out and is quite close to
22 where this construction will occur.

23 CHAIRPERSON HILL: Would you like to testify as an
24 individual or as the -- it sounds like maybe it might be best
25 off to testify -- I mean, you could do both, but if you wanted

1 to testify as an individual first and then as the association
2 representative or how would you like to handle things?

3 MS. HARMON: What do you suggest? Maybe as an
4 individual first?

5 CHAIRPERSON HILL: Well, maybe you can tell us -- yeah,
6 why don't you tell us about the individual first? Because I
7 think you're going to speak to everything you're concerned about.
8 And then you, you know, you might not -- you don't need to repeat
9 yourself is also what I'm getting at. And since you have been a
10 commissioner, you understand how this works. So I'm going to put
11 three minutes on the clock just so I know where we are, and you
12 can begin whenever you like.

13 MS. HARMON: Okay. Well, we do feel like there are
14 adverse effects of this construction on the condominium that do
15 change the character of the immediate neighborhood. As you can
16 see from the overhead, we are quite close to where the
17 construction is occurring. We wish that some of the adverse
18 effects of noise and disruption and blocking the light and air
19 of association record -- residents and myself had been
20 recognized. But we do want to work collaboratively with the
21 Applicant on a construction management agreement. But again, we
22 do feel like there are adverse effects of light and air on the
23 association record -- residents and myself. And the construction
24 does generate additional traffic, create noise and disruption,
25 and alter the character of the immediate neighborhood, as we

1 stated in our filing.

2 CHAIRPERSON HILL: Okay. Does anybody have any
3 questions of the witness?

4 ZC COMMISSIONER MAY: Yes.

5 CHAIRPERSON HILL: Who said yes?

6 Commissioner May?

7 ZC COMMISSIONER MAY: My camera had been turned off.

8 So I'm struggling to understand how the addition of
9 this green wall, which will be on the east side of the penthouse,
10 would have any substantive effect on your building or your
11 apartment specifically, because it's on the far side, and that's
12 the only area where they're asking for relief.

13 MS. HARMON: My understanding is that there is the
14 possibility of bringing in a crane, very -- it's some slight
15 possibility of an overhead swing crane, also crane possibly on
16 the alley, that is going to have an effect on the creating
17 additional traffic and creating noise and disruption that will
18 have an effect on the condominium.

19 ZC COMMISSIONER MAY: Okay. So all of those are
20 construction effects, which, you know, it helps explain why you
21 want to have a construction management agreement. But if this
22 project -- well, it doesn't seem that there's anything that
23 specific to the construction of the green wall itself that would
24 cause any long-term impact on your building or your unit.

25 MS. HARMON: Well, I'm interested in hearing about how

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1 shoring up the entire perimeter of the building and what kind of
2 effect that would have on the condominium.

3 ZC COMMISSIONER MAY: Okay. All right. And again,
4 that has nothing to do with the relief that's requested. The
5 relief is specific --

6 MS. HARMON: Well, they did say they had to shore up
7 the building to implement the relief.

8 ZC COMMISSIONER MAY: That was for the green roof, not
9 the green wall.

10 CHAIRPERSON HILL: Okay.

11 All right. Mr. Epting, you are in contact with Ms.
12 Harmon, correct?

13 MR. EPTING: Yes, we are.

14 CHAIRPERSON HILL: Okay. Great.

15 MR. EPTING: And we actually, one of our people will
16 attend their board meeting tomorrow night. And so hopefully
17 we'll be close to a resolution on the plan soon.

18 CHAIRPERSON HILL: Okay. Great. Thank you.

19 All right. Thank you, Ms. Harmon. You have a good
20 day.

21 Okay. Mr. Young, if you could please excuse Ms. Harmon.

22 Does the Board have any final questions of the
23 Applicant?

24 Okay. I'm going to go ahead and, Mr. Epting, do you
25 have anything you'd like to add on the end?

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1 MR. EPTING: So I was just going to say, and I think
2 everybody knows this, that there's no change in the height, no
3 change in the GFA. So the request we're seeking is minor. The
4 neighborhood's already mixed use, so we think it fits in nicely
5 with the neighborhood and we ask for your approval. Thank you.

6 CHAIRPERSON HILL: Thank you, Mr. Epting.

7 All right. I'm going to go ahead and close the hearing
8 on the record.

9 Mr. Blake, would you like to go first? I know there's
10 a question. You're on mute, Mr. Blake.

11 COMMISSIONER BLAKE: I know. Yeah, I'll be glad to go
12 first. It just seems it's funny whenever you ask me that question
13 I always seem to somehow fiddle with my notes and misplace them.
14 But anyway, I do believe the Applicant has met the burden of
15 proof to be granted relief, the requested relief. This screen
16 is basically a requirement they have to do to meet the green area
17 ratio requirement as part of this project. I do not believe that
18 -- it doesn't impact the neighborhood, the neighboring
19 properties. It's obviously to fit in with the requirement, other
20 developmental requirements, of the zone. I believe that the
21 Applicant has made a perfectly fine argument as to why it meets
22 the criteria for relief as outlined in the report by the Office
23 of Planning. We have no objection from the ANC who's in support.
24 I understand the concerns of the neighboring properties, but as
25 I said when the person that had requested party status in

1 opposition had indicated their interest, I wasn't clear how the
2 actual relief had impacted or would impact their situation. I
3 continue to believe that based on what we have today. So that
4 said, and I still can't find my notes, I believe the Applicant
5 has met the burden of proof to be granted relief and I will be
6 voting in favor of the application.

7 CHAIRPERSON HILL: Thank you.

8 Mr. Smith?

9 COMMISSIONER SMITH: I can't state it better than Mr.
10 Blake. I do agree that the Applicant has met the burden of proof
11 for us to grant the special exception. I do believe they met
12 all the criteria as specified under Subtitle X 901 and Subtitle
13 C 1506 for us to grant the requested special exception. I give
14 great weight to the Office of Planning's staff report and will
15 support the application.

16 CHAIRPERSON HILL: Thank you.

17 Vice Chair -- I'm sorry, Commissioner May?

18 ZC COMMISSIONER MAY: I don't have anything to add. I
19 would just compliment Board Member Blake for his excellent
20 analysis without notes. And I will vote in support. Thank you.

21 CHAIRPERSON HILL: Thank you.

22 Vice Chair John?

23 VICE CHAIR JOHN: I am also in support of the
24 application and I don't see any adverse impact on the condominium
25 building or on the applicant who requested party status in

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1 opposition because of the location of the green wall on the
2 eastern side of the project. So I'm in support.

3 CHAIRPERSON HILL: Thank you.

4 I'm not going to -- I agree with everything my
5 colleagues have said. I mean, I think that upon further
6 reflection, I didn't realize it's going to make it better, you
7 know, in a way that I think there might be a little bit of
8 construction going on that was going to go on anyway. But I do
9 appreciate the person who was here to testify, because if you
10 don't show up and if you don't participate, then nobody knows
11 what you have to think. And so it's better that they came than
12 if they didn't, in my opinion.

13 So I'll go ahead and make a motion to approve
14 Application No. 20825 as captioned and read by the secretary and
15 ask for a second, Ms. John?

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: The motion been made and second, Mr.
18 Moy, if you'd take a roll call please?

19 MR. MOY: Thank you, Mr. Chairman. When I call your
20 name, if you would please respond to the motion made by Chairman
21 Hill to approve the application for the relief requested. The
22 motion to approve was second by Vice Chair John.

23 Zoning Commissioner Peter May?

24 ZC COMMISSIONER MAY: Yes.

25 MR. MOY: Mr. Smith?

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1 COMMISSIONER SMITH: Yes.

2 MR. MOY: Mr. Blake?

3 COMMISSIONER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Chairman Hill?

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: Then staff would record the vote as five to
9 zero to zero. And this is on the motion made by Chairman Hill
10 to approve the application for the relief requested. The motion
11 to approve was second by Vice Chair John, who is also in support
12 of the motion, as well as support from Zoning Commissioner Peter
13 May, Mr. Smith, Mr. Blake, Vice Chair John, and Chairman Hill.
14 The motion carries, sir, on a vote of five to zero to zero.

15 CHAIRPERSON HILL: Thank you, Mr. Moy.

16 Commissioner May, I didn't think it was possible. I
17 really didn't.

18 ZC COMMISSIONER MAY: I praise you, Mr. Chairman. What
19 a brisk meeting you have conducted today. And I don't think we
20 missed any steps along the way. I think we gave full
21 consideration to every case, yet we still -- we're finished with
22 nine minutes to spare. So thank you very much.

23 CHAIRPERSON HILL: All right. Well, you all -- does
24 anybody have anything to add otherwise I'm going to adjourn us?
25 I don't see anybody --

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1 MR. MOY: Well, adjourn. I concur with Commissioner
2 Peter May that the Board did not have to go into overtime.

3 CHAIRPERSON HILL: Okay. Oh, that's very good. Very
4 appropriate.

5 MR. MOY: Yes.

6 CHAIRPERSON HILL: All right. Okay. All right.

7 ZC COMMISSIONER MAY: Yeah, God forbid, penalty kicks.

8 CHAIRPERSON HILL: I love it. All right. Bye-bye.

9 (Whereupon, the above-entitled hearing was adjourned.)
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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 12-14-2022

Place: Teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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