

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

MARCH 1, 2023

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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, Lorna John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA JOHN, Vice Chairperson
CARL H. BLAKE, Commissioner
CHRISHAUN SMITH, Commissioner
PETER MAY, Zoning Commissioner
ANTHONY HOOD, Zoning Commission Chair
ROBERT MILLER, Zoning Commission Vice Chair

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

MARY NAGELHOUT, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on March 1, 2023.

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

(9:30 a.m.)

VICE CHAIR JOHN: Good morning, ladies and gentlemen. Today -- this is the March 1st, 2023 public hearing of the Board of Zoning Adjustment of the District of Columbia, convening to act on a chancery application pursuant to the Foreign Missions Act, 22 U.S.C. 4301 to 4316, and Chapter 10 of the zoning regulations. My name is Lorna John, Vice Chairperson of the Board of Zoning Adjustment. And joining me today is Board Member Carl Blake. The federal representatives are Marcel Acosta, the executive director representing the National Capital Planning Commission, and Peter May, representing the National Park Service, U.S. Department of the Interior.

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 at 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 so as not to pick up sound or background noise.

If you experience difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number at 202-727-5471 to receive Webex log-in or call-in instructions. To all persons planning to testify either in support or in

1 opposition, please remember to state your name and home address
2 before providing oral testimony on your presentation.

3 The order of procedure for a Foreign Mission case is
4 as follows: statement and witnesses of the applicant; government
5 reports, including the United States Secretary of State and the
6 District of Columbia Office of Planning on behalf of the mayor;
7 reports or recommendations by other public agencies; report of
8 the advisory neighborhood commission; persons in support; persons
9 in opposition. Please note that requests for party status in a
10 chancery application are not applicable because this is a rule-
11 making proceeding.

12 The following time constraints will be maintained: the
13 applicant, including witnesses, will be permitted 60 minutes to
14 present its case; persons testifying whether in support or
15 opposition will be permitted three minutes each except an ANC.
16 These time constraints do not include time used during questions
17 from the Board. The Board may place further reasonable
18 restrictions on or permit additional time for testimony as it
19 deems appropriate. Because this is a rule-making proceeding and
20 there are no parties, there is therefore no cross-examination.
21 The record will be closed at the conclusion of each case, except
22 it will remain open for any material specifically requested by
23 the Board. The Board and the staff will specify at the end of
24 the hearing exactly what is expected and the date when the
25 material must be submitted to the Office of Planning. After the

1 record is closed, no other information will be accepted by the
2 Board.

3 The District of Columbia Administrative Procedure Act
4 requires that the public hearing on each case be held in the open
5 before the public. Pursuant to Sections 405(b) and 406 of that
6 Act, the Board may, consistent with its rules of procedure and
7 the Act, enter into a closed meeting on a case for purposes of
8 seeking legal counsel in a case pursuant to D.C. Official Code
9 Section 2-575(b)(4), and/or deliberating on a case pursuant to
10 D.C. Official Code Section 2-575(b)(1)(3), but only after
11 providing the necessary public notice and in the case of an
12 emergency closed meeting after taking a roll call vote.

13 The decision of the Board in this legislative
14 proceeding must be based exclusively on the public record. To
15 avoid any appearance to the contrary, the Board requests that
16 persons present not engage the members of the Board in
17 conversation. Preliminary matters are those that relate to
18 whether a case will be or should not be heard today, such as
19 requests for postponement, continuance or withdrawal, or whether
20 proper and adequate notice of the hearing has been given. If
21 you are not prepared to go forward with a case today or if you
22 believe that the Board should not proceed, now is the time to
23 raise such a matter.

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

25 MR. MOY: Good morning, Madam Vice Chair and members

1 of the Board.

2 VICE CHAIR JOHN: Morning.

3 MR. MOY: Good morning. I do not. But of course, we
4 do have some preliminary matters related to specific
5 applications, and I'll bring that to your attention when I call
6 that specific case. Other than that, then we can proceed with
7 the first of two applications that are before the Board in its
8 decision-making meeting session today.

9 VICE CHAIR JOHN: Okay. Please go ahead and call the
10 first case.

11 MR. MOY: This is Application No. 20838 of the Embassy
12 of the Republic of Kosovo. This is an application pursuant to
13 Subtitle X, Section 201 to locate a chancery use in a low to
14 medium density residence zone. Property is located in the R-1B
15 zone at 3612 Massachusetts Avenue, N.W., Square 1931, Lot 5. As
16 you'll recall, the Board -- and this is the Foreign Missions
17 composition of the BZA. This was last heard at its hearing on
18 February the 15th and it was set for decision-making today, March
19 1st. Thank you, Madam Vice Chair.

20 Oh, one other thing can. Yeah, I want to add, Madam
21 Vice Chair, that within the 24-hour block there was a letter that
22 was submitted in opposition from Ward 3 councilmember. So that's
23 before the Board if you want to allow that -- whether you wish
24 to allow that into the record. Thank you.

25 VICE CHAIR JOHN: Thank you, Mr. Moy. I saw that

1 information, and I think I'd like to hear from the other Board
2 members on this. Ordinarily, the Board is very lenient in letting
3 in information that's filed after the record is closed. The
4 issue in this case is that it's -- the case is here for a decision,
5 and there's no opportunity for the Applicant to respond to this
6 new filing. And that is also true because of the time constraints
7 of reaching a decision or a conclusion in an FM BZA case, because
8 the case was set for today with no opportunity for a continuance.
9 So I would like to hear from other Board members. I believe that
10 if the Board were to hear -- to allow that material in, the Board
11 would have to decide, considering its lateness, what weight to
12 give to that information. And I would like to hear from the
13 Board.

14 Mr. May, would you like to start, Commissioner May? I
15 want to put you on the spot.

16 COMMISSIONER MAY: Yeah. I have mixed feelings about
17 this. The -- ordinarily, we are very lenient, as you said, about
18 letting things into the record. I -- but, you know, it is a
19 councilmember, and so hearing what he has to say, I guess I'm
20 slightly inclined to let this into the record. I think the fact
21 that there will not be an opportunity for the Applicant to rebut
22 this, I don't think really makes that much of a difference,
23 because I don't think we're going to hear anything new either in
24 the letter or in a rebuttal. But it's more a matter of the
25 courtesy of letting it in the record. So I guess it's slightly

1 in favor of letting into the record.

2 VICE CHAIR JOHN: Okay. Thank you.

3 Mr. Acosta?

4 MR. ACOSTA: Yes, I would actually concur with that as
5 a matter of courtesy to the councilmember. I think it is
6 important to at least have a statement on the record. We are in
7 a decision-making process right now, so I also appreciate the
8 fact that there won't be an opportunity for a response. But I
9 think just for a matter of public record and courtesy that we
10 allow this to occur.

11 VICE CHAIR JOHN: Okay. Thank you.

12 Board member Blake?

13 COMMISSIONER BLAKE: Concur with that as well, Madam
14 Vice Chair.

15 VICE CHAIR JOHN: Okay. So thank you, everyone. And
16 Mr. Moy, could you have your staff enter the letter from the
17 councilmember into the record? And I'm going to take a few
18 minutes to pull it up because I'm having technical difficulties
19 today. So I'm going to go off the video for a few minutes while
20 I try to get it up. Thank you.

21 (Pause.)

22 VICE CHAIR JOHN: Hello, everyone. Okay. Has everyone
23 had an opportunity to review the councilmember's letter? Okay.
24 Are we ready to deliberate? Okay. I'll go ahead and start.

25 So I'll just start off by saying that I believe the

1 letter from the councilmember reflected many of the comments that
2 were filed by the witnesses and the neighbors. And so we can
3 address those issues as we proceed. So I'll go ahead and start.
4 So in an FM BZA case, the Board must decide whether to not
5 disapprove or disapprove a chancery application according to the
6 standards laid out in Subtitle X 200 to 205. Chancery
7 applications are permitted as a matter of right in some cases,
8 but a special exception is required to locate a chancery in a
9 low to medium density residential zone. And this special
10 exception criteria is that if an applicant meets the criteria in
11 the regulation, then ordinarily the Board must grant the
12 application. Consistent with the Foreign Missions Act, as
13 codified in the D.C. Code and the ZR '16, the Board must review
14 the federal and local interests in deciding whether or not --
15 whether to not disapprove or approve the application. The
16 threshold issue for the Board is to determine whether the proposed
17 location of the chancery is in a mixed use area based on the
18 existing uses in the area. The Applicant has submitted a map of
19 the area to be considered by the Board as required by the
20 regulations. As explicitly stated in Subtitle Y, 01.6, where the
21 application is for low -- is for a location in a low to medium
22 density residence zone, the Applicant must file a written
23 statement attesting to the calculation of the land area within
24 the square or other area determined pursuant to Subtitle X 201.4
25 of all low to medium density residence and -- I'm sorry, all low

1 to medium density residence zoned lots identified by lot numbers.

2 Section 201.4 describes the permissible other area as
3 the area the Board of Zoning Adjustment determines most
4 accurately depicts the existing mix of uses adjacent to the
5 proposed location of the chancery. I agree with OP's definition
6 of adjacent, which is not limited to adjoining -- to an adjoining
7 lot and would include nearby lots. This interpretation is
8 consistent with the BZA's practice. Therefore, the term adjacent
9 would reasonably include the square in which the proposed
10 chancery is located, properties along Massachusetts Avenue, and
11 I would include the educational use of the St. Albans school, the
12 Saint Sophia Greek Orthodox Church, and the Embassy of Liberia,
13 which is a residential use. However -- well, I'll address the
14 residential use of the embassy later. Those properties are
15 directly across from the subject property. There's no
16 requirement to exclude properties separated by a major artery and
17 in the past the BZA has considered properties and lots, I should
18 say, that are located across the street.

19 At the hearing there was a discussion of the three
20 parks that the Applicant did not include as non-residential uses,
21 considering their proximity to the subject site. Those
22 properties -- those lots are also non-residential uses, in my
23 view. And nowhere in the regulation is the BZA required to
24 consider the entrance to a lot in determining adjacency, rather
25 it's the lot line that determines the proximity of the lot and

1 its authorized use.

2 After the BZA determines the appropriate area, the
3 related (indiscernible) then is whether more than 50 percent of
4 the zoned land within the area is devoted to uses other than
5 residential uses. In that case, the Board must consider the area
6 to be a mixed use area. Therefore, based on the lots identified
7 in Exhibit 20B, which is the Applicant's suggestion of the
8 appropriate area, I would add the three parks and I would exclude
9 the Embassy of Liberia. And I agree with the witnesses and
10 opponents of the application that the Embassy of Liberia would
11 be residential use. I would determine that the area is a mixed
12 use based on the lot area of those properties I identified.

13 Under certain conditions, the Board may approve a mixed
14 use area with 50 percent or less non-residential uses. But in
15 this case, based on the calculation that I'm suggesting, the 50
16 percent threshold is satisfied, so there's no reason to decide
17 whether it meets the less than 50 percent criteria. Once the
18 application satisfies the mixed use criteria, the Board must
19 examine six criteria in Subtitle X 201.8, and the Board's decision
20 must be based solely on those six criteria as specifically
21 required by that section.

22 Paragraphs (a), (d), and (f) represent the federal
23 interests and have been addressed by the Department of State's
24 testimony and submissions in the record at Exhibit 30. Paragraph
25 (b) describes the historic designation, which is not relevant.

1 Paragraph (c) addresses parking. The Applicant is not seeking
2 parking relief in this case and is providing two parking spaces
3 where only one is required, and the site is also well-served by
4 mass transportation. Paragraph (e) addresses the municipal
5 interest, which in these cases is satisfied by the report of the
6 Office of Planning, which includes comments from DDOT and
7 agreements with the Applicant regarding use of public space. The
8 applicant has agreed to DDOT's public space changes, which are
9 reflected in the revised submissions.

10 I've listened to and reviewed the many witness
11 statements and I appreciate the comments and concerns of the
12 community. To the extent that their objections and proposed
13 conditions, except for parking, fall outside of the scope of X
14 201.8, I do not view those conditions as within the Board's
15 purview in an FM BZA case.

16 The ANC submitted a post-hearing response stating that
17 ANC 308 (sic) is not authorized to provide any post-hearing
18 response. And I will note that the Board did not require a
19 response from ANC 3C08, but perhaps other Board members may recall
20 differently. The ANC's recommendation is that the BZA limit its
21 consideration to the ANC resolution, which would consider only
22 Square 1931 as the relevant area for making the mixed use
23 determination. However, as I noted earlier, the Board's mixed
24 use determination is not limited to the particular square in
25 which the property is located, in my view at any rate.

1 Because this is a rule-making proceeding, the Board
2 denied MAHCA's request for party status. The Board must consider
3 its comments as it would any other organization or witness in
4 light of the ANC's post-hearing letter. And because the Board
5 did not request comments from any witness, I don't believe that
6 that -- the response is properly considered.

7 Now with respect to the conditions, I'm happy to
8 discuss those after the Board has decided whether or not to not
9 disapprove the application. So I'm sorry this took so long, but
10 I thought I would try to get as much in as possible.

11 And I will go to Mr. Acosta if you are ready to proceed?

12 MR. ACOSTA: Yes. Thank you, Madam Chair. I concur
13 with your analysis of the of this application. I do agree with
14 your changes, your suggested changes to the boundaries, and also
15 incorporating those into our decision-making. Again, I think the
16 location of this proposed building on this particular square, I
17 think allows us to consider a broader definition of a boundary,
18 including those properties across from Massachusetts Avenue. So
19 I would concur with your area determination and that we move
20 forward with this application.

21 VICE CHAIR JOHN: Thank you. Mr. Acosta.

22 Mr. Blake?

23 COMMISSIONER BLAKE: Sure. Thank you, Madam Vice
24 Chair. I would agree with the statements that you've made to
25 this point as well as that of Mr. Acosta. The -- as I look at

1 this situation, it's clear that our responsibility is to look at
2 it in a fairly narrow definition based on the criteria of X 201.

3 As -- first of all, as it relates to the letter provided
4 by the councilmember, I do agree that it does reflect a lot of
5 the comments that -- in fact all the comments that we received
6 from the ANC and the neighborhood over the course of the last
7 hearing. As we look at the area of the zone, I do agree that
8 the Applicant has provided us -- first of all, I agree that -- I
9 believe that the square itself, which is what was presented by
10 the ANC, Square 1931, comprises only 24 lots, it totals about
11 173,000 square feet, and consists of about 86 percent principal
12 dwellings and in that mix. When I think about the ANC's argument,
13 it talks primarily about the square is located being considered
14 because it is buffered from Massachusetts. I believe considering
15 the relevant area to 1391 -- 1931 would be overly narrow in this
16 case, and anyway I would expect the square in the R-1B zone to
17 contain primarily residential properties and not have more than
18 50 percent. So that's why it's a special exception and not a
19 matter of right. But such a narrow definition would disqualify
20 almost every square in the R-1B zone in the District. So I'd
21 also note that the landscaping plan outlined by the Applicant
22 will certainly provide a connection to Mass Ave, whether it's
23 esthetically as attractive as some would like or not. So for
24 that reason I agree the Applicant and the Office of Planning's
25 position and the broader view of the surrounding area is

1 appropriate, which is consistent to X 201.4.

2 The other point you mentioned there, as I look at that
3 though, there were those squares of those recreational areas that
4 we mentioned that were included -- that were excluded from the
5 calculation. I do believe that that -- those three squares,
6 which essentially are recreational in nature and are a
7 institutional nature by definition, would -- should be included
8 in both the numerator and denominator for that calculation, which
9 would increase the overall total land area and of course boost
10 the percentage of non-residential, in either case well exceeding
11 the 50 percent threshold. So I'd agree with that analysis as
12 well, but with that small tweak.

13 I do agree that the Applicant has met the burden of
14 proof based on the comments from the -- based on the written
15 reports and the letters and testimony from the Office of Planning
16 and DDOT (audio glitch) representatives, as well as the letters
17 and testimony from the Department of state. The six criteria
18 have been outlined in X 201.8 have clearly been met. And we can,
19 of course, discuss the provisions, but as I understand the
20 conditions must relate to the international obligation of the
21 U.S. to facilitate the provision of foreign missions here,
22 historic preservation, adequacy of off-street parking, to the
23 extent to which the area's capable of being protected, and the
24 municipal interest, not necessarily the adverse impact on the
25 neighboring properties, as is the case with a general special

1 exception standard. So for that reason -- or zoning regulations
2 -- for that reason, I think that, you know, I'm not as comfortable
3 with the conditions, but we can certainly talk about that as
4 well. And I do think, as you point out, it probably would not
5 be within the purview of the Board.

6 And I do give great weight to the Office of Planning's
7 recommendations for disapproval. And I know DDOT has provided
8 support and they have, as you point out, incorporated conditions
9 that they've discussed. And again, as we pointed out, we did
10 give great weight, and I do give great weight, to the ANC 3C's
11 input and their issues and concerns, but again I do believe it
12 has been historic practice for the FM BZA to have a broader
13 definition of the relevant area. And I think that that has been
14 accomplished as well in this case. And I'll be voting to not
15 disapprove.

16 VICE CHAIR JOHN: Thank you.

17 Commissioner May?

18 COMMISSIONER MAY: I don't have a whole lot to add to
19 what's already been said. I agree with the all of the statements
20 that have been made so far members of the Board. I will add a
21 little bit of background to this, which is that I recall when in
22 past times the Zoning Commission had discussed the rules (audio
23 blank) --

24 VICE CHAIR JOHN: Can't hear you, Mr. --

25 COMMISSIONER MAY: Hear me better now?

1 VICE CHAIR JOHN: Yes. Yes.

2 COMMISSIONER MAY: So anyway, I recall when the Zoning
3 Commission discussed these -- the conditions for defining the
4 area of a chancery in a low density residential neighborhood.
5 And there was significant discussion of it at the time. And I
6 think that the -- what we are moving toward not disapproving
7 today is consistent with the intentions of the regulations, as I
8 recall them being, you know, modified a little bit back in ZR
9 '16. So I think this is really -- this is pretty straightforward.
10 I understand the concerns of the neighbors, but I think that the
11 regulations on this are pretty clear. And the area that we have
12 to consider is much broader than just the square. So that's sort
13 of a crux of the issue I think.

14 I also agree with including the area of the parks nearby
15 as a non-residential space, because again that can mitigate any
16 potential impacts associated with a chancery use if it's -- if
17 there is parking nearby or adjacent. I would also say that, you
18 know, the definition of adjacent really does have to be more
19 expansive than what is immediately upon it, because you could
20 also take the very, very tight sort of definition of adjacent
21 use, in which case there'd be only one property that's technically
22 adjacent because everything else is separated by a road or a
23 public way of some sort, an alley. So it's not -- it doesn't
24 really make logical sense to say that well, you know, across
25 Massachusetts Avenue should not be considered, but you know,

1 across the other streets or across the alley should be or
2 properties, you know, that are on the other, you know, that are
3 two doors away should be considered when somebody across the
4 street should not. It just doesn't -- it doesn't make logical
5 sense.

6 So I think this is completely in keeping with the zoning
7 regulations. And I, you know, given the changes that the
8 Applicant is already committed to make to bring the property into
9 compliance with the District's public space regulations, I think
10 it's -- the outcome will be appropriate and I do not see that
11 this is going to have a substantial impact on anyone despite the
12 concerns that have been expressed to us. Again, that's not really
13 a reason for us to not disapprove. Our reasons for -- or reasons
14 to disapprove, our reason to disapprove are spelled out in
15 regulations as well. And I don't see any reason why we would
16 not disapprove this application at this point.

17 VICE CHAIR JOHN: Okay. Thank you, Mr. -- Commissioner
18 May. Would you like to start us off on the conditions?

19 So as we all know, an FM BZA case is different from a
20 regular BZA case. And I realize that there's been some discussion
21 of the Board having included conditions in the past in some cases.
22 However, each case is decided on its own facts. And one
23 consideration in imposing conditions is basically enforceability,
24 that the Board has no jurisdiction to enforce these conditions.
25 And so it would basically be left to the goodwill of the embassy

1 and its relationship with its neighbors. So to that end, the
2 Board had asked the parties to communicate further to see what
3 agreements they could come to on their own that the Board would
4 not include in the order.

5 I understand from the record that the parties met, and
6 I believe there's some conditions that the Applicant agreed to,
7 but the ANC did not comment on that. And I don't believe the
8 ANC participated. And then the ANC said that ANC 3C08 is not
9 authorized to represent the ANC outside of what is shown in the
10 resolution. So at this point I am only inclined to point to the
11 conditions that the Applicant has already agreed to abide by.
12 And the parties can continue to work together to see what other
13 conditions can be worked out between them, but -- or among them.
14 So that's where I am.

15 I would like to hear from the other Board members.

16 COMMISSIONER MAY: I think you were starting with me?

17 VICE CHAIR JOHN: Oh, I wasn't.

18 Commissioner May I please go ahead. Thank you.

19 COMMISSIONER MAY: All right. Well, I thought from the
20 lead-in --

21 VICE CHAIR JOHN: I did. I did, just -- yeah. Sure.

22 COMMISSIONER MAY: That's okay. No, I appreciate that
23 recap. I mean, what we received is indication that the Applicant
24 agreed to 9 out of 14 of the ANC's conditions. I'm a little
25 curious though, you had said something about the Board could

1 point to that agreement. I understand that to mean that we would
2 note that in the decision, but not incorporate the conditions
3 into the order.

4 VICE CHAIR JOHN: Yes.

5 COMMISSIONER MAY: Am I right?

6 VICE CHAIR JOHN: Yes.

7 COMMISSIONER MAY: Yeah, that's my inclination as well.
8 I mean, I did not see any of the conditions as being critical to
9 our -- an action to not disapprove this particular application.
10 So I'm with you, I agree with that, we should point to that, and
11 of course encourage the Applicant to work closely with the
12 neighbors. We want them to be a good neighbor for the people
13 who live nearby as well. So I don't think I have anything else
14 to add.

15 VICE CHAIR JOHN: Thank you.

16 Mr. Acosta.

17 MR. ACOSTA: Thank you, Madam Chair. Yes, I would
18 concur with your proposal. I do think we have, again, are limited
19 in terms of what we can impose as conditions. I think they have
20 made an effort, the Applicant has made an effort to address some
21 of the community's issues, but I also think at the end of the
22 day, this is a voluntary agreement that we cannot enforce, as you
23 said. So I would hope that they continue to talk and continue
24 to work on resolving issues today and as they may occur over time
25 as this development proceeds.

1 VICE CHAIR JOHN: Thank you.

2 Board Member Blake?

3 COMMISSIONER BLAKE: Madam Chair, I have nothing to
4 add. I agree with the comments made by the other members of the
5 Board.

6 VICE CHAIR JOHN: Okay. So. At this time, then I will
7 make a motion to not disapprove Application 2038 as captioned and
8 read by the secretary and note that the Applicant has offered to
9 comply with nine conditions which will not be included in the
10 order, and asked for a second, Mr. Blake?

11 COMMISSIONER BLAKE: I'll second that.

12 VICE CHAIR JOHN: Thank you.

13 Mr. Moy, would you take the roll call please?

14 MR. MOY: Thank you, Madam Vice Chair. When I call
15 your name, if you'll please respond to the motion made by Vice
16 Chair John to not disapprove the application. This motion was
17 second by Mr. Blake.

18 Mr. Acosta?

19 MR. ACOSTA: I vote to not disapprove.

20 MR. MOY: Mr. May?

21 COMMISSIONER MAY: I vote to not disapprove. I also
22 would like to just note that there's no -- one thing about the
23 conditions is that we did not have any conditions that were
24 recommended by the Office of Planning. And so I think that's
25 noteworthy when it comes to any conditions that might be

1 incorporated into the order. So sorry I didn't get that in there
2 earlier.

3 VICE CHAIR JOHN: Thank you.

4 And I also have a note, a point of clarification. The
5 Applicant's conditions also included a timeline, a revised
6 timeline, for making some of the changes recommended by DDOT, and
7 those would be included in the order. So do I need to redo this,
8 Mr. Moy? I think we're fine. So I think we can continue.

9 MR. MOY: Okay. Thank you, Madam Vice Chair.

10 Those notations will be referenced in the order as
11 stated and with your concurrence, Madam Vice Chair.

12 VICE CHAIR JOHN: Thank you.

13 MR. MOY: Where am I? Okay. I did get to Mr. Acosta,
14 yes, and Mr. May.

15 Next is Mr. Blake?

16 COMMISSIONER BLAKE: Yes to not disapprove.

17 MR. MOY: Vice Chair John?

18 VICE CHAIR JOHN: Yes to not disapprove.

19 MR. MOY: We have a Board member not present, not
20 participating today. Staff would record the vote as four to zero
21 to one, and this is on the motion made by Vice Chair John to not
22 disapprove. The motion to not disapprove was second by Mr. Blake,
23 also in favor of the motion, as well as Mr. Acosta, Mr. May, of
24 course Mr. Blake and Madam Vice Chair. The motion carries on a
25 vote of four to zero to one.

1 VICE CHAIR JOHN: Thank you, Mr. Moy.

2 So my suggestion is we take a five-minute break and
3 then I will read in for the BZA hearing. And at that time we
4 will also take the first meeting case. Is that okay, five
5 minutes? Thank you.

6 COMMISSIONER MAY: Thank you. See you next time.

7 VICE CHAIR JOHN: Thank you.

8 (Whereupon, there was a brief recess.)

9 VICE CHAIR JOHN: Okay. We can go ahead and get
10 started.

11 MR. MOY: The Board is back in session and the time is
12 at or about 10:27 a.m.

13 Madam Vice Chair, did you want to go with the second
14 meeting session case, which is the expedited review application
15 or did you want to skip over to the first hearing case because
16 that's a continued case with Rob Miller?

17 VICE CHAIR JOHN: I think I'd like to hear from
18 Commissioner Miller. I mean, the expedited case won't be very
19 long, so.

20 MR. MOY: Very good. I just wanted to bring that to
21 your attention.

22 VICE CHAIR JOHN: Yeah, I will just go ahead and read
23 us in, and then we'll take the expedited the meeting case first.

24 MR. MOY: Okay. Very good. That would be with Zoning
25 Commission Chair Anthony Hood.

1 VICE CHAIR JOHN: Okay. Oh, that's true.

2 MR. MOY: Okay.

3 VICE CHAIR JOHN: Commissioner Hood, are you hearing
4 us?

5 ZC CHAIRPERSON HOOD: Yes, I am, Madam Vice Chair.

6 VICE CHAIR JOHN: Okay. Are you fine with the order?

7 ZC CHAIRPERSON HOOD: Whenever ready, I'm listening,
8 I'm across the room, but whatever y'all give, I'll be here.

9 VICE CHAIR JOHN: Okay. We'll just stay with the agenda
10 as it's written. Okay?

11 ZC CHAIRPERSON HOOD: Okay.

12 VICE CHAIR JOHN: Thank you.

13 Good morning, ladies and gentlemen. The Board of
14 Zoning Adjustment's March 1st, 2023 public hearing will please
15 come to order. My name is Lorna John, I'm the vice chairperson
16 of the District of Columbia Board of Zoning Adjustment. Joining
17 me today are Board members Carl Blake and Chrishaun Smith, and
18 Zoning Commissioners Rob Miller and Anthony Hood. Today's
19 meeting and hearing agendas are available on the Office of
20 Zoning's website. Please be advised that this proceeding is
21 being recorded by a court reporter and is also webcast live via
22 Webex and YouTube Live. The video of the webcast will be
23 available on the Office of Zoning's website after today's
24 hearing. Accordingly, anyone who is listening on Webex or by
25 telephone will be muted during the hearing. Also, please be

1 advised that we do not take any public testimony at our decision
2 meeting session. If you experience difficulty accessing Webex
3 or with your telephone call-in, then please call our OZ hotline
4 number at 202-727-5471 to receive Webex, log-in or call-in
5 directions.

6 At the conclusion of a decision meeting session, I
7 shall, in consultation with the Office of Zoning, determine
8 whether a full or summary order may issue. A full order is
9 required when the decision it contains is adverse to a party,
10 including an affected ANC. Full order may also be needed if the
11 Board's decision differs from the Office of Planning's
12 recommendation. Though the Board favors use of summary orders
13 whenever possible, an applicant may not request the Board to
14 issue such an order.

15 In today's hearing session, everyone who is listening
16 on Webex or by telephone will be muted during the hearing, and
17 only persons who have signed up to participate or testify will
18 be unmuted at the appropriate time. Please state your name and
19 home address before providing oral testimony or your
20 presentation. Oral presentations should be limited to a summary
21 of your most important points. When you have finished speaking,
22 please mute your audio so that your microphone is no longer
23 picking up sound or background noise. Once again, if you
24 experience difficulty accessing Webex or with your telephone
25 call-in, or if you had forgotten to sign up 24 hours prior to

1 this hearing, then please call our OZ hotline number at 202-727-
2 5471 to sign up to testify and to receive Webex log-in or call-
3 in instructions.

4 All persons planning to testify either in favor or in
5 opposition should have signed up in advance. They will be called
6 by name to testify. By signing up to testify all participants
7 completed the oath or affirmation as required by Subtitle Y,
8 Section 408.7. Requests to enter evidence at the time of an
9 online virtual hearing, such as written testimony or additional
10 supporting documents, other than live video, which may not be
11 presented as part of the testimony, may be allowed pursuant to
12 Subtitle Y, Section 103.13, provided that the person making the
13 request to enter an exhibit explains how the proposed exhibit is
14 relevant, the good cause that justifies allowing the exhibit into
15 the record, including an explanation of why the requester did not
16 file the exhibit prior to the hearing pursuant to Subtitle Y,
17 206, and how the proposed exhibit would not unreasonably
18 prejudice any parties.

19 The order of procedure for special exceptions and
20 variances pursuant to Subtitle Y, 409 will be as follows:
21 preliminary and procedural matters; statement of the applicant
22 and the applicant's witnesses; report and recommendation from the
23 D.C. Office of Planning; reports and recommendations from other
24 public agencies; reports and recommendations from the affected
25 Advisory Neighborhood Commission and the ANC's witnesses, if any,

1 for the area within which the property is located; parties in
2 support of the application; individuals and organization
3 representatives in support of the application; parties in
4 opposition to the application; individuals and organization
5 representatives in opposition to the application; individuals and
6 organization representatives who are undeclared with respect to
7 the application; rebuttal and closing statements by the
8 applicant.

9 Pursuant to Subtitle Y, Sections 408.2 and 408.3, the
10 following time constraints shall be maintained: the applicant,
11 appellant, and all parties except an affected ANC in support,
12 including witnesses exclusive of the appellee persons and parties
13 except an affected ANC in opposition, including witnesses
14 collectively have an amount of time equal to that of the applicant
15 and parties in support, but in no case, more than 60 minutes
16 collectively; individuals maximum of 3 minutes; organization
17 representatives maximum of 5 minutes. These time restraints do
18 not include cross-examination and/or questions from the Board.
19 Cross-examination of witnesses by the applicant or parties,
20 including the ANC, is permitted. The ANC within which the
21 property is located is automatically a party in a special
22 exception or variance case. Nothing prohibits the Board from
23 placing reasonable restrictions on cross-examination, including
24 time limits and limitations on scope of cross-examination
25 pursuant to Subtitle Y, Section 408.5.

1 At the conclusion of each case, an individual who was
2 unable to testify because of technical issues may file a request
3 for leave to file a written version of the planned testimony to
4 the record within 24 hours following the conclusion of public
5 testimony of the hearing. If additional written testimony is
6 accepted, then the parties will be allowed a reasonable time to
7 respond as determined by the Board. The Board will then make
8 its decision at its next meeting session, but no earlier than 48
9 hours after the hearing. Moreover, the Board may request
10 additional specific information to complete the record. The
11 Board and the staff will specify at the end of the hearing exactly
12 what is expected and the date when persons must submit the
13 evidence to the Office of Zoning. No other information shall be
14 accepted by the Board.

15 Once again, after the Board adjourns the hearing, the
16 Office of Zoning, in consultation with me, will determine whether
17 full or summary order may issue. A full order is required when
18 the decision it contains is adverse to a party, including an
19 affected ANC. A full order may also be needed if the Board's
20 decision differs from the Office of Planning's recommendation.
21 Although the Board favors the use of summary orders whenever
22 possible, an applicant cannot request a full order (audio
23 glitch).

24 Finally, the District of Columbia Administrative
25 Procedure Act requires that a public hearing (audio glitch)

1 before the public. However, pursuant to Sections 405(b) and 406
2 of that Act, the Board may, consistent with its rules of
3 procedures and the Act enter a closed meeting on a case for
4 purposes of seeking legal counsel in a case, pursuant to D.C.
5 Official Code Section 2575(b)(4) and/or deliberating on a case
6 pursuant to D.C. Official Code Section 2575(b)(13), but only
7 after providing the necessary public notice, and in the case of
8 an (audio glitch), after a roll call vote.

9 Mr. Secretary, do you have any preliminary matters?
10 Mr. Secretary?

11 MR. MOY: Thank you, Madam Vice Chair. I do not in
12 general, but I will have some preliminary matters (indiscernible)
13 specific case applications, but I'll bring that to your attention
14 when I call that case.

15 VICE CHAIR JOHN: Okay. Thank you. So can you call
16 our first meeting case?

17 MR. MOY: This would be Case Application No. 20874 of
18 Sean O'Reilly and Allison Hellreich. Again, this is a expedited
19 review case. This application as amended for self-certification
20 Pursuant to Subtitle X, Section 901.2 for special exceptions
21 under Subtitle D, Section 5201 from the lot occupancy
22 requirements Subtitle D, Section 304.1 and from the side yard
23 requirement Subtitle D, Section 206.7. Property located in the
24 R-1B zone at 6432 31st Place, N.W., Square 2349, Lot 816. And
25 that's all I have for you. Thank you.

1 VICE CHAIR JOHN: Thank you, Mr. Moy.

2 So I'll start us off. And please feel free to add any
3 other comments. So this is an application to construct a two-
4 story side addition with a first floor deck to an existing two-
5 story detached principal dwelling unit with basement in the R-1B
6 zone. And the Applicant is seeking lot occupancy relief and side
7 yard relief for the addition. So as amended, I did not have any
8 issues with this application. It was fairly straightforward and
9 the Office of Planning is in support of the application, as is
10 DDOT. The real issue is that the side yard on the extension is
11 nonconforming and so the Applicant would need relief for that
12 portion of the side yard. So I will just go around to see if
13 anybody else has comments.

14 Mr. Smith, may I start with you?

15 COMMISSIONER SMITH: Sure. I by and large agree with
16 everything that you stated. The issue here is contrary to, you
17 know, the other lots within this neighborhood, it is a corner
18 lot, but you have Worthington Street, N.W., that curves into the
19 property, so while this is a corner lot and it's triangular in
20 nature, I believe the size of the lot is relatively half, close
21 to half, of the minimum lot size for this particular zone. So
22 you know, that's the conundrum of, you know, the size of the lot
23 relative to the zoning regulations, size of the lot, and also
24 because of the side yard setback requirements as stated by you,
25 Vice Chair John. So I do believe that the -- what has been

1 proposed by the Applicant is fairly modest in nature and it is
2 in keeping with the character of what currently exists throughout
3 the neighborhood there. So I give OP's staff report great weight
4 in their determination that it meets the special exception
5 criteria for us to grant both of these special exceptions from
6 lot occupancy and side yard requirements. I would note that the
7 ANC has voted in support of this application and DDOT has no
8 objection and has recommended that they make some design changes
9 by closing the driveway and curb cut along Worthington Street and
10 removing a portion of the building. Additionally, within the
11 Worthington Street -- no, I'll make note of that, but I do
12 believe that the curb cut is beyond our purview. So no
13 recommendations on that regard. But I do support the application
14 as submitted, so I will support both special excpetions.

15 VICE CHAIR JOHN: Thank you, Board Member Smith.

16 Board Member Blake?

17 COMMISSIONER BLAKE: Yeah. I'm in support of the
18 application. The comments that you've made and that of Board
19 Member Smith pretty much wrapped up all the issues that I saw.
20 And I do give great weight to the Office of Planning
21 recommendation, note the support. No objection from DDOT and the
22 ANC support with no issues or concerns and also support of the
23 neighboring adjacent properties. So I'll be voting in favor of
24 the application.

25 VICE CHAIR JOHN: Thank you.

1 Board member -- Commissioner Hood?

2 ZC CHAIRPERSON HOOD: Yes. Thank you, Madam Vice Chair.
3 I would agree with all of my colleagues' comments. I would just
4 add, while I know it's not necessarily germane, I would just add
5 that I appreciate the clarification. It's always good to have a
6 clean record. Appreciate the clarification with DDOT and the
7 Applicant is located -- as Exhibit 26, which is their additional
8 supplemental report and I think at Exhibit 28, I believe that's
9 it. But either way, it's in the record. Yes, 28. So with that,
10 I'll be voting in support of this application and agree with all
11 my colleagues. Thank you, Madam Vice.

12 VICE CHAIR JOHN: Thank you, Commissioner Hood. Yes,
13 and with that amended submission, I believe the Applicant
14 clarified that the driveway -- that the garage would still be
15 used, so it was okay with DDOT for the Applicant to keep the curb
16 cut. I believe that was the resolution. So I'm also in favor
17 of the application and if there are no further comments I'll go
18 ahead and make a motion to approve Application 20874 as captioned
19 and read by the secretary, and ask for a second, Mr. Blake?

20 COMMISSIONER BLAKE: Second.

21 VICE CHAIR JOHN: Mr. Moy?

22 MR. MOY: Thank you, Madam Vice Chair. When I call
23 your name, if you'll please respond to the motion made by Vice
24 Chair John to approve the application for the relief requested.
25 The motion to approve was second by Mr. Blake.

1 Zoning Commission Chair Anthony Hood.

2 ZC CHAIRPERSON HOOD: Yes to the motion.

3 MR. MOY: Mr. Smith?

4 COMMISSIONER SMITH: Yes.

5 MR. MOY: Mr. Blake?

6 COMMISSIONER BLAKE: Yes.

7 MR. MOY: Vice Chair John?

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: Then staff would record the vote as four to
10 zero to one. And this is on the motion made by Vice Chair John
11 to approve the application. The motion to approve was second by
12 Mr. Blake, who is also in support of the motion, as well as Zoning
13 Commission Chair Anthony Hood, Mr. Smith, and of course Mr. Blake
14 and Vice Chair John. The motion carries on a vote of four to
15 zero to one.

16 VICE CHAIR JOHN: Thank you, Mr. May (sic). Can you
17 call our first hearing case?

18 MR. MOY: Okay. So this would be Case Application No.
19 20815 of Maurice Hawkes. This is amended pursuant to Subtitle
20 X, Section 901.2 for special exceptions under Subtitle U, Section
21 253.10 from the side limit on accessory apartments in the -- in
22 Subtitle U, Section 253.7(b) and under Subtitle E, Section 5201
23 from the rear addition requirements of Subtitle D, Section 306.3.
24 As the -- and the property is located in the R-2 zone at 4027
25 through 4029 Ely Place, S.E., Square 5397S, Lot 70. And as the

1 Board will recall, this was last heard at your public hearing on
2 January 18th and continued to today, March 1st. Participating
3 is Zoning Commissioner Rob Miller. And I think just one other
4 check if I may. And I believe there was a motion from the
5 Applicant to except an untimely filing, which is noted under
6 Exhibit 50. And that's all I have for you, Madam Vice Chair.

7 VICE CHAIR JOHN: Okay. Thank you, Mr. Chairman (sic).
8 So I'll go ahead and grant the motion. And I see that the
9 submissions are already in the record at Exhibits 50 through 51.
10 Okay.

11 Mr. Hawkes? Can you hear me, Mr. Hawkes?

12 MR. HAWKES: Yes, can you hear me?

13 VICE CHAIR JOHN: Yes, I can. Are you choosing not to
14 use your video?

15 MR. HAWKES: It's -- I can't -- I thought that the last
16 time I used the Webex app, and I couldn't get it on -- couldn't
17 get the video on. Now I'm not sure where --

18 VICE CHAIR JOHN: Okay. That's fine, Mr. Hawkes. So
19 please tell us what happened since the last hearing and where you
20 are today.

21 MR. HAWKES: Okay. Since the last hearing, we had
22 submitted an addendum to the burden of proof, submitted on
23 November 3rd. And I think in there, we -- I was trying to pass
24 -- or trying to -- requesting to get it approved based on an
25 accessory apartment unit in addition to the -- well, with an

1 addition -- an addition with an accessory apartment unit attached
2 to the property. So I did -- that's basically it. I did submit
3 that addendum to the burden of proof under the new regulations
4 for special exception.

5 VICE CHAIR JOHN: Okay. Thank you, Mr. Hawkes.

6 Does the Board have any questions?

7 So I'll go to the Office of Planning, Mr. Jesick.

8 MR. JESICK: Thank you, Madam Vice Chair, and members
9 of the Board. My name is Matt Jesick and I'll be presenting OP's
10 testimony today. We reviewed the relevant criteria of Subtitle
11 U, Section 253, and the Applicant would require just one area of
12 relief from that section, which as was noted is the size of the
13 accessory unit. The regulations limit that size to 35 percent
14 of the floor area of the house. In this case, the floor area
15 would be 50 percent of the house. And the Board can
16 (indiscernible) modify that requirement pursuant to 253.10, which
17 states that the -- any relief should not impact the single-family
18 residential appearance and character of the zone. And in this
19 case, the front of the house would be remaining exactly as it
20 has been since it was constructed. The entrances that are in
21 place today would continue to be used as they are. There would
22 be no impact to the character of the street or the zone.
23 Therefore, we recommended approval of the application. And I'd
24 be happy to take any questions.

25 VICE CHAIR JOHN: Okay. Thank you, Mr. Jesick.

1 Does the Board have any questions for Mr. Jesick?

2 Okay. Is the ANC here? I don't believe so.

3 Mr. Young, has anyone signed up to testify?

4 MR. YOUNG: No, we do not.

5 VICE CHAIR JOHN: Do you have any closing comments, Mr.
6 Hawkes?

7 MR. HAWKES: Just that I humbly request that the Board
8 approve that special exception for relief. And I thank you.

9

10 VICE CHAIR JOHN: Thank you.

11 So I'm going to go ahead and close the record and the
12 hearing. Is the Board ready to deliberate? Does anyone want to
13 start?

14 Okay. So when this first came to the Board, it was an
15 application for a variance because the Applicant wanted to make
16 an addition to a flat which was nonconforming in the zone. And
17 so the Applicant went back and worked with the Office of Planning
18 and submitted a new application to request a principal dwelling
19 with an accessory apartment. And I'm going to give great weight
20 to the Office of Planning's report, which explained how the
21 application meets the criteria, and especially important is that
22 the -- there's no change in the footprint, the building will
23 present as a single-family residence and the accessory structure
24 then will be -- the accessory dwelling will not meet the 35
25 percent gross floor area because it's on the top floor of the

1 building. And so I believe that the waiver can be granted and
2 that's allowed in the regulation as the Office of Planning
3 described, and the application meets the criteria for waiver of
4 that one condition. So I am in support of the application.

5 Does -- can I go to you, Mr. Blake? Would you like to
6 continue or I can --

7 COMMISSIONER BLAKE: That's fine, yeah. I believe the
8 Applicant has met the burden of proof to be granted relief. As
9 we remember from the January 18th hearing, we had a lot of
10 discussion about the variance which we had some -- which had some
11 issues. And this approach, now that the Applicant has agreed to
12 use it as an accessory apartment, the apartment does work well,
13 and I do think it meets the criteria for relief. And that's
14 substantiated by the Office of Planning's recommendation for
15 approval, which I note and give great weight to. And DDOT has
16 no objection. As you point out, it will look the same and it
17 will accomplish the goal that the Applicant has without an undue
18 impact on the neighbors. The one area that we had some issues
19 with a little bit was the ANC has not weighed in on this, so
20 there's nothing to apply -- to attribute great weight to; however,
21 that we do see that the Applicant in its recent filings has
22 reached out to the ANC and made the attempts to do that. I do
23 think that is suffice as it does not make a material difference
24 and we have determined that they would likely not have an adverse
25 impact on the neighboring properties. So I will be voting in

1 support of the application.

2 VICE CHAIR JOHN: Thank you, Mr. Blake.

3 Board member Smith?

4 COMMISSIONER MAY: I agree with all the statements
5 stated by you and Board Member Blake that, you know, as stated
6 by Board Member Blake, there was, you know, when we previously
7 (indiscernible) the application, there was a lot of, you know,
8 heartburn and I would say I'm one of the ones that had heartburn
9 over the request by the Applicant initially for a use variance
10 and I did not at that time and still don't believe that a use
11 variance met the criteria for us to be able to grant a variance
12 to allow that to move forward. But the Applicant had a different
13 avenue and it seems the Applicant has, you know, that Applicant
14 pursued that different avenue and I do believe that what is being
15 requested does rise to the level of, as for this, would meet the
16 special exception criteria. As outlined in OP's staff report,
17 the building would largely be in character with what we see there
18 now as far as how it looks. And as stated by Ms. John, they are
19 required to get a special exception because it -- the accessory
20 dwelling unit would be, you know, entirely the second floor of
21 the building, more than the 35 percent, but I do believe that
22 the Applicant has met the criteria for us to grant the special
23 exception for that particular request. So with that, I give OP's
24 staff report great weight, noting that they meet all the special
25 criteria for both the special exception as well as Subtitle X,

1 901, the general special exception criteria. And I will support
2 both the special exception.

3 VICE CHAIR JOHN: Thank you, Board Member Smith.
4 Commissioner Miller?

5 ZC VICE CHAIR MILLER: Thank you, Madam Vice Chair. I
6 concur with the comments of my BZA colleagues and support the
7 application. I want to thank the Applicant for amending the
8 application to change that use variance to a special exception
9 request for relief purs- -- under the accessory dwelling unit
10 regulations. I would say that the, you know, the zoning
11 regulations regarding accessory dwelling units and buildings are
12 designed to facilitate housing, and in this case they're facil-
13 -- it's facilitating the Applicant's mother being able -- who's
14 ailing to be able to age in place with him there to care for her.
15 And we certainly want to facilitate that. So I agree that the
16 special exception for the accessory dwelling, waiver more than
17 35 percent being used by it, that the criteria has been met, the
18 character of the build- -- of the street will not be changed from
19 the view of the street, the appearance. And the other special
20 exception relief that was previously in the application for the
21 rear depth beyond the ten feet, the Office of Planning and the
22 Applicant have already put information in the record which shows
23 that there's no undue impact on the privacy, light, or air of
24 the adjacent properties as a result of that addition. So I am
25 in support of the special exception relief and prepared to support

1 it today. Thank you.

2 VICE CHAIR JOHN: Thank you, Commissioner Miller.

3 And so I have nothing to add. I agree with all of the
4 comments so far, and will go ahead then and make a motion to
5 approve Application No. 20815 as captioned and read by the
6 secretary and ask for a second, Mr. Blake?

7 COMMISSIONER BLAKE: Second.

8 VICE CHAIR JOHN: Mr. Moy, would you please take the
9 roll call?

10 MR. MOY: Yes. Thank you, Madam Vice Chair. When I
11 call your name, if you will please respond to the motion made by
12 Vice Chair John to approve the application for the relief that's
13 requested. The motion was second by Mr. Blake.

14 Zoning Commissioner Rob Miller.

15 ZC VICE CHAIR MILLER: Yes.

16 MR. MOY: Mr. Smith?

17 COMMISSIONER SMITH: Yes.

18 MR. MOY: Mr. Blake?

19 COMMISSIONER BLAKE: Yes.

20 MR. MOY: Vice Chair John?

21 VICE CHAIR JOHN: Yes.

22 MR. MOY: And we have a Board member not present, not
23 participating. Staff would record the vote as four to zero to
24 one and this is on the motion made by Vice Chair John to approve
25 the application for the relief requested. The motion to approve

1 was second by Mr. Blake, who is also in support of the motion,
2 as well as from Zoning Commissioner Rob Miller, Mr. Smith, and
3 again, Mr. Blake and Vice Chair John. The motion carries on a
4 vote of four to zero to one.

5 VICE CHAIR JOHN: Thank you, Mr. Moy. You may call the
6 next case.

7 Thank you, Commissioner Miller.

8 ZC VICE CHAIR MILLER: Thank you. Have a good rest of
9 the day, everybody.

10 VICE CHAIR JOHN: Okay. You too.

11 ZC VICE CHAIR MILLER: Take care.

12 MR. MOY: The next case is Application No. 7468B, B as
13 in bravo, of NHT Communities and G and I X East River Park MZL,
14 LLC. This is a self-certified application pursuant to Subtitle
15 Y, Section 704 for modification of significance of BZA order --
16 or the orders of the -- the order which are appeals No. 7468 and
17 7469 that allow the location of required parking on a separate
18 lot and pursuant to Subtitle X, Section 901, a special exception
19 under Subtitle C, Section 703 from Subtitle C, Section 70 --
20 again, from Subtitle C, Section 701.10 to permit the reduction
21 in the number of required parking spaces. Property located in
22 the MU-7B zone at 307 40th Street, N.e., Square 5083, Lot 179,
23 179, Square 5051N, Lots 15, 16, 838, and 840. And this is the
24 East River Shopping Center. Again, this is located in the MU-7B
25 zone, and I believe that the Board last heard this at its January

1 11th public hearing where the Board granted the ANC's motion to
2 -- for continuance to today's date, March 1st. And I think I
3 want to check one other thing, Madam Vice Chair. I believe --
4 let's see -- okay. That's all I have for you, Madam vice Chair.

5 VICE CHAIR JOHN: Thank you, Mr. Moy.

6 Good morning, Mr. Tummonds. Can you introduce yourself
7 for the record and tell us who you have with you today?

8 MR. TUMMONDS: Yes. Good morning, Madam Vice Chair.
9 I am Paul Tummonds with Goulston & Storrs. Also with me here
10 this morning are Kevin White and Ed Pauls of NHT Communities, the
11 owner of the property that is referred to as the 40th Street lot.

12 And if Mr. Young could pull up our PowerPoint
13 presentation?

14 VICE CHAIR JOHN: Mr. Tummonds, could you hold off a
15 moment? We're just going to do introductions right now.

16 MR. TUMMONDS: Okay. I'm sorry, yeah. I'm sorry, yes.

17 VICE CHAIR MILLER: Yeah.

18 MR. TUMMONDS: So I was going to say, as referenced on
19 the screen and so these are our presenters this morning, myself
20 and Mr. Pauls and Mr. White from NHT Communities.

21 VICE CHAIR JOHN: Thank you.

22 Mr. Pauls, would you introduce yourself please?

23 MR. PAULS: Hi there, yes. Yes, my name is Edward
24 Pauls, I am a senior director of real estate at NHT Communities.

25 VICE CHAIR JOHN: Thank you. And oh, would you give

1 your address as well?

2 Mr. PAULS: My work address or home address?

3 VICE CHAIR JOHN: It says -- the regulations say home
4 address, but.

5 MR. PAULS: I'm sitting here right now. 817 Taylor
6 Street, N.E.

7 VICE CHAIR JOHN: Thank you. Thank you.

8 Mr. White, would you please introduce yourself?

9 MR. WHITE: Good morning. My name is Kevin White. I'm
10 managing director of real estate development at National Housing
11 Trust, NHT Communities. I reside at 521 14th Street, S.E.

12 VICE CHAIR JOHN: Thank you.

13 And I believe I see the commissioner, Commissioner
14 holcomb. Okay.

15 MR. HOLCOMB: Yes, good morning, Vice Chair.

16 VICE CHAIR JOHN: Okay. Thank you. I see you.
17 Welcome.

18 So Mr. Tummonds, would you go ahead and tell us about
19 your project and we'll put 15 minutes on the board just so we
20 can keep track.

21 MR. TUMMONDS: Fantastic. Great. Next slide please,
22 Mr. Young. Great. Thank you.

23 So the existing East River Park Shopping Center
24 consists of three buildings as shown on this plat, and a surface
25 parking lot containing approximately 278 parking spaces. The

1 three buildings on the shopping lot were constructed between the
2 late 1940s and the early 1960s. When these buildings were
3 constructed, the 1958 zoning regulations required a total of 342
4 parking spaces for these buildings in the uses. There are no
5 immediate plans to make any changes to the 278 parking spaces
6 that currently exist on the East River parking -- East River Park
7 Shopping Center site. I will also note on the right-hand side
8 of this plat is the 40th street lot, which sits across 40th
9 Street, N.E. from the shopping center. And it is currently used
10 as a surface parking lot, as to satisfy a portion of the required
11 East River Park Shopping Center. As Mr. Moy noted, part of our
12 application today is to modify a order, and that's why this case
13 is Application No. 7468. I might add, this is one of the older
14 BZA cases that I've ever had to come back and modify.

15 So in 1963, the owner of the East River Park Shopping
16 Center sought and received zoning relief from the BZA to satisfy
17 a portion of its parking requirement on the 40th Street lot.
18 That was for building three, which is the Safeway shopping grocery
19 store. A covenant dated April 22nd, 1965, was recorded in the
20 D.C. land records, which required the 40th Street lot provide 64
21 to 69 parking spaces to satisfy some of the requirements of the
22 East River Park Shopping Center. This covenant states that the
23 40th Street lot shall be used for no other purpose than for
24 accessory passenger automobile parking spaces for the use and
25 benefit of the East River Shopping Center site. With this

1 approval of this application, the BZA will allow NHT Communities
2 to remove this 1965 parking covenant on the site and construct
3 an affordable housing project on the 40th Street lot that will
4 be subject to NHT Communities working through the DHCD funding
5 process with the Affordable Housing Production Trust Fund. The
6 Office of Zoning administrator has determined that Subtitle C,
7 Section 701.10 which states "the number of required parking
8 spaces shall not be reduced below the minimum required as long
9 as that use that generated that requirement remains in existence
10 requires the applicant to provide 342 parking spaces on the site,"
11 despite the fact that the 2016 zoning regulations would require
12 significantly less due to just the amount of parking that is
13 required and also the proximity of this site to Metro rapid bus
14 lines and the potential H Street rail line trolley cart extension.
15 Therefore, the Applicant is seeking relief from Subtitle C,
16 Section 701.10 through the special exception approval
17 requirements of Subtitle C, Section 703. Our statement outlines
18 how we have satisfied the special exception requirements of this
19 Subtitle C, Section 703 as well as the general exceptions
20 standards of Subtitle Y, Section 901. We note that the Office
21 of Planning and the Department of Transportation agree with this
22 analysis and support approval of this application.

23 I would note that in the past 24 hours there was a
24 question raised and we were requested to address whether Subtitle
25 C, Section 707, 714, and 715 will apply to the existing 278

1 parking spaces on the East River Park Shopping Center site if
2 this application is approved. We have the following responses.
3 With regards to 707, which is the section of the 2016 zoning
4 regulations that addresses parking significantly in excess of the
5 minimum requirement -- and Mr. Young, could you now pull up the
6 email PDF that I -- it was a separate document.

7 MR. YOUNG: I just need one minute to call that up.

8 MR. TUMMONDS: Perfect, thank you.

9 VICE CHAIR JOHN: Is that in the record, Mr. Tummonds?

10 MR. TUMMONDS: It was -- because we just heard about
11 this -- we just heard today or I'd say yesterday the concerns
12 about this, so we are submitting it for the record today. I
13 submitted it to -- it was after the 24-hour period when we heard
14 about this, you wanted us to address this. So now we have
15 presented it to -- sent it to Mr. Young yesterday. We will ask
16 that it be submitted today. This is one of the top things -- if
17 we were in person, I'd be handing it out to you today up at the
18 dais.

19 So basically -- and what -- I'll give you a preview of
20 what it's going to say -- what it's going to show you is on April
21 15th, 2021, the former zoning administrator made a determination
22 in a case with a very similar fact pattern to this that the
23 mitigations required under Section 707 do not apply to an existing
24 parking facility. This is the exact same -- so here it is. So
25 this was a confirmation that Mr. LeGrant made with regards to

1 another MU-7 project located at 5300 Wisconsin Avenue, N.W. And
2 I've highlighted the conclusions of the zoning administrator.
3 And it says that although the number of provided parking space
4 in the project may significantly exceed the minimum required, the
5 mitigations required under Subtitle C, 707 do not apply to the
6 project because the parking will be in the retained and existing
7 parking levels. The required mitigations do not apply to an
8 existing parking facility. That is the same situation we have
9 here. We have an existing parking facility of 278 spaces on the
10 East River Shopping Center site. So we will not be subject to
11 Subtitle C, Section 707. In addition, a question was raised
12 whether or not Section 714 and 715, which are the landscape
13 screening and the landscape requirements and then the screening
14 requirements in the 2016 zoning regulations. As we've stated,
15 we are not making any changes to the proposed 278 or to the
16 existing, I should say, 278 parking spaces on the shopping center
17 property. Those parking spaces were constructed in accordance
18 with the regulations that existed at the time of the construction
19 of the shopping center, and to the degree that they would not
20 satisfy the current requirements with regards to landscape
21 screening and landscaping in general, they considered to be --
22 they can be considered to be nonconforming structures. As we
23 know, sections 201.1 and 201.2 of Subtitle C note that
24 nonconforming structures may be continued, operated, expanded,
25 or extended as long as the nonconforming structure is not enlarged

1 upon, expanded, or extended. Since there is no proposal to extend
2 or increase the existing 278 parking spaces, we do not believe
3 that there is any requirement for the existing parking spaces to
4 be required to meet Section 714 and 715. I apologize that that
5 took a while to, you know, address what is a rather some might
6 say a mundane BZA application, but we wanted to make sure that
7 that was in the record and any questions that the Commission may
8 have would be addressed.

9 With that, I will now have Mr. White present his
10 testimony.

11 Mr. White?

12 VICE CHAIR JOHN: Thank you.

13 Mr. White?

14 MR. WHITE: Thank you, Madam Vice Chair. Thank you,
15 Paul. And good morning again, everyone. Again, my name is Kevin
16 White. I'm managing director of real estate development at NHT.
17 We're a D.C. based nonprofit organization focused on the
18 preservation and creation of affordable housing.

19 VICE CHAIR JOHN: Excuse me, please, Mr. White.

20 Mr. Young, could you please drop the presentation?
21 Thank you.

22 Go ahead.

23 MR. WHITE: Okay. Yeah. And since 1999, we have
24 created or preserved more than 4,000 units of affordable housing
25 here in the District -- or excuse me, nationwidem and here in

1 the District, we own over 1,100 units comprised in 11 properties.
2 And we're located in -- our properties are located in five wards.
3 So as Mr. Tummonds noted, we're seeking to develop this site at
4 307 40th Street as affordable housing and will do so pursuant to
5 the zoning. But in order to do that, we need to remove the
6 parking covenant that's in place, as Mr. Tummonds explained, from
7 the old shopping center requirements. We have met with the ANC
8 commissioners and have had dialog with them since the new year,
9 and they hosted us last night for a community meeting in which
10 we were able to hear not only ANC commissioners' feedback, but
11 also from much of the community. It was very well attended and
12 we appreciated the opportunity to hear the community's feedback
13 about our development vision there, and we agreed to continue to
14 meet with the ANC and the community as we go through our
15 development process. We are very early on. We just acquired
16 the property in October of 2022, so we're very early in the design
17 process and will continue to dialog with the ANC, the community,
18 Marshall Heights Community Development Organization, and other
19 stakeholders as we proceed through development.

20 MR. TUMMONDS: Thank you, Mr. White.

21 And then, Mr. Young, if you could put back up the
22 PowerPoint presentation? Thank you. And if you could go one
23 page up, I believe? Oh, the other way. Okay. Great. Thank
24 you.

25 So in furtherance of that dialog that Mr. White noted

1 with the ANC commissioners and the ANC 7F leadership, the
2 Applicant has prepared a development and construction management
3 plan that we've submitted as part of our PowerPoint presentation
4 today. And we are, as noted here, we are willing to have the
5 compliance with this plan included as a condition of approval in
6 this case. This document here really is in furtherance of this
7 dialog that we expect to have and we will have with ANC 7F,
8 Marshall Heights Community Development Organization, and the
9 surrounding community as the actual development of the 40th
10 Street parking lot and then eventually the East River Park
11 Shopping Center property is developed. With that, we are -- this
12 completes our presentation and we're able to answer any questions
13 that the BZA may have.

14 VICE CHAIR JOHN: Thank you, Mr. Thomas.

15 Does the Board have any questions?

16 Mr. Blake?

17 COMMISSIONER BLAKE: I have real quick. What -- I'd
18 just wish you to say one more time just to be clear, what level
19 of relief are you asking for, how many parking spaces?

20 MR. TUMMONDS: So if we were to apply the 2016 zoning
21 regulations to this site, there would be a requirement of 67
22 parking spaces because given the proximity -- given again the
23 uses, then the 50 percent reduction, given the proximity to the
24 Minnesota Avenue Metro station, and then the rapid bus lines. We
25 -- as I said, we do not intend to do anything to the existing

1 278 parking spaces. So what we are requesting is the way that
2 the zoning regulations work with regards to flexibility
3 requested, is that Section 7 -- Subtitle C 703 says you can
4 request flexibility if you meet these standards. We believe
5 we've met these standards, we believe it is appropriate rather
6 than just kind of come up with a number. We would say, let's
7 have the 2016 zoning regulations' number of required parking
8 spaces be that which is -- would be a measurable number in this
9 case, which would be 67, or it would, pending on if the uses
10 changes, we would say the number of parking spaces provided should
11 be that which is required by the 2016 zoning regulations.

12 COMMISSIONER BLAKE: Okay. Okay.

13 VICE CHAIR JOHN: Board Member Smith?

14 COMMISSIONER SMITH: I have a question, Mr. Tummonds,
15 and I don't necessarily blanketly agree with your approach to go
16 with completely with the ZR '16 regulations. Actually, I believe
17 that when that was implemented, I believe that it was an intention
18 to reduce -- to mitigate some of that or to reduce some of that
19 -- reduce the opportunity of a rush for people to automatically
20 apply the ZR '16 regulations. And I have a question about how
21 you believe that you meet the criteria under C 703.3(a). I get
22 where the ZR '16 regulations are, but has your company or your
23 client done a full scale analysis on the parking demand for the
24 tenants within your shopping center? So have you done -- have
25 you done the demand on how much parking is regularly used in the

1 shopping center during peak season, during peak hours? I'm
2 assuming probably peak season would be Thanksgiving and Christmas
3 for your particular type of use because it's the grocery store.
4 Have you -- that's your anchor here is the grocery store. So
5 has there been any type of analysis on the percentage of parking
6 spaces that are in front of that shopping center, that 278, is
7 it more than 67?

8 MR. TUMMONDS: Oh, I would say yeah. I would say the
9 existing shopping center of 278 spaces. We have not done a formal
10 count of the occupancy of the shopping center itself. I think
11 what we would say anecdotally for the 64 -- the 69 parking spaces
12 that exist on the 40th Street lot, the general view is they are
13 virtually never used. So if we look at what is intended to be,
14 that 40th street lot is supposed to be used as overflow parking,
15 for lack of a better term, to the shopping center site, those 65
16 spaces are never used. It is truly a kind of vacant property.

17 With regards to the 278 spaces, we do not have a census,
18 but perhaps, yeah, it is far in excess of 67 spaces that are used
19 on a daily basis. So I would say too that the BZA has the
20 authority in this to say okay, what is appropriate. And we have
21 -- as we have said, we have no plans to change the 278 parking
22 spaces that are there. If the BZA determines that it is
23 appropriate to say the parking requirements on the East River
24 Parking Shopping center site should be 278, I believe that is
25 entirely within the jurisdiction of the BZA to say that.

1 COMMISSIONER SMITH: Okay. And I'm glad you stated
2 that, because without that analysis being completed, I'm more
3 inclined to recommend that route to reduce it not to ZR '16, to
4 reduce it down to what is currently on that property, that 278
5 with -- in front of that shopping center. So I'm glad you stated
6 that because, you know, without that additional analysis, I'm not
7 there yet on reducing it down to ZR '16, and I'll just put it
8 out there now, so. And it seems to me that what you're attempting
9 to do is to remove that parking requirement that you have for
10 the East River Shopping Center on that 40th Street property,
11 which is behind your shopping center, doesn't seem to be used.
12 I'm assuming that who probably uses it is maybe the employees of
13 the tenants in the shopping center, or maybe you use it for
14 loading purposes, something of that particular nature, which
15 seems to me is what you are -- that's the primary reason why
16 you're here, not necessarily to reduce the parking down to 67.
17 So I'm just going to put it out there for my other Board members
18 that that's where my head is now, unless there's additional
19 information that's presented during this application.

20 Once I hear Mr. Holcomb --

21 VICE CHAIR JOHN: We'll get to you, Commissioner. We'll
22 get to you, Commissioner.

23 Go ahead, Commissioner Hood.

24 ZC CHAIRPERSON HOOD: Thank you, Madam Vice Chair. I
25 have a couple of comments and I hear Board Member Smith. My own

1 analysis I think we're perfectly aligned moving forward. But I
2 would also proceed with caution. I believe Chairperson Holcomb
3 would not be here had this not been discussed. I'm sure they
4 would have thoroughly looked at what's been reduced. But for me,
5 it's a trade-off. And I understand, Mr. Tummonds, you're trying
6 to clean up. But my question is more or less to Mr. White.
7 Sounds like you made a promise to this community about affordable
8 housing. And right now in this city, that is definitely a word
9 that is very -- it's a buzzword, and we want to make sure we get
10 there. And to some areas, I believe, that could be a tradeoff.
11 I want to make sure that if you've committed affordable housing
12 and I understand this is not necessarily germane here, I may --
13 we may see it again or not. I don't know what you plan on doing.
14 But I want to make sure that you -- when you commit to a community,
15 and I believe you have, Mr. White, I believe that Commissioner
16 Holcomb may verify it, I'm not sure, I'll wait to hear from him,
17 but I want to make sure, Mr. White, that you tell a community
18 you're going to do affordable housing, that that's what you're
19 going to do, and it's going to be affordable housing, not just
20 some housing at 80 percent of the MFI, but affordable. So it -
21 - was that your commitment to the community?

22 MR. WHITE: Yes, Commissioner Hood. As a nonprofit
23 organization, our mission is around the development and creation
24 and preservation of affordable housing. And that's just what our
25 track record proves. I'd just note quickly that much of our work

1 in the District has been in the preservation of existing
2 properties through the Tenant Opportunity to Purchase Act, in
3 which we're partnering with tenant associations in their
4 preservation efforts to make sure that properties remain
5 affordable. This being new construction, of course, there's not
6 a tenant association, but in keeping with that, we committed to
7 the ANC and to the community that we'll work with them and
8 throughout our development process as we go through the design
9 phase. And as Mr. Tummonds noted, just quickly to wrap up, we
10 will be seeking housing production trust funds from DHCD in
11 pursuit of our development there. So yes, it's an affordable
12 building that we're seeking to develop.

13 ZC CHAIRPERSON HOOD: Okay, great. And also all those
14 other tiffs or whatever else you're looking at, you're going to
15 have a deep affordability. So that's good that you put that on
16 the record, Mr. White, so thank you.

17 MR. WHITE: Yeah, just small clarification. I'm
18 specifically referring to the 40th Street lot. That's the lot
19 in which NHT owns, the shopping center development. I can't
20 speak to -- another party is developing that. So I just want to
21 be clear that I'm speaking about 307 40th Street.

22 ZC CHAIRPERSON HOOD: Yeah. You don't want to put
23 yourself out there on the limb for that. I understand that. So
24 anyway, I just want to make sure that commitment is honored years
25 from now. Mr. Holcomb, myself, and others may not be around,

1 but we want to make sure that we honor that to that community.
2 So thank you, Madam Vice Chair.

3 VICE CHAIR JOHN: Thank you, Commissioner Hood.

4 So Commissioner Holcomb, we will get to you according
5 to the schedule. We're next going to hear from the Office of
6 Planning, and then I'll give you an opportunity to speak after
7 the Board has finished its questions to the Applicant. And I
8 see you, Mr. Blake.

9 COMMISSIONER BLAKE: Just one quick que- -- could you
10 have the Applicant -- I don't see that slide show that has the
11 memo from the zoning administrator in the record, could you please
12 ask them to submit that please?

13 MR. TUMMONDS: Absolutely, we'll submit it for the
14 record.

15 VICE CHAIR JOHN: Okay.

16 So does the Board have any other questions? Board
17 Member Smith?

18 COMMISSIONER SMITH: Chair John, I just wanted to say
19 to Mr. Blake it's in the record now, the determination from the
20 zoning administrator.

21 VICE CHAIR JOHN: Okay. So I have a question for Mr.
22 Tummonds. So the Applicant is seeking relief under the special
23 exception criteria under 703.1. And I'm in agreement with that
24 because the Board has recently decided that these cases can be
25 heard as special exception cases. And so what you're seeking to

1 do is to reduce a requirement that's already been established in
2 ZR '58. So that requirement still exists. What is not in the
3 regulation is what relief should be granted for an applicant who
4 seeks mitigation of that relief. And so that's why the Board
5 said, absent the Board's clarification of the regulation to allow
6 special exception, the Applicant would have to request a
7 variance. So I'm not sure what your rationale is for substituting
8 the requirement in ZR '16 instead of requesting a reduction in
9 the required parking because those are two separate things. In
10 one year substituting regulations which did not apply then, and
11 it's not clear that they could apply because of 710 -- is it 701,
12 you know, that --

13 MR. TUMMONDS: Yes.

14 VICE CHAIR JOHN: Yeah. So did you -- did you want
15 -- did you have a comment on that? And if so, I want to have
16 this cleared up before I go to the Office of Planning. In that
17 case, you would have to amend your application to not seek
18 substitution of the ZR '16 requirement, because there's already
19 been a requirement established and there's been nothing -- it's
20 still existing today.

21 MR. TUMMONDS: Right. So I think that -- I understand
22 what you're saying. You know, so the other component of this
23 application also is a modification of significance of the
24 previous BZA order. Right? So we are seeking -- so it was that
25 previous BZA order which put the parking covenant on the 40th

1 Street lot and said 342 spaces are required.

2 VICE CHAIR JOHN: Right.

3 MR. TUMMONDS: I think that it is appropriate to say
4 with a modification of significance of that order, and then
5 applying the current zoning regulations, I believe that the
6 procedural stance that we've presented to the BZA is appropriate
7 to address your concern. I also think that the issues raised by
8 BZA Member Smith make sense of saying okay, that we can look at
9 what is the appropriate amount of relief to grant you, and it's
10 not from 342 to 67, it's 342 to 278. 278. So I think that that
11 is why it's appropriate to do -- to apply Section 703 to this
12 case along with a modification of significance. I think if we
13 didn't have the modification of significance, then we might have
14 an issue with procedure. I think that the two combined work to
15 the degree that you would say that we need to, I guess I would
16 just say -- I'll leave it at that.

17 VICE CHAIR JOHN: Well, let me look at your -- what are
18 you requesting? I believe your argument is a substitution of ZR
19 '16, which is what I'm having difficulty with because I don't see
20 how you substitute new -- I mean, you already have a requirement
21 of 378, whatever that number is. It's fixed.

22 MR. TUMMONDS: Yes.

23 VICE CHAIR JOHN: Okay. So I can work -- I mean, I
24 can follow you when you say you have a modification of
25 significance with respect to the 40th Street lot, and that will

1 work for me. I don't know about other Board members. But then
2 when you say substitute the requirement for ZR '16, which
3 technically would apply to a new development where no parking
4 requirement has been established, you have an established parking
5 requirement that you're seeking to reduce.

6 MR. TUMMONDS: Yes.

7 VICE CHAIR JOHN: so --

8 MR. TUMMONDS: And maybe I would put it this way and I
9 apologize, maybe it was inartfully drafted, I would say we are
10 looking to reduce the parking requirement from the 1963 BZA order
11 7468.

12 VICE CHAIR JOHN: Okay.

13 MR. TUMMONDS: I utilized -- so then to give us a sense
14 of framework of okay, what would be an appropriate number, and
15 almost to say maybe I should have used it a different way, rather
16 than saying that 67 parking spaces is the number we want to reduce
17 to, I applied the parking regulations from 2016, so now we're
18 saying okay, we don't need to apply -- it was more of a I should
19 have said probably more artfully would have said an appropriate
20 number would be 67 because that's what 2016 requires. So based
21 on what we've said -- what we've heard today, we can say an
22 appropriate number for the reduction of parking spaces is 278,
23 which is what exists there. So maybe it was a more artfully way
24 I should have said we can use the 2016 zoning regulations to give
25 us guidance as to what would parking be now, the demand, so to

1 address Commissioner Smith's concerns, I think that may be a more
2 artfully way to have presented this.

3 VICE CHAIR JOHN: Okay. That's fine.

4 If the Board has no further questions, I'll go to the
5 Office of Planning.

6 Mr. Mordfin.

7 MR. MORDFIN: Yes. Hi. Good morning. I'm Steven
8 Mordfin with the Office of Planning. And the Office Planning is
9 in support of this application. I would like to point out is
10 that in my report on page three at the top of the chart, I think
11 that's a little confusing where it says the 67 parking spaces is
12 what's required. What I mean by that is if that shopping center
13 were to be constructed today, it would require 67 parking spaces.
14 However, that's not the case. The existing shopping center will,
15 as long as it remains in place, will have the parking requirement
16 of 342 because that -- those are the regulations under which it
17 was constructed. And what the Applicant is requesting to do is
18 reduce that number to 278 for that existing shopping center. As
19 comparison, you could look at ZR '16 and see what could be
20 constructed today if they were to build that and how many parking
21 spaces would be required and use that as a comparison as to
22 whether or not 278 is appropriate or not. Also, the special
23 exception pursuant to C, 703, which is applicable to this case,
24 for the Applicant to reduce the amount of parking required, it
25 does meet two of those criteria. One being that these are

1 structures particularly well served by mass transit and it is
2 within half a mile of the Minnesota Avenue Metro station and also
3 bus lines that are adjacent to the property. There's also the
4 future light rail line, but that's not there yet. So based on
5 all of that, the Office of Planning is in support of this
6 application and I'm available for questions. Thank you.

7 VICE CHAIR JOHN: Okay.

8 Does the Board have any questions?

9 Board Member Blake?

10 COMMISSIONER BLAKE: Yes, Mr. Mordfin, what elements
11 did you look at in terms of the adverse impact that the reduction
12 might cause? I mean, one of the things that I've noticed in this
13 record is that there is nothing other than some incidental
14 information that talks about the rear lot's usage. The pictures
15 I saw of the parking lot were relatively full. I did not see
16 how the usage of the back lot was done, and I didn't get a sense
17 of, you know, a study that said this is what the average use is,
18 we talked about that earlier, what kind of usage went on here.
19 Can you tell me what how you framed that and came to your
20 conclusions?

21 MR. MORDFIN: Okay. Well, we base it on C, 703, which
22 says that the Applicant has to demonstrate to the Board's
23 satisfaction of at least one of the following, and it lists what
24 A through J. B is the use of structure particularly well served
25 by mass transit, shared vehicle, or bicycle facilities, which I

1 think the application demonstrates that it is the half mile from
2 Minnesota Avenue Metro station and the bus lines on the adjacent
3 streets. And in this case, the Applicant also has said that
4 they're also in conformance with G, quantity of the existing
5 public, commercial, or private parking other than on-street
6 parking on the property or in the neighborhood that can be
7 reasonably expected to be available when the building or
8 structure is in use. In this case, those 278 parking spaces that
9 are on the property are under the ownership of the Applicant and
10 therefore in total control of the Applicant. They don't serve
11 other uses and it doesn't take away on-street parking that might
12 be servicing parking for the uses or residents within the
13 neighborhood. So I think the Applicant is in conformance with
14 two of those criteria. And based on that, I think that that's
15 why we recommended approval. I'm sorry, sir.

16 COMMISSIONER BLAKE: My understanding is that qualifies
17 them for a reduction. It doesn't -- it does qualify for some
18 form of reduction. It doesn't say what the reduction is. And
19 so what my question to you is did you look at some type of
20 analysis to determine what the appropriate level of reduction
21 would be? I mean, clearly -- I mean, just to be clear from our
22 perspective, removing that rear lot may make sense if it's not
23 needed. And if it's not needed because there's no -- the usage
24 is there and the actual usage for the shopping center is satisfied
25 with the 278 spaces. And I'm asking you, yes, it's qualified

1 for reduction. Did you look at the adverse impact of that and
2 is it in any way?

3 MR. MORDFIN: The Applicant did not submit any
4 information addressing the usage of the 40th Street lot or the
5 parking lot within the shopping center. So I don't have that
6 information.

7 VICE CHAIR JOHN: Are there any other questions for the
8 Office of Planning?

9 COMMISSIONER SMITH: Just one.

10 VICE CHAIR JOHN: Okay.

11 COMMISSIONER SMITH: Just one clarifying question, Mr.
12 Mordfin. In calculating the parking requirement that currently
13 exists, did you -- was all the uses within that shopping center
14 counted? I see your table here that says, you know, retail at
15 76,066 square feet, offices 44,000, and medical offices 19,024,
16 that is encompassing all the uses on that parcel?

17 MR. MORDFIN: Yeah. Yes. And that's where the 342
18 comes from, how much parking is required pursuant to ZR '58.

19 COMMISSIONER SMITH: Okay. Okay. I just wanted to
20 verify. Okay. Thank you. That was it.

21 VICE CHAIR JOHN: Okay. If there -- Mr. Blake?

22 COMMISSIONER BLAKE: Actually, I'm not sure this
23 question is for the Applicant or for the Office of Planning. But
24 I understand there was a TDM plan that we should see with this,
25 is there something like that around?

1 MR. MORDFIN: TDM.

2 VICE CHAIR JOHN: Mr. Tummonds, that's for you I
3 believe.

4 MR. TUMMONDS: You're right. We have not submitted a
5 TDM plan for the removal of those parking spaces. There is no
6 current requirement to have a TDM plan on the shopping center
7 site itself. But if --

8 VICE CHAIR JOHN: So I think what we are looking at is
9 C, 703.3(b) because we sort of can't choose which provisions we
10 apply and don't apply because you're asking for a reduction in
11 the number of parking spaces which have to be proportionate to
12 the reduction in parking demand. So you've said that for the
13 40th Street property, it's rarely ever used. So I believe that
14 that standard has been met for the 40th Street parking through
15 your testimony. And so the next thing would be B. And I believe
16 you've sort of addressed that as well. I am -- anyway, I --
17 let's continue with the hearing and then we can go ahead and at
18 the end decide what we may or may not need from you.

19 MR. TUMMONDS: Okay.

20 VICE CHAIR JOHN: Okay.

21 Commissioner Holcomb, are you available now?

22 MR. HOLCOMB: I -- yes, I am, Madam Vice Chair.

23 VICE CHAIR JOHN: Okay. Please go ahead and provide
24 your statement.

25 MR. HOLCOMB: Thank you so much. Good morning. Thank

1 you for this opportunity to provide testimony today on BZA Case
2 No. 7468B. We understand the parking covenant separates both
3 developers' land, but we wanted to make sure that we go on the
4 record that we want to ensure this parking covenant isn't a
5 sanction for the properties to sit idle with no development
6 activity or for the sake of flipping the property. Far too often
7 our community has been told one thing by a developer just for
8 them to do the complete opposite. We're tired of hearing wait
9 for grocery stores, wait for amenities, wait for a clean beautiful
10 place we can be proud to call home. (Indiscernible) a shopping
11 center on 40th Street are part of what has been referenced as
12 the downtown of Ward 7 since the 1980s by the late Lloyd Smith
13 who founded Marshall Heights Community and Development
14 Organization. To this end, we believe the BZA should place a
15 revocation of the granted parking covenant in the event the
16 property sit idle with no activity. As a fourth generation native
17 of Ward 7 I know ANC 7F has long been a family centered community.
18 While we certainly understand change is inevitable, there's a
19 particular challenge -- a particular changes with this case that
20 is disruptive to our everyday life as a community. The 40th
21 Street property that is proposed to be built by NHT will cause
22 major parking problems for current and potential future
23 residents, ultimately gridlocking our streets in today's parking
24 nightmare. We understand zoning laws have changed that
25 accommodate a reduction in parking spaces. Thus, we desire to

1 obviously building shrunk in size if feasible, shrink in size if
2 the feasibility isn't present for parking spaces or garage that
3 would alleviate the problem. Furthermore, we want to make sure
4 that it is noted we aren't thrilled we weren't presented designs
5 as the process (indiscernible) early, but we want to make note
6 that while communication did not get started on the right foot,
7 the community meeting last night, we stressed the importance to
8 both development teams that community members need to be involved
9 in the process, that they need to be transparent, and that this
10 would be through a monthly task force meeting, stakeholder
11 quarterly engagement meeting, and as well as the development
12 happens -- as the development happens the community benefit from
13 the development, from the youngest, to our families to our seniors
14 and the like thereof. Also, I'd like to make note that the
15 commission requests all documents that have been presented today
16 to the Board to be presented or sent over to us as well for our
17 records. And with that, I yield my time back.

18 VICE CHAIR JOHN: Thank you, Commissioner.

19 Does the Board have any questions for Commissioner
20 Holcomb?

21 Okay. Commissioner Hood?

22 ZC CHAIRPERSON HOOD: Madam Chair, I will yield to --
23 if you don't mind, to Board Member Blake, and I'll go after him.

24 VICE CHAIR JOHN: Mr. Blake?

25 COMMISSIONER BLAKE: Thank you. The question I have

1 to you, Mr. Holcomb, is when would you expect that the ANC will
2 actually review this proposal? Sounds like yesterday was the
3 first time that the community had actually looked at parts of
4 this, but not this specifically. When -- what -- and you say
5 you don't have the documentation. Would you be foreseeing a
6 presentation to the full ANC for a vote in the near future or
7 what don't we have here?

8 MR. HOLCOMB: Forgive my oversight. The commission
9 actually voted to take a position or to take non-position on the
10 matter, so the commission doesn't have a position on the matter
11 either way.

12 COMMISSIONER BLAKE: Well, we're required to give great
13 weight to the issues and concerns raised by the ANC and its
14 report. Were there issues and concerns that the ANC reviewed in
15 that meeting and when did it take place?

16 COMMISSIONER MAY: Yes. So the meeting took place
17 yesterday, yesterday evening. The issues that we reviewed
18 certainly were around the housing component. But again, as I
19 said there, the housing aspect of this is bare bones because they
20 are early in the process. I think the real crux of what is
21 important for us as a community that came out last night, and as
22 the commission, is the matter related to parking. That is where
23 we are really -- and the vote that we took last night was to push
24 the Board of Zoning -- to push the BZA, you all are the BZA, to
25 be in consideration of what this potential project at 40th Street

1 will do to our community as it relates to parking. We already
2 have a very bad issue as it relates to community members not
3 being able to park in front of their homes, businesses having
4 folks parked in front of other individuals' homes. So this is
5 going to really turn our community, honestly, as I stated in my
6 statement, into a nightmare as it relates to the parking
7 situation. And that is what came up last night. And that is
8 what we want to stress to you all today day is that we are very
9 deeply concerned about the potential of a 110-unit building going
10 up and only six parking spaces having to be provided. Appearing
11 -- six parking spaces, one parkin space for every six units.
12 That is very alarming and concerning to us, and that is what we
13 want to make sure that we emphasize to y'all today.

14 COMMISSIONER BLAKE: When I look at the shopping center
15 itself, do you have enough parking? As -- did you -- did your
16 constituents talk about the parking at the shopping center?

17 MR. HOLCOMB: Yeah. So the shopping center --

18 COMMISSIONER BLAKE: Was there communication of there
19 being sufficient parking there or anything else?

20 MR. HOLCOMB: Yeah, so if I could say for the record,
21 I think it's a little -- I think it's very uncommon in this
22 context of conversation and I wanted to jump in earlier and say
23 we're talking about the shopping center and the shopping center
24 developer or ownership team is not a part of this conversation.
25 We actually -- I asked the question last night if they needed to

1 approach this with both developers having to file for this
2 covenant to be granted, for this change in covenant to be granted.
3 And they told us they did. So it's just a little ironic that
4 they were present last night, we want to say that for the record,
5 but that they're not here today. I do know that Mr. Tummonds
6 has worked with both development teams and so he may be a bit
7 more familiar, but the parking aspect as it relates to the
8 shopping center wasn't really on display in last night's meeting
9 from what I recall. I think a lot of the attention was focused
10 on the 40th Street parcel as the way the conversation went was
11 that it sounds like 40th Street property would get off the ground
12 a bit quicker than the actual shopping center itself. We are
13 aware that they intend to build a parking garage in the shopping
14 center itself, but I think there are concerns, or questions rather
15 that folks would have about, you know, we know that there are a
16 number of retailers who use the site -- who use the parking spaces
17 that are there now, what would that look like in terms of -- and
18 this was mentioned last night, that there are 20 spaces that are
19 in the building on 40th Street, another 20 spaces would be
20 allocated for residents in the parking garage as well.

21 COMMISSIONER BLAKE: Okay. Thank you.

22 VICE CHAIR JOHN: Okay. Thank you.

23 Are there any other questions?

24 So Mr. Holcomb did the --

25 ZC CHAIRPERSON HOOD: Madam Vice Chair?

1 VICE CHAIR JOHN: Oh, sorry. Go ahead, Commissioner
2 Hood.

3 ZC CHAIRPERSON HOOD: Thank you. Thank you, Chairman
4 Holcomb, for providing information. Last night -- and I can tell
5 you from this, as this is evolving and your comments of you all
6 having a meeting last night, and I know there were postponements,
7 I'm having some problems that last night was when you all really
8 got additional information. And also now you're asking for
9 additional information, like from the Applicant who is not giving
10 it to you. So I don't know where the Board is, and I know you
11 all are -- the Board doesn't necessary have to go by our racial
12 equity lens that the Commission has to go by -- let me back up.
13 Thank you for mentioning Lloyd Smith who was a zoning commissioner
14 here in this city for years. I've actually talked to his grandson
15 and learned things from him as well, so. And I knew him as well,
16 so. But let me back up. More community engagement and whether
17 you have to go by the lens or not, and I'm speaking to my Board
18 members as well, I think it's very important to have that
19 engagement. I think there's a full understanding that's needed
20 by the community, and I think -- I watch what we do in other
21 parts of this city and they go and work with them long before
22 last night. So that's why I'm having an issue with that. I
23 think more time needs to be given. And right now, if we -- I
24 don't know where we would go with this, and I've heard some
25 concerns from my other Board members and I also agree with the

1 Vice Chair when she mentioned the substitute of ZR '16, I think
2 as Mr. Tummonds has already admitted to or alluded to, that he
3 probably -- the characteristics of words that he used, I do
4 understand a modification of significance and I understand how
5 it goes. It may differ a little bit sometime on the BZA. But I
6 can tell you I'm having a serious problem with the community
7 engagement. At first, when I was first reading, I said okay,
8 well, now I'm hearing about affordable housing, maybe that was
9 the give and take, but it seems to me like it was no give and
10 take, it was just this is what we're going to try to do, we're
11 going to show up the night before the hearing and go in front of
12 the Board and say we did this.

13 So Madam Chair, I'm very uncomfortable with moving in
14 this fashion, so I'll just leave it at that and hear from others
15 and see how we proceed. Thank you.

16 VICE CHAIR JOHN: Thank you.

17 So Commissioner Holcomb, did the BZA (sic) finalize a
18 resolution on this particular case, which is the reduction in the
19 parking?

20 MR. HOLCOMB: So the ANC finalized a position on the
21 case and that position is that we support there not being a
22 drastic reduction in the number of parking spaces that would be
23 granted for the 40th Street property. As it relates to
24 Commissioner Hood's comments about community engagement, we had
25 a meeting in which we expressed, you know, we laid out what it

1 was we desire to see as it related to community engagement, and
2 then we got a response that was completely the opposite of what
3 we expressed. We know that things are done differently outside
4 of 7 and 8, and we're aware of that. Because we're aware of that
5 and knowledgeable of that, we push back. They desired to come
6 to an ANC meeting. We said no, this requires more than just you
7 getting 20 minutes on an ANC meeting. This needs to be a separate
8 meeting where community members get to ask -- get the opportunity
9 to ask questions. There are community members who I know who
10 check their mail on a daily basis, who said they didn't receive
11 the notice that was supposed to have been mailed out. We
12 partnered with Marshall Heights to make sure that community
13 members were aware of the meeting. Thus, we had an attendance
14 capacity or a total attendance of last night's meeting well over
15 100 people between online and in-person. So we know the power
16 of community and ensuring that community was aware of it. So to
17 this date or at this moment, the position of the ANC is that we
18 desire to not see a drastic reduction in the number of parking
19 spaces on that 40th Street property.

20 VICE CHAIR JOHN: Okay. So can I follow up? Is there
21 -- when will that resolution be submitted to the Board? Was it
22 drafted? How many people were at the meeting? How many people
23 voted? I'm not having a -- I'm not understanding what happened.
24 Did you support the application, did you not support the
25 application? This is only for the reduction in the parking.

1 This is not for the development of the building that will be on
2 that location or the future development of the shopping center.
3 All we're doing is removing -- well, all the Applicant is asking
4 for is a reduction in parking based on what is there now. If
5 the use changes down the road or the parking -- the shopping
6 center's redeveloped in such a way that it's a new structure,
7 then the parking requirements have to be adjusted. What we --
8 what we need now is what did the -- is there some writing, some
9 email, or something that tells the Board what happened last night?

10 MR. HOLCOMB: Yes, ma'am. We have something in draft
11 form.

12 VICE CHAIR JOHN: Okay. Okay. You have --

13 MR. HOLCOMB: We have something in draft form.

14 VICE CHAIR JOHN: Okay.

15 MR. HOLCOMB: Yes.

16 VICE CHAIR JOHN: Thank you.

17 Mr. Smith, you had your hand up?

18 COMMISSIONER SMITH: Yeah, can I -- I think you were
19 getting on -- you were asking a particular question, I just want
20 to expand on it a little bit more or ask it in a different way.
21 So Mr. Holcomb, I understand the ANC's concerns about a reduction
22 in parking at 40th Street and as Chair John stated that what's
23 before us is a -- is more so dealing with a reduction in the
24 parking in relation to that shopping center. So is the letter
25 that you're drafting in relation to the ANC doesn't want to see

1 a reduction in parking for a potentially new development that
2 would occur on 40th Street that may have a low amount of parking,
3 or is that in relation to a reduction of parking for the shopping
4 center?

5 MR. HOLCOMB: It's in relation to 40th Street. Again,
6 as we understood it, this this matter at hand is not about the
7 shopping center necessarily than it is about the 40th Street
8 property. And honestly, honestly speaking, I think that there's
9 a convoluted line in a sense where obviously like we're in this
10 session now and it seems as if, I don't know, both matters are
11 being considered at the same time or if we're -- the covenant is
12 separated. So I just -- yeah. But the commission's stance that
13 was voted on last night was in relation to the 40th Street
14 property, not the shopping center.

15 COMMISSIONER SMITH: So you know, based on what you're
16 saying, I'm kind of where Chairman Hood is on this as far as
17 community engagement because it sounds like what was more so
18 discussed was the developments that are occurring in Marshall
19 Heights. So what is before us today -- and I get, you know,
20 there's been discussion about this affordable housing development
21 on 40th Street. What is before us today has nothing -- the
22 application -- what I'm saying there's going to be a technical
23 and judicial answer, what is before us today is the shopping
24 center is required to maintain their 40th Street lot for parking
25 because when that shopping center was developed, they needed that

1 to meet the parking requirement. What they're before us to do
2 today is to reduce their parking requirement for the shopping
3 center. If we grant this, they would be required to meet their
4 parking requirement by using that 40th Street lot. If it is
5 granted, then that affordable housing development at some point
6 in time, you know that's not before us right now, could presumably
7 proceed. And in that instance, then whatever happens with that
8 development will have to come back to the ANC for whatever they
9 propose. It may have to come back here for whatever they propose,
10 but we're not necessarily directly talking about their
11 development. So I think that was, you know, the question that
12 was raised by Ms. John and by me is more so related to that
13 parking reduction in relation to the shopping center. So it
14 sounds like there wasn't a dialog had about a parking reduction
15 in relation to the shopping center.

16 MR. HOLCOMB: Yeah, no, the emphasis of last night's
17 meeting certainly was on the 40th Street property and the
18 redevelopment of the shopping center more than it was on per se
19 the reduction of the number of parking spaces that would be
20 happening with the potential redevelopment. So I think in this
21 moment for us, what would be most conducive would be the
22 opportunity for us to introduce a resolution at our March
23 commission meeting, general meeting, that could then be submitted
24 to the Board on the position of -- because again the just -- the
25 lines have been so convoluted, even the way that the approach of

1 communication in the very beginning we had no communication with
2 NHT prior to the holiday season, yeah, like right before the
3 Christmas holiday, I think it was. If my memory serves me
4 correct. So it's -- the lines have just been a bit convoluted
5 and I think we'd like the opportunity to be able to vote on the
6 matter at hand and, you know, ensure that we're utilizing great
7 weight on the matter.

8 VICE CHAIR JOHN: Commissioner Hood?

9 ZC CHAIRPERSON HOOD: Thank you, Madam Vice Chair.
10 Commissioner Holcomb, is there a chance that they can come back
11 out and talk because here's the thing, I'm looking on down the
12 line as Board Member Smith was talking about the project and he
13 said it may come here, it may not come to BZA, it may show up at
14 the Zoning Commission, so I'm looking on down the line to kind
15 of cut down on some of the problems that we'll have at a later
16 date. While I understand that we're not talking about the project
17 today, we're talking about a reduction in parking for the shopping
18 center. But at some point in time, all of us want -- it's an
19 echo effect. I mean, it's going to eventually carry over effect.
20 So I really think that the conversation needs to really go back
21 to the community. I'm saying this to the Applicant. And I know
22 Mr. Tummonds. I've worked with him on many applicants and he
23 usually comes out well, I'm not sure who came out to the ANC,
24 but I think it's very important that, Mr. White, you and others
25 go back to that community and Mr. Tummonds and others and explain

1 exactly what's going on, because if it's a little confusing here,
2 okay, I won't put it on everybody, I'll say it for me, if it's a
3 little confusing here what's actually going on, you know, I think
4 I got it, and the community does not do this every day, needs to
5 understand, and there needs to be more than one conversation,
6 more understanding and all the questions and uncertainties need
7 to be fleshed out. That's where I am, Madam Vice Chair. Thank
8 you.

9 VICE CHAIR JOHN: Let me go to Mr. Tummonds. Okay.
10 Are you representing the developer on the 40th Street lot that
11 is the subject of the park- -- the request for removal of the
12 covenant?

13 MR. TUMMONDS: Yes. So the Applicant in this case was
14 both NHT Communities and then that rather long G and I East, so
15 that was the owner of the East River Park Shopping Center site.
16 So that's why both of the owners are the Applicant.

17 VICE CHAIR JOHN: Okay.

18 MR. TUMMONDS: And so subsequent to our filing of this
19 application on October 4th, G and I East River, LLC sold their
20 interest in this shopping center to Standard Real Estate
21 Investment, which is the group that has been having dialog with
22 Chairman Holcomb and the ANC 7F and Marshal Heights Community
23 Development Organization. I would say in a response and -- in
24 response to the questions and comments and concerns raised, in a
25 post-hearing submission we can do a couple of things and it sounds

1 like -- one, we can provide -- first, we will reiterate the
2 commitment made by NHT and the East River Park Shopping Center
3 owner to continue the dialog with Chairman Holcomb and his
4 constituents and the community stakeholders. Two, we will
5 provide a document which shows the context that have been happened
6 to date. I think we could -- what we can also provide is the
7 transportation demand management plan that was submitted for the
8 large tract review application for the East River Shopping
9 Center, which was -- we noted in our pre-hearing statement that
10 we would work with DDOT if one was required. In DDOT's report,
11 it said we'll continue to evolve that TDM plan. We will submit
12 that TDM plan to the BZA. And I think that we will -- I think,
13 put in writing the discussion -- the commitments that we made
14 today in response to Commissioner Smith and Commissioner John's
15 questions about so what is it we're requesting and what are we
16 requesting the parking requirement to be on the East River parking
17 -- East River Park Shopping Center site.

18 VICE CHAIR JOHN: Okay. All right. Thank you very
19 much.

20 Let me see if there's anyone -- has anyone signed up
21 to testify, Mr. Young?

22 MR. YOUNG: Yes, we have one person signed up.

23 VICE CHAIR JOHN: Okay. Could you let that person in
24 please?

25 MR. THOMPSON: Hello, Commission. Just again kind of

1 wanted to --

2 VICE CHAIR JOHN: Good afternoon. Mr. Thompson, can
3 you please state your name and home address for the record please?

4 MR. THOMPSON: Yes, my name is Darren Thompson. I live
5 at 4365 C Street, S.E.

6 VICE CHAIR JOHN: Yes. And you will have three minutes
7 to give your testimony.

8 MR. THOMPSON: Yeah. So I just wanted to kind of more
9 or less reiterate some of the things that I've already heard, but
10 I was unable to attend the meeting last night, did not hear any
11 kind of outreach for about a week before the meeting was meant
12 to be held. The only reason I even knew -- I knew about this
13 -- the meeting was because of the signage that was left in the
14 rear of the Safeway on my morning walk. And so I wanted to make
15 sure just kind of as a resident of the community, very concerned
16 about any reduction in off-street parking for what -- for most
17 of us is our -- really our only grocery store and most -- and
18 many of us still have to drive to it. So I'm very concerned
19 about any reduction that does not kind of speak to a broader plan
20 for the space, because, like I said, there's so many of us who
21 live in Ward 7 in a food desert, and our only means to get quality
22 produce is to drive to that Safeway or to further out grocery
23 stores. And so I know I heard some initial that if we brought
24 it up to the current level, it would be 67. I'm sure that seems
25 -- that's not the number that they're shooting for, but without

1 hearing how many spaces that they would hope to have that they're
2 asking for this reduction, it would be very difficult, very
3 concerning for a lot of community members like myself, as we hope
4 that this site does get developed, we do hope for that it also
5 factors into the community and our needs. So I just wanted to
6 make that known.

7 VICE CHAIR JOHN: Thank you, Mr. Thompson. So Mr.
8 Thompson, you park in the underground parking lot when you go to
9 the Safeway?

10 MR. THOMPSON: Yeah, when I need to go to the to the
11 Safeway, I do use the off-street parking lot that they have there.

12 VICE CHAIR JOHN: Underneath the Safeway?

13 MR. THOMPSON: No, no, this one does not -- this has a
14 -- it's all surface level.

15 VICE CHAIR JOHN: Oh, okay. All right. Thank you.

16 MR. THOMPSON: Yeah, and I know -- I believe Uber is
17 the one that uses the rear parking lot, but I don't know much
18 about the rear parking lot.

19 VICE CHAIR JOHN: I see. Okay.

20 Board Member Smith, did you have a question?

21 COMMISSIONER SMITH: I think you -- I got
22 clarification. My question was do they use -- do you, Mr.
23 Thompson, use the rear parking lot off of 40th Street. You're
24 saying that you use the parking lot that's in front of the grocery
25 store?

1 MR. THOMPSON: Yes, the only time I've ever used that
2 rear parking lot is to attend a funeral at the funeral home that's
3 on the other -- on Benning Road. So when people have a funeral
4 there, many people do park in that lot.

5 COMMISSIONER SMITH: Okay.

6 VICE CHAIR JOHN: Okay. Thank you. Thank you, Mr.
7 Thompson.

8 MR. THOMPSON: Thank you for the time.

9 VICE CHAIR JOHN: Thank you.

10 So from the looks of things, we're not going to decide
11 this case today. So I'm not going to go into any deliberation.
12 But I just wanted to say, Mr. Tummonds, where we are, where I am
13 --

14 MR. HOLCOMB: Madam Vice Chair?

15 VICE CHAIR JOHN: Yes, Mr. Holcomb?

16 MR. HOLCOMB: I'm sorry, the executive director of
17 Marshall Heights Community Development Organization signed up to
18 testify.

19 VICE CHAIR JOHN: I don't see that person's name on the
20 list.

21 MR. HOLCOMB: His name is Babatunde Oloyede.

22 VICE CHAIR JOHN: Mr. Young, do you see that person's
23 name on the list?

24 MR. YOUNG: I see him logged on. He wasn't signed up
25 to testify though.

1 VICE CHAIR JOHN: Okay.

2 MR. YOUNG: I can bring him in if you want.

3 VICE CHAIR JOHN: Yes. You can bring him in and
4 administer the oath please, Mr. Young -- Mr. Moy?

5 MR. MOY: Okay. I can do that, Madam Vice Chair, once
6 he is on screen.

7 VICE CHAIR JOHN: Yes.

8 Good morning. Good morning -- afternoon, Mr. Oloyede,
9 did I get it?

10 MR. OLOYEDE: Almost. Good try. It's actually -- it's
11 [Oh-loy-yuh-day].

12 VICE CHAIR JOHN: [Oh-loy-yuh-day].

13 MR. OLOYODE: [Oh-loy-yuh-day]. So --

14 VICE CHAIR JOHN: Please state your name and home
15 address for the record? Are you representing yourself or the
16 association?

17 MR. OLOYEDE: I am representing Marshall Heights
18 Community Development Organization, also known as MHCDO. My name
19 is Babatunde Oloyede, I'm the president and CEO of Marshall
20 Heights Community Development Organization, and I reside at 939
21 Jefferson Street, N.E., Washington, D.C. 20011.

22 VICE CHAIR JOHN: Okay. So normally organizations may
23 testify for five minutes, but I don't believe we have anything
24 in the record that says you are authorized to speak on behalf of
25 the organization, but we will allow you the latitude to give your

1 testimony and then you can submit something to the record that
2 says that the organization has authorized you to speak on their
3 behalf.

4 MR. OLOYEDE: I certainly can get you that today.

5 VICE CHAIR JOHN: Okay. Thank you. Please go ahead.

6 MR. OLOYEDE: Okay. Thank you.

7 MR. MOY: Madam Chair?

8 VICE CHAIR JOHN: Yes, ma'am -- oh, thank you, Mr. Moy.
9 Let's administer the oath. Thank you.

10 MR. MOY: Oh, I did that this morning with Robert Reed.
11 But I can do it again, I have no issue.

12 VICE CHAIR JOHN: Your call Mr. Moy.

13 MR. MOY: Well, let's do this for clarity, sir.

14 (Party sworn.)

15 MR. MOY: All right. Thank you, sir.

16 VICE CHAIR JOHN: Thank you.

17 Please go ahead.

18 MR. OLOYEDE: Okay. The Marshall Heights Community
19 Development Organization is a nonprofit community-based
20 organization that has undertaken community development at --
21 community development activities in Ward 7 of Washington, D.C.
22 since 1979. MHCDO's mission statement as to help grow Ward 7
23 into the District of Columbia's most welcoming, prospering,
24 livable community for everyone. The organization provides
25 services designed to increase affordable housing opportunities,

1 expand economic opportunities, and improve the quality of life
2 for individuals and families. MHCDO has five components that
3 comprise its economic development model: health, education and
4 wellness; small business development; housing services; real
5 estate development; and workforce development training. For over
6 44 years MHCDO has provided economic resources and opportunities
7 for improving the community and has launched several initiatives
8 aimed at improving the lives of Ward 7 residents. MHCDO has a
9 rich history with both sites to bring resources and amenities to
10 the community, those sites being the 40th Street parking lot and
11 the East River Park Shopping Plaza. In 1983, MHCDO purchased the
12 East River Park Shopping Plaza, the first example in the country
13 of a community development organization orchestrating a
14 commercial real estate purchase of that magnitude. In 1988 MHCDO
15 was instrumental in securing the current anchor full-service
16 grocery store at the shopping plaza. I believe that was
17 referenced earlier in this conversation. As a result of being a
18 neighbor and former owner of both sites, MHCDO is keenly focused
19 on ensuring that these projects continue to benefit the
20 community. MHCDO believes these projects align with several
21 MHCDO initiatives. By aligning with these initiatives, the
22 projects will create economic opportunity and value for the
23 community. MHCDO looks forward to participating as a development
24 partner to ensure that Ward 7 residents' concerns are addressed
25 and participate in the following project components: housing

1 opportunities across all income levels; rental housing
2 opportunities across all income levels; small business
3 opportunities; employment and career opportunities. MHCDO looks
4 forward to working with the ANC, along with other community
5 stakeholders, the National Housing Trust, and Standard Real
6 Estate Investments to ensure that these new developments serve
7 as assets for the community. And I would like to add one other,
8 I think, critical point, even though it is an anecdotal note. My
9 window, if you're not aware where Marshall Heights is located,
10 my window actually looks at the parking lot in question and I
11 can look out on a -- and I have looked out on a daily basis to
12 look at the usage of that lot. And over the past 15 days, Monday
13 through Friday, I have only seen one car parked in that parking
14 lot. And I know that's an anecdotal reference, but I just want
15 the Board to have a sense of what the usage level is for that
16 parking lot on a daily basis. Now, I will say I do not know
17 about the usage on the weekends, but from Monday through Friday
18 the usage is almost nonexistent.

19 VICE CHAIR JOHN: And thank you, Mr. -- thank you, Mr.
20 Oloyede.

21 MR. OLOYEDE: Thank you. See, you hit it, you got it
22 right.

23 VICE CHAIR JOHN: Thank you. Thank you.

24 Does the Board have any questions?

25 Commissioner Hood?

1 ZC CHAIRPERSON HOOD: Yes, thank you.

2 Thank you, Mr. Oloyede. It's -- I won't have to ask
3 the question, I've been seeing you quite a bit here lately. So
4 you did not attend the meeting last night, have you been in
5 discussions and work -- oh, did you, let me -- maybe I got it
6 wrong.

7 MR. OLOYEDE: Yes, I did. Actually the meeting was
8 held last night at our offices, at Marshall Heights offices, 3939
9 Benning Road.

10 ZC CHAIRPERSON HOOD: Okay. So as you stated, and I
11 know, that Marshall Heights has always been there to basically
12 work with the community to make sure the community understands.
13 Are you going to be involved, are you working with Commissioner
14 Holcomb and the ANC in making sure they understand exactly what's
15 -- what all this -- and I know what we're dealing with here in
16 front of the Board, but what all this may encompass, how one is
17 probably going to trigger some other things later on, are you
18 helping to facilitate that as well?

19 MR. OLOYEDE: Yes, Commissioner Hood. The expectation
20 from my board and my board chair is that Marshall Heights will
21 be intimately involved with the -- with both of the projects from
22 the -- from the start to the finish. And we are charged to make
23 sure that we work intimately with the ANC and the other community
24 stakeholders to make sure that they are properly engaged and
25 aware of all of the developments of both projects.

1 ZC CHAIRPERSON HOOD: Thank you and thank you for all
2 the work that Marshall Heights has done in the past and will
3 continue to do. Thank you.

4 MR. OLOYEDE: Thank you.

5 VICE CHAIR JOHN: Thank you. Thank you, Mr. Oloyede,
6 and thank you for your testimony.

7 MR. OLOYEDE: Thank you.

8 VICE CHAIR JOHN: Okay. So I'm going to go to the
9 Board members now. And please bear with us, Mr. Tummonds. So I
10 don't think we're getting to a decision today for all of the
11 comments made so far. So is there anything you would like to
12 have from the Applicant? Okay. Mr. Tummonds, let me tell you
13 where I am. Okay.

14 MR. TUMMONDS: Okay. Sorry.

15 VICE CHAIR JOHN: Okay. So before you repeat all of
16 the -- that -- your suggestions for what should be included in
17 the record, I would like to suggest that you focus on the criteria
18 for the special exception, and particularly C 703.3, because I
19 believe you have met 703.1 and 703.2. And I agree with you --
20 well, 703.4 is the provision that has the TDM requirement because
21 if there's a reduction for less than four spaces for parking --
22 for more than four parking spaces, which is where I think you
23 are, that's what I think you should focus on before you return
24 to the Board. And you also said you would submit information on
25 -- you did agree to the TDM plan submission. I just wanted to

1 focus your effort on the specific criteria. Was there something
2 else that you agreed to submit and I forgot?

3 MR. TUMMONDS: Yes. So the members of the ownership
4 of the East River Park Shopping Center site as well as NHT,
5 they've engaged in over 80 contacts with members of the community
6 since last May. We will have a document that outlines those
7 contacts and the discussion that has occurred that really
8 culminated in the special public meeting of ANC 7F last night.
9 I think that -- my notes -- those are, I think between what I
10 said and what you said, I think we have it covered. And I
11 appreciate the comments of Mr. Oloyede, his anecdotal evidence
12 about the actual usage of the 40th Street lot which really
13 comports with our experience as well.

14 VICE CHAIR JOHN: Okay.

15 MR. TUMMONDS: And so with that, I have -- that kind
16 of would be my rebuttal and closing statement. We look forward
17 to providing this information to you. And as we've stated
18 numerous times, we look forward to our continued dialog with
19 Commissioner Holcomb -- Chairman Holcomb, his fellow
20 commissioners, the community and Marshall Heights community as
21 well.

22 VICE CHAIR JOHN: Thank you.

23 Mr. Smith -- Commissioner Smith, you had your hand up?

24 COMMISSIONER SMITH: Yes. I just want to reiterate
25 that, you know, I'm in complete agreement with Ms. John's

1 recommendation that I would like for you to focus on the criteria
2 of C 703.3. And, you know, some of the dialog that we heard,
3 there is, you know, some concerns about reduction of parking.
4 And it seems, you know, not so much in relation to the 40th Street
5 lot, but -- as raised, it seems more in relation to reduction in
6 the minimum below what is in front of that shopping center or in
7 that square of the shopping center. So you know, I would
8 recommend revising your request from reducing it to ZR '16 to
9 probably just reducing to what's in the shopping center as it
10 stands now. And that will get you to what you need, you know,
11 what it sounds like you want is to reduce the parking requirements
12 to the point that you don't need to use the 40th Street lot. So
13 that's my recommendation to you before you come back.

14 VICE CHAIR JOHN: Board Member Blake?

15 COMMISSIONER BLAKE: One quick question. And just
16 clarify who is the owner of the shopping center currently?

17 MR. TUMMONDS: I will submit that for the record, but
18 it is Standard Real Estate Investments.

19 COMMISSIONER BLAKE: Okay. Okay. So you will be
20 representing them as well in the presentation?

21 MR. TUMMONDS: Yes, I have been to date. And so they
22 were -- so again, the Applicant of this case was, as noted,
23 Standard Real Estate Investments purchased the assets of G and I
24 East River Park MZL, LLC.

25 COMMISSIONER BLAKE: Okay. So the current owner's not

1 actually part of this at this point.

2 MR. TUMMONDS: I mean, they --

3 COMMISSIONER BLAKE: They will be?

4 MR. TUMMONDS: Correct. I mean right. They are, you
5 know, they are participating in the discussions with Chairman
6 Holcomb and the ANC 7F. They are actively involved with that.
7 They did not present testimony here today. But yes, they are
8 part and parcel involved with this application.

9 COMMISSIONER BLAKE: But they have authorized you to
10 represent them as well?

11 MR. TUMMONDS: Yes. And I can submit that for the
12 record as well.

13 COMMISSIONER BLAKE: Okay. Would you do that? Thank
14 you.

15 MR. TUMMONDS: Yeah, absolutely.

16 VICE CHAIR JOHN: Okay. And from the ANC, Mr. Holcomb,
17 I would like to request that the resolution that was passed last
18 night be submitted to the record. And I'm assuming that that
19 resolution is only on what is requested in this application,
20 7468B, which is a reduction in the parking. If that's not what
21 it addresses, since there's time, maybe the ANC might want to
22 revisit the application for reduction of parking. Okay? Because
23 we're not involved in the development of Lot 40 or the
24 redevelopment of the shopping center. Those matters will be
25 handled at another time if they need to come back to the BZA or

1 the Zoning Commission. Okay?

2 MR. HOLCOMB: Understood, Madam Vice Chair. I do also
3 want to make sure that it's known -- I heard Mr. Tummonds mention
4 that they will be submitting letters of engagement since May. I
5 want to make it clear that from our understanding, the owners of
6 the shopping center haven't owned this property since -- have not
7 owned it but since October. So if they're submitting engagement
8 from May, that would be totally disrespectful of the current
9 owner as we didn't start engaging until the Fall. So I want to
10 make sure that's known for the record. But I do also want to
11 make sure that it also is known for the record that the Commission
12 did agree to an MOU that both development teams are in support
13 of, certainly that's for Commissioner Hood, that both
14 developments teams are in support of around engagement on a
15 monthly basis with the community task force that the ANC will
16 approve, as well as a quarterly stakeholder meeting for the
17 community at large to be a part of as well. So that is something
18 that the Commission agreed to last night.

19 VICE CHAIR JOHN: Thank you. And that's wonderful that
20 you are all communicating and you have this agreement. I saw it
21 in the record and you're ahead of the Board because we typically
22 ask for this. The downside is that that MOU does not apply to
23 what's before us here. I tend to be narrowly focused on what's
24 before the Board because that's all our jurisdiction is. So
25 right now we're considering parking, reduction in the parking,

1 and that's what we need. So if you'd like to also respond to
2 the Applicant's statement in terms of their communication, that's
3 also great. And that would be my comment.

4 Does the Board have -- Commissioner Hood?

5 ZC CHAIRPERSON HOOD: I agree with what you said, Vice
6 Chair John, but I want Chairman Holcomb to know the Zoning
7 Commission has a little more purview, and I bring that to this.
8 Unfortunately, sometime it's hard to turn it off and on like a
9 light switch. I do know if I ever see this again, I'm going to
10 be looking for engagement on the Commission side on the BZA side.
11 I agree with Vice Chair 100 percent, but I also wanted to let
12 you know that the commissioners, Zoning Commission, even though
13 this is not a Zoning Commission case, and I'm trying to head it
14 off before we get there, I don't know what's going to happen,
15 but that engagement piece is a great part. So continue to do
16 that because that's a part of what we have to do mandated by the
17 D.C. City Council. Thank you, Madam Chair.

18 VICE CHAIR JOHN: Thank you so much.

19 So I'm going to close the hearing for today, but not
20 the record and ask Mr. Moy to give us a date for the continued
21 -- I think we're just going to have a limited hearing on the
22 submissions that we have requested.

23 MR. MOY: All right. Thank you, Madam Vice Chair. So
24 the timeline that I'd like to -- the draft timeline I'd like to
25 share with you. As always, you know, I try to push this as early

1 as I can as to provide all the parties the opportunity to submit.
2 So working from the top, Madam Vice Chair, and of course I welcome
3 the input from the parties on the timeline, but I'm going to
4 suggest that the Applicant make their post-hearing submissions
5 by Friday, March 10th, responses from the parties on March 23rd,
6 which is a Thursday, and then back with the Board with limited
7 scope hearing on Wednesday, March 29th. And that's what I have
8 for you.

9 VICE CHAIR JOHN: Thank you.

10 MR. MOY: In case you want to make any adjustments to
11 those dates.

12 VICE CHAIR JOHN: No, I'm fine, Mr. Moy.

13 Is it fine with the Applicant, the commissioner, and
14 Chairman Hood?

15 MR. HOLCOMB: Yes.

16 VICE CHAIR JOHN: Okay. All right. So we'll see you
17 back here then.

18 MR. TUMMONDS: Thank you.

19 MR. WHITE: All right. Thank you.

20 VICE CHAIR JOHN: Okay. Thank you.

21 So Mr. Moy, we're going to lose a Board member at 1:30,
22 so I'm going to suggest we take a 15-minute break. It's after
23 -- it's around 12:30. Maybe we'll get through one case before
24 we lose a Board member. And does anyone want to switch the order?
25 This case took longer than I had hoped. I think we'll switch

1 the order then and maybe take 20875 before 20873. Okay? So
2 after a 15-minute break, we will start with 20875 and then end
3 with 20873. Okay? Thank you. See you back here in 15 minutes.

4 (Whereupon, there was a brief recess.)

5 VICE CHAIR JOHN: Okay. The Board is back from a 15-
6 minute break and we will resume the hearing with the next
7 application.

8 Can you call that next case, Mr. Moy?

9 MR. MOY: Yes. Thank you, Madam Vice Chair.

10 After a quick break, the Board has returned to its
11 public hearing session and the time is at or about 12:46 p.m. So
12 I believe this would be Case Application No. 20875 of the American
13 Association of Colleges and Universities. Madam Vice Chair, this
14 is self-certified pursuant to Subtitle X, Section 901.2 and
15 Subtitle U, Section 320.1(a) and 420.1 for special exception
16 under Subtitle U, Section 203.1 to allow a nonprofit office use
17 of a residential building. And pursuant to Subtitle X, Section
18 1002 for area variances and to forms, the nonconforming structure
19 requirements Subtitle C, Section 202.2(b) and the floor area
20 ratio requirements Subtitle F, Section 602.1. Property is
21 located in the RA-8 zone at 1816 through 1818 R Street, N.W.,
22 Square 134, Lots 149 and 150. The only thing I have to add in
23 here, Madam Vice Chair, is that the Applicant filed their
24 PowerPoint presentation within the 24-hour block. So that's
25 something that you may want to address. Thank you.

1 VICE CHAIR JOHN: Okay. Thank you.

2 Good afternoon, Ms. Prince. Can you introduce yourself
3 for the record please?

4 MS. PRINCE: I can. Good afternoon, Vice Chair John
5 and members of the Board. I'm Allison Prince with Goulston &
6 Storrs, and I'm here today on behalf of the American Association
7 of Colleges and Universities. I'm here with Melvina Norried-
8 Thomas of AACU and Brion Lipschutz, the architect for the project.
9 And we did file a little late. I wanted to make sure that our
10 presentation included the most up-to-date version of the rear
11 elevation that was approved by the Historic Preservation Review
12 Board last week. We had a little bit of confusion over that,
13 got the right one in the record, and that's why we're just a
14 little late.

15 VICE CHAIR JOHN: Okay. Thank you, Ms. Prince.

16 Mr. Moy, can you -- Mr. Young, can you please update
17 that recent filing to the record, at least the presentation?

18 So to clarify, Ms. Prince, do we have the correct
19 drawings elsewhere or only in the presentation?

20 MS. PRINCE: The presentation contains the approved
21 renderings of the rear elevation. It's a very, very minor change
22 from what's in the record. It involves some of the mullions and
23 window placement.

24 VICE CHAIR JOHN: Okay. Thank you.

25 So Mr. Young, can you pull up that presentation please?

1 MS. PRINCE: Great. I just have a brief intro before
2 the architect -- before Melvina speaks and before the architect
3 walks through the drawing. So -- and I can keep this as brief
4 for as long as you want it. I know it's been a long day for you.

5 VICE CHAIR JOHN: Okay.

6 MS. PRINCE: We're here today to ask for special
7 exception and variance approval to allow a very small,
8 approximately 394 square foot, addition to the rear of a combined
9 building located at 1816, 1818 R Street. The Applicant's a
10 nonprofit organization whose mission is to advance equity and
11 inclusion on college campuses. They've occupied the property for
12 over 50 years, which is really a remarkable tenure. Due to their
13 long residency the building needs some significant upgrades to
14 come into compliance with life safety requirements and
15 accessibility requirements. This very small rear addition will
16 recapture a fraction of the occupiable space that will be taken
17 up by the life safety upgrades. And so we ask the Board also to
18 grant special exception approval to permit continued nonprofit
19 office use of the property and to very slightly exceed the maximum
20 FAR. The building is permitted a maximum FAR of 1.8, it's very
21 slightly over 1.8, and this 300 square foot addition will increase
22 it a little more. So we need relief from the section that
23 prohibits the expansion of a structure that's already
24 nonconforming as to FAR.

25 As Cliff mentioned, the property's zoned RA-8 and as

1 outlined in the pre-hearing statement, the special exception
2 relief is available under Section 203.10, and that's the section
3 that we've had since the '70s that allows large contributing
4 buildings in a historic district that are to be used by -- for
5 office purposes, for nonprofit office purposes by special
6 exception. The Applicant's nonprofit use is very consistent with
7 the surrounding neighborhood, which consists of embassies, other
8 offices, a museum, and some residences. And this one's a little
9 complicated, so I'm going to just try to explain the background
10 of this case a bit, but I won't take long. The two buildings
11 have been owned by the association, as I said, for decades, one
12 was bought in the '50s, one was bought in the early '70s. They
13 were both commercially zoned when they were bought. 1818 got a
14 commercial C of O and for a variety of reasons that we can't
15 really put together, 1816 did not get a commercial C of O before
16 it was down-zoned. It was down-zoned in the early '70s.
17 Nonetheless, they continued to occupy both buildings thinking
18 that their 1818 C of O covered the whole building. They got a
19 tax exemption. They just operated thinking they were fine. We
20 met with the zoning administrator, Matthew LeGrant, before he was
21 placed on leave, and he agreed, given the long history of use,
22 he agreed that he would give a commercial C of O for 1816. That
23 was not issued before he went on leave. The new acting zoning
24 administrator indicated yesterday that he will honor that. But
25 just out of an abundance of caution, we'd appreciate a special

1 exception relief to apply to the entirety of 1816 and this tiny
2 addition to 1818. The happy story here is that ANC 2B was a
3 delight to work with on this application. We had a new SMD, he
4 was extremely engaged and he recommended that we hold two open
5 houses at the property. We did that. We literally heard no
6 opposition. There was a lot of just super helpful outreach and
7 high level of communication with the ANC and they unanimously
8 support the application. Also, the HPRB granted concept
9 approval, as I mentioned, to the design. The rear addition really
10 cleans up the back of the building, as the architect will show
11 you. And although I would like any order to give us flexibility
12 to address any final, final comments from HPRB that come up in
13 the permit process. Without further delay, Melvina Norried-
14 Thomas, who is the head of HR and facilities for the association
15 will talk very briefly and then Brion Lipschutz can walk through
16 the plans unless you have questions for me.

17 VICE CHAIR JOHN: No questions. I think given the time
18 constraints, we might be more interested in hearing the plans
19 first, and all the, you know, talking about the addition and the
20 HPRB changes.

21 MS. PRINCE: Okay.

22 VICE CHAIR JOHN: Thank you.

23 MS. PRINCE: So Brion, you can go ahead with the
24 presentation. Is he recognized as a panelist?

25 VICE CHAIR JOHN: No, he will have to -- did he sign

1 up to testify?

2 MS. PRINCE: Yes, he signed up.

3 VICE CHAIR JOHN: Okay. Please introduce yourself for
4 the record.

5 MS. PRINCE: I see him. I see --

6 VICE CHAIR JOHN: I can't see -- let me pull up the
7 participants.

8 MR. LIPSCHUTZ: Hello? Can you hear me? This is Brion.

9 MS. PRINCE: We can hear you. Hi, Brion, we can hear
10 you.

11 VICE CHAIR JOHN: Yes, Brion, please introduce yourself
12 and give us your home address for the record.

13 Mr. LIPSCHUTZ: Yes, Madam Vice Chair. My name is
14 Brion Lipschutz. I'm with Kleinrock City Architecture. My home
15 address is 2901 Boston Street in Baltimore, Maryland.

16 VICE CHAIR JOHN: Thank you. Please tell us about the
17 addition and why you're seeking the relief.

18 MR. LIPSCHUTZ: Yes. The property is located in the
19 RA-8 zone about mid-block on R Street, N.W. between 18th Street
20 and 19th Street in the DuPont Circle neighborhood. The
21 neighborhood consists of a mixture of row houses, embassies, and
22 other nonprofit offices. The buildings have not been updated for
23 many years and therefore require significant upgrades to their
24 life safety and ADA accessible features. In order to help
25 recapture some of these occupiable space that will be taken up

1 by the upgrades, we are proposing a very small 394 square foot
2 addition attached to the rear facade of 1818 R Street. This
3 small addition requires the Board's approval for a special
4 exception for the continuing expanded nonprofit office use and
5 variance relief for the existing nonconforming FAR of the
6 property and a slight increase in the nonconforming FAR. In
7 addition to satisfying the specific standards of Subtitle U,
8 Section 203 for nonprofit office use in residential buildings,
9 the relief requested is in harmony with the intent and purposes
10 of the zoning regulations. The property has been continuously
11 used for nonprofit office space for 50 years, as noted earlier,
12 and the use matches with that of the surrounding neighborhood.
13 The variance relief we request is due to the property's existing
14 nonconforming FAR, and because of the addition will increase the
15 FAR by 394 square feet. The building currently has a combined
16 12,503 square feet of gross floor area and an approximately 1.92
17 FAR. The addition will increase the gross floor area by up to
18 approximately 12,897, with an FAR 1.98 combined. The maximum
19 permitted FAR in the RA zone is 1.8. So the extension of
20 nonconforming FAR is only by .12, a de minimis amount.

21 The three prongs of the variance standard are met in
22 this case for the following reasons: first, property is affected
23 by the exceptional situation and the AACU's extraordinarily long,
24 50 plus year, tenure at the property is remarkable, particularly
25 given the building's historic and size constraints. The

1 buildings are also unusual in the way that they are connected
2 internally half a century ago and have operated as a single
3 building since then. Second, the strict application of the
4 regulation would result in practical difficulty to the Applicant
5 in that it would preclude this very minor expansion at the rear
6 of the building, cost the Applicant valuable space it needs to
7 replace what is lost in the life safety upgrades.

8 The Applicant does commendable work improving the lives
9 of undergraduate students and the inability to recapture the
10 space would make their work practically difficult.

11 Finally, the variance will not cause any adverse impact
12 on the neighboring properties. The addition will not extend
13 beyond the rear facade of either adjacent properties and has no
14 impact on access to light. Therefore, we ask the Board to grant
15 the relief requested so that AACU may make this small expansion
16 to the rear of the property. Thank you for listening to that.
17 And if you would like to ask any questions, I'd be happy to answer
18 them. But we can also walk through the presentation of the plans
19 and the rear elevation proposed.

20 VICE CHAIR JOHN: So thank you, Mr. Lipschutz. I think
21 what you can do is to show us the changes that were made because
22 of the HPRB requirements so the Board as aware of what's the --
23 what the final position is.

24 MR. LIPSCHUTZ: Okay. Thank you. If we can go to the
25 proposed south elevation on A17, which is the second to last

1 panel? Thank you.

2 So we've taken the opportunity to look at the existing
3 conditions on the left, and have outlined the proposed addition.
4 The proposed design is on the right. And in working with HRPB
5 over the last couple of weeks, we've come to understand that it's
6 important to keep the two buildings as separate, even though they
7 are -- will be a combined building. The issue was to make it
8 appear as if they are still two buildings and which we have done.
9 We have pushed the new facade of the addition to 1818 R Street
10 back eight inches from the existing facade of 1816 R Street. We
11 are removing a renovated sleeping porch that is now offices to
12 expose the existing facade and reconstructing the windows'
13 openings that were there that were lost. Excuse me. And the
14 new windows that we are proposing for 1816 replicate the design
15 intent of the existing wood windows that are there now. The
16 desire from HRPB is to also make this less look like an office
17 building and more in keeping with the residential nature of the
18 buildings that -- the facades of the buildings on the alleyway,
19 which we believe we have done the. The third and fourth floors
20 of 18 -- both buildings actually are offices. The second floor,
21 which are the large windows -- excuse me -- the large windows
22 are the boardroom -- is the Boardroom for our client. And as
23 you can see in the existing photograph, that there was three
24 large windows that were previously had arches and two of them had
25 been bricked -- were bricked up in a renovation from 1970. And

1 then on the first floor of 1818 is a large communal space. That
2 will be used hopefully for presentations, both live and
3 broadcast. And we've tried to keep the materials again in line
4 with the existing buildings on either side and around the
5 alleyway. Any questions at this point?

6 VICE CHAIR JOHN: Not for me. Does the Board have any
7 questions? Okay. Thank you.

8 I believe you can drop the slide, Mr. Young.

9 Oh, was your hand up, Commissioner Hood?

10 ZC CHAIRPERSON HOOD: No, Madam Vice Chair, I was just
11 scratching my head. I'm sorry.

12 MR. LIPSCHUTZ: All right. Thank you for listening and
13 your time.

14 VICE CHAIR JOHN: Okay.

15 Ms. Prince, would you like to have Ms. Thomas speak now
16 or are you ready to move on?

17 MS. PRINCE: Thank you, Vice Chair John. If you're
18 -- if you'd like to hear from her, I think everything that she
19 was prepared to say has already been said. This is really a
20 pretty straightforward case, even though the amount of zoning
21 relief makes it sound so much more complicated than it really is.

22 VICE CHAIR JOHN: Okay. That's fine. I just wanted
23 to give you that opportunity.

24 So if the Board has no more questions, I will go to the
25 Office of Planning. Mr. Jesick?

1 MR. JESICK: Thank you, Madam Vice Chair and members
2 of the Board. My name is Matt Jesick and I'll be presenting OP's
3 testimony in this case. And OP is happy to rest on the record
4 in support of the special exception and variance requests. And
5 I can rest on the record of the written staff report, but I'm
6 happy to take any questions. Thank you.

7 VICE CHAIR JOHN: So can you just talk about the
8 variance relief, Mr. Jesick?

9 MR. JESICK: Certainly. We felt that the Applicant had
10 demonstrated that they comply with the three-part variance test.
11 The exceptional conditions on the property include the fact that
12 they're already over the FAR limits, but that they need to meet
13 modern ADA and fire code requirements to ensure safe ingress and
14 egress from their building, as well as to modernize core elements
15 such as the elevator and restrooms.

16 Strict compliance with the regulation would result in
17 a practical difficulty for the Applicant. As was noted, the new
18 core elements would require additional floor area which if
19 incorporated in the existing building envelope would
20 detrimentally impact the functioning of the use itself.
21 Therefore, the Applicant is proposing the small addition to the
22 rear. That addition would not have an impact on adjacent
23 properties because the space is currently recessed from the rear
24 walls of adjacent properties so there would be no light or air
25 impacts.

1 The intent of the regulations would not be harmed by
2 the application. One of the purposes of establishing the DuPont
3 Circle RA zones is to protect the integrity of contributing
4 buildings in historic districts, and allowing this use to
5 continue and to maintain and enhance the existing buildings would
6 help to fulfill that purpose of the zoning regulations.

7 So the Office of Planning felt that the application met
8 the three-part variance test and therefore we are recommending
9 approval.

10 VICE CHAIR JOHN: Okay. Thank you very much.

11 Does the Board have any questions for the Office of
12 Planning?

13 Does the Applicant have any questions for the Office
14 of Planning?

15 MS. PRINCE: No questions.

16 VICE CHAIR JOHN: Okay.

17 Mr. Young, has anyone signed up to testify?

18 MR. YOUNG: We do not.

19 VICE CHAIR JOHN: Okay.

20 Ms. Prince, would you like to make closing statements?

21 MS. PRINCE: Yes. Very briefly, the 1200 feet of the
22 building that will be removed essentially for life safety
23 upgrades will be replaced with a 394-foot addition. So the
24 Applicant is simply looking for an opportunity to regain a little
25 bit of the space that it's losing because of the upgrades. I do

1 believe we meet the variance burden of proof. Something that's
2 truly unique about the property is the five to six decades of
3 continuous occupancy of two adjacent but joined buildings where
4 the floors don't even align. So it's just a complicated unique
5 situation that we're addressing. Clearly, there's a practical
6 difficulty when we can't meet the life safety and accessibility
7 requirements. I would only ask that since the HPRB was very
8 interested in a high level of detail on the exterior elevation,
9 I would ask that should the Board grant the application, offer
10 flexibility to address any final comments from the HPRB staff
11 during the permit process. But we thank you for your time and
12 if there are no more questions, that concludes our presentation.

13 VICE CHAIR JOHN: Okay. Thank you very much for your
14 testimony.

15 And at this time, I'll excuse the witnesses and close
16 the record. Thank you.

17 MR. LIPSCHUTZ: Thank you.

18 VICE CHAIR JOHN: Okay. Are we ready to deliberate?
19 And does anyone or Board members wish to start? Perhaps Mr.
20 Smith or Mr. Blake? Mr. Blake?

21 COMMISSIONER BLAKE: Sure, I will. Okay. I can do
22 this. The Applicant proposes to construct a rear addition and
23 reconfigure the interior to provide ADA compliant and fire
24 compliant ingress and egress to contributing structure in the
25 DuPont Circle Historic District. The present FAR of the building,

1 which is actually two buildings combined internally, is 1.92
2 above the permitted 1.8, and the proposed design for the rear
3 addition would increase the floor area by a net of 394 square
4 feet, resulting in a 1.98 FAR. As a result, the Applicant is
5 seeking a area variance from Subtitle F 602 to further exceed the
6 allowable FAR and an area variance from Subtitle C 202.2(b) to
7 allow for the increase in nonconforming aspect of the building,
8 in this case FAR.

9 In addition, the Applicant seeks, out an abundance of
10 caution, as they said, a special exception to establish the office
11 use in the newly constructed part of the building, as well as
12 formalize the use of a portion of the building for office use
13 among the other two buildings on site. Looking at the criteria
14 for the variance, obviously it's a three-part test, extraordinary
15 exceptional condition or situation contributing to a practical
16 difficulty, and the granting of relief will result in no
17 substantial detriment to the public good or no substantial
18 impairment of the intent and purpose of the integrity of the
19 zoning regulation.

20 As for the first prong, I agree with the Applicant's
21 argument and the Office of Planning's analysis that the property
22 exhibits exceptional conditions in that it's already built to the
23 two and beyond FAR limit, and that's probably not complying with
24 modern ADA or fire code standards to conduct its long established
25 use on the site. In order to make the building safe for its

1 occupants and accessible for use of all mobility levels and allow
2 the Applicant to remain in the building, those core elements must
3 be modernized. With the removal of the non-historic rear porches,
4 the proposed design allows the Applicant to add 1,246 square feet
5 to additional core elements, while increasing the floor area by
6 only 394 net square feet. As proposed design minimizes the
7 increased building mass, I believe it's consistent with the
8 intent and purpose of the zoning regulations to protect the
9 integrity of the contributing buildings in this historic district
10 and maintain an appropriate scale and preserve an anticipated
11 use. That covers the third prong.

12 For the second prong, I believe that the Applicant has
13 demonstrated that the proposed addition as designed will not
14 substantially be detrimental to the public good as it relates to
15 light, airflow, and privacy of the neighboring properties.

16 Looking at the special exception criteria for office
17 use pursuant to conditions U 203.1 and the general standards of
18 X 901.2, I also believe the Applicant has met the burden of proof
19 to be granted the requested relief. The subject building is a
20 contributing structure in DuPont Circle Historic District. The
21 total floor area of the building is over 10,000 square feet at
22 12,503. The office use in question has been in operation for
23 more than half a decade. Over that time, the use does not appear
24 to have had any adverse effect on the use of neighboring
25 properties. The site offers sufficient parking. They're

1 offering eight spaces where only two are required. And no
2 commercial products are sold on the site. And the Applicant has
3 gotten conceptual approval from HPRB. So I give great weight to
4 the Office of Planning's recommendation for approval. I note
5 that DDOT has no objections. I also give great weight to the
6 report of ANC 2B which is in support and states no issues or
7 concerns. I'll be voting in favor of the application.

8 VICE CHAIR JOHN: Thank you, Mr. Blake.

9 Board Member Smith?

10 COMMISSIONER SMITH: I have nothing in addition to add.
11 I by and large agree with the position of Mr. Blake on this
12 particular case. And I stand on the record of OP's staff report,
13 and will support the application.

14 VICE CHAIR JOHN: Thank you, Board Member Smith.

15 Commissioner Hood?

16 ZC CHAIRPERSON HOOD: Thank you, Madam Vice Chair.

17 I think all submissions and report point to approval
18 of this case, and I think Board Member Blake and Board Member
19 Smith have captured it. And I think the merits are ready for us
20 -- for me to vote to approve this case. And thank you.

21 VICE CHAIR JOHN: Thank you.

22 So I appreciate Board Member Blake's very thorough
23 analysis, and I agree with all of his comments, as well as Board
24 Member Smith's assessment of how the application meets the
25 criteria for relief. And I will be voting in support of the

1 application.

2 So I will make a motion to approve Application No.
3 20875 as captioned and read by the secretary with the flexibility
4 to make minor changes recommended by HPRB, provided no additional
5 zoning relief is required, and ask for a second, Mr. Blake.

6 COMMISSIONER BLAKE: Second.

7 VICE CHAIR JOHN: Mr. Moy, would you please take the
8 roll call?

9 MR. MOY: Thank you. Thank you, Madam vice Chair. So
10 when I call your name, if you'll please respond to Vice Chair
11 John's motion to approve the application for the relief requested
12 along with the flexibility language. This motion was second by
13 Mr. Blake.

14 Zoning Commission Chair Anthony Hood?

15 ZC CHAIRPERSON HOOD: Yes.

16 MR. MOY: Mr. Smith?

17 COMMISSIONER SMITH: Yes.

18 MR. MOY: Is that a yes, Mr. Smith?

19 COMMISSIONER SMITH: Yes.

20 MR. MOY: Thank you.

21 Mr. Blake?

22 COMMISSIONER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: We have a Board member not present, not voted

1 today, not participating. Staff would record the vote as four
2 to zero to one, and this on the motion made by Vice Chair John
3 to approve the application for the relief requested along with
4 the flexibility language. The motion was second by Mr. Blake,
5 who is also in support of the motion to approve along with Zoning
6 Commission Chair Anthony Hood, Mr. Smith, and again Mr. Blake and
7 Vice Chair John. The motion carries on a vote of four to zero
8 to one.

9 VICE CHAIR JOHN: Thank you, Mr. Moy. And when you're
10 ready, you can call your new -- your -- the next case. I believe
11 we're losing Mr. Smith, so thank you very much. And we'll see
12 you next time.

13 COMMISSIONER SMITH: All right.

14 VICE CHAIR JOHN: Okay.

15 COMMISSIONER SMITH: Have a good day, everyone.

16 VICE CHAIR JOHN: You too.

17 MR. MOY: All right. So the next and final case before
18 the Board today is Application No. 20873 of Network Towers 2.
19 This is an amended self-certified application pursuant to
20 Subtitle X, Section 901.2. This is for a special exception under
21 Subtitle C, Section 1313 to allow a monopole not meeting setback
22 requirements. Property located at -- in the R-2 zone at 2425
23 Irving Street, S.E., Square 5845, Lot 833. And would ask -- what
24 am I forgetting -- and I think that's all I have for you, Madam
25 Vice Chair.

1 VICE CHAIR JOHN: Okay. Thank you very much. So let
2 me turn to the Applicant. Can you introduce yourself- -- could
3 you introduce yourself for the record please?

4 MR. WALLACE: Good afternoon, everyone. I'm Derick
5 Wallace with Goulston & Storrs. My address is 300 Moore Street,
6 N.E.

7 VICE CHAIR JOHN: Thank you. And who do you have with
8 you today, Mr. Wallace?

9 MR. WALLACE: I have my colleague, Meghan Hottel-Cox
10 and Katherine Blackwood.

11 VICE CHAIR JOHN: Okay. Thank you. Did you want to
12 introduce yourself now, Ms. Hottel-Cox or Ms. Blackwood?

13 MS. HOTTEL-COX: I'm Meghan Hottel-Cox, as Mr. Wallace
14 mentioned, also with Goulston & Storrs, land use counsel for the
15 Applicant.

16 VICE CHAIR JOHN: Thank you.

17 Ms. Blackwood? Ms. Blackwood, can you hear me? No.

18 MS. BLACKWOOD: Yes, I can now. Sorry about that.

19 VICE CHAIR JOHN: Okay. Please introduce yourself.

20 MS. BLACKWOOD: My name is Katherine Blackwood. I
21 represent the Applicant, Network Towers. And my address is 6095
22 Marshall E (phonetic) Drive.

23 VICE CHAIR JOHN: Okay. Thank you.

24 So we've put 15 minutes on the clock, and you can go
25 ahead and make your presentation, beginning however you want to

1 start, Mr. Wallace.

2 MR. WALLACE: Good afternoon again, everyone. My name
3 is Derick Wallace, and I, along with my colleague Meghan Hottel-
4 Cox are with Goulston & Storrs, representing Network Towers 2,
5 the Applicant in this case. Network Towers 2 is the agent for
6 Verizon Wireless, T-Mobile, and AT&T, and asking for special
7 exception approval for a temporary monopole at 2425 Irving
8 Street, S.E. These three carriers all provided wireless service
9 to the Garfield Heights and Buena Vista neighborhood from
10 antennas on the rooftop of Garfield Elementary School. However,
11 because of impending renovations to the school, the Department
12 of General Services required all three carriers to remove their
13 existing equipment and antennas by December 1, 2022. To address
14 the potential gap in coverage that would be caused by the antenna
15 removal, the zoning administrator authorized the placement of a
16 temporary monopole at DCFD Engine 32 and Truck 16 for 90 days.
17 We are here today asking for special exception approval for an
18 additional two years, and during this two-year period, the
19 Applicant will explore a permanent solution within the community.

20 The temporary antenna is needed at this location to
21 maintain coverage and service to the Garfield Heights and Buena
22 Vista community. Without such a temporary antenna, the coverage
23 for this area would be severely impacted and emergency service
24 connections would be harmed. The proposed monopole will be 104
25 feet tall, which is the minimum height needed to maintain coverage

1 in this area. The property is located in the R-2 zone, which
2 necessitates this special exception approval from the Board. As
3 demonstrated in our initial and supplemental filings, the
4 application meets all of the requirements of Subtitle C, Section
5 1312 and 1313 for special exception approval with one exception.
6 The regulations would require a 34-foot setback from all property
7 lines. Instead, we are proposing a 14'2" setback from the east
8 property line to the monopole. This is the only viable location
9 for the temporary installation to maintain coverage and
10 accommodate the structure on this property.

11 The regulations underscore the importance of
12 maintaining service for the community, which necessitates this
13 special exception. In addition to the specific materials
14 required and standards set forth in Subtitle C, Chapter 13, the
15 proposal also meets the general special exception standards. The
16 application is in harmony with the purpose and intent of the
17 regulations, as the proposal meets all of the requirements except
18 for the one setback I mentioned earlier.

19 Given the need to maintain service in the community,
20 this location is the best out of given the limited location
21 available for the monopole. Furthermore, the monopole is shorter
22 than an existing monopole and will not adversely affect
23 neighboring properties. Before turning to our presentation, I'm
24 happy to report that we are here today with the support of the
25 office of Planning and a report of no objection from the District

1 Department of Transportation. Additionally, the ANC voted in
2 support of the application on December 2022 and we greatly
3 appreciate the ANC's time working with us on this project.

4 We have been in touch with the ANC chair to submit a
5 report in the case record, but as of this time they have not
6 provided that report. With that, we have one witness today,
7 Katherine Blackwood with Network Towers 2. She will provide
8 greater detail on the need for the temporary monopole and what
9 it will look like on the site.

10 Mr. Young, could you please bring up the presentation
11 we submitted?

12 MS. BLACKWOOD: Thank you, Mr. Young. I'm going to
13 walk you guys through our proposal for this temporary tower. If
14 you can go to the next slide please?

15 So this slide shows the current location in the bottom
16 right corner of Garfield Elementary School, where T-Mobile, AT&T,
17 and Verizon are currently located. Due to planned extensive
18 renovations at the school, all three carriers will need to
19 relocate their equipment, and D.C. government was very
20 cooperative and helped us find a location in the area that would
21 continue to provide the needed coverage and capacity at 2425
22 Irving Street, S.E., so right there behind the fire department.
23 Next slide?

24 So this just shows kind of the proximity of where the
25 proposed location is and a different view. You can go to the

1 next slide.

2 This is a more detailed view of exactly what we're
3 proposing with the proportions. As you can see, there is a
4 compound that is proposed where the tower and all three carriers'
5 equipment will be located inside of a fenced compound. As you
6 can see, there's direct access to the parking lot. So should
7 any emergency maintenance be needed, we have access to it at all
8 times and we will be able to take care of any needs that arise.
9 Next slide?

10 All right. And then this is the proposed tower. As
11 you can see, all three carriers are going to be located at this
12 site. The height was dictated by what the carriers needed in
13 order to continue to provide consistent coverage and capacity in
14 this area. It was very important to both us and the community
15 that we continue to serve them in the same way that they were at
16 the previous site. This is going to be a two-year temporary
17 tower. And if you go to the next slide, I can walk you through
18 some of the propagation maps.

19 So these kind of show the coverage for Verizon right
20 now. This is how it is without the current site. If you go to
21 the next slide?

22 This is what the coverage looks like with the current
23 location at Garfield Elementary School. And then the next slide?

24 Shows Verizon's coverage with the proposed temporary
25 site at 2425 Irving Street. Next slide?

1 This is just the existing site right now. So this is
2 what Verizon's coverage currently looks like with the Garfield
3 Elementary location. And then the next slide?

4 Will show what it is with the temporary location. So
5 you can see there's very little impact due to the proximity of
6 the two sites. Next slide?

7 And this is AT&T's coverage showing their current
8 existing with the Garfield Elementary School location. And then
9 the next slide?

10 Shows the proposed temporary location. So again, some
11 change, but very little change, and coverage to the surrounding
12 neighborhood remains intact. This was very important to the
13 community in all of our discussions with them. We began talking
14 with them back in July. One of my colleagues began reaching out
15 when we knew we were going to need to propose something that
16 would possibly be a little bit of a visual impact, but ultimately
17 would serve the community's needs. It was very important to us
18 that we continue to serve their needs. And then in August, we
19 held a site walk with a community representative to walk around
20 the fire department, show them what we were planning, and go over
21 any questions that came up at that time. And then in September,
22 our team went to the community meeting and spoke with the
23 community and addressed any concerns and questions that they had.
24 And we have continued to be in contact with the community through
25 the ANC chairman, both the previous one and the current one, just

1 to make sure that they were still in support and should they have
2 any questions or concerns that had arisen since we'd last spoke
3 to them, we could address them. And then if you go to the next
4 slide?

5 This is -- we did some photos. So this is just the
6 overview of where the pictures were taken from. The first view
7 is the only view that would be impacted by the temporary
8 monopoles. If you want to go to the next slide?

9 This is what it currently looks like. You'll see almost
10 right in the middle there, that's the picture from the balloon
11 fly marking where the tower would be at the 104-foot height. And
12 then the next slide?

13 This is a photo simulation of what the tower will look
14 like that the ANC voted to support on December 20th.

15 MR. WALLACE: And that concludes our presentation.
16 We're happy to answer any questions that the Board has.

17 VICE CHAIR JOHN: So I have a question. Is -- let's
18 go back to the last slide, Mr. Young. So is that the area that
19 needs the waiver, is that 14 feet from the street? And that's
20 for you, Mr. Wallace, or Ms. Blackwood.

21 MR. WALLACE: Yes.

22 VICE CHAIR JOHN: Okay. Can you show a diagram that
23 explains the limitations on the site?

24 MR. WALLACE: Yeah, Kate if we want to go I guess to
25 earlier in the presentation?

1 MS. BLACKWOOD: Yes. If you go to the third slide, we
2 can show you.

3 VICE CHAIR JOHN: Okay. Thank you.

4 MS. BLACKWOOD: Of course. So if you -- actually can
5 you go to the next one? I think that one shows it a little bit
6 better. There it is. So as you can see, the property line is
7 where that fence on the right is. So we're abutting that property
8 line. The tower doesn't meet that needed setback. I'll let
9 Derick explain further.

10 MR. WALLACE: So as we mentioned, there's a 34-foot
11 requirement and where it's located currently. And really the
12 only location that works on the site is 14'2" from that property
13 line.

14 VICE CHAIR JOHN: And that's what we were just looking
15 at now?

16 MR. WALLACE: Exactly.

17 MS. BLACKWOOD: Yes, ma'am.

18 VICE CHAIR JOHN: And on this -- go ahead.

19 MS. BLACKWOOD: Yes, ma'am.

20 VICE CHAIR JOHN: Okay.

21 All right. Does any Board member have any questions
22 for the Applicant? No.

23 I'll go to the Office of Planning then. Ms. Thomas?

24 MS. THOMAS: Yes. Good afternoon, Madam Chair. I'm
25 sorry, I was not put in as yet.

1 VICE CHAIR JOHN: Thank you.

2 MS. THOMAS: The Office of Planning is recommending
3 approval of this application. We believe the Applicant has met
4 the criteria outlined in Section 1313 and we support the waiver
5 as requested. I'd also like to point out that this installation
6 would maintain access for a very underserved community in Ward 8
7 with respect to high-speed internet connection. And the Mayor
8 has also taken this up as an issue in the D.C. Comeback Plan. So
9 we at the Office of Planning are in support of maintaining this
10 access for Ward 8's residents. And so I'll be happy to take any
11 questions. Thank you.

12 VICE CHAIR JOHN: Thank you.

13 Does the Board have any questions for the Office of
14 Planning?

15 Does the Applicant have any questions for the Office
16 of Planning?

17 MR. WALLACE: No, we do not.

18 VICE CHAIR JOHN: Thank you.

19 Mr. Young, has anyone signed up to testify?

20 MR. YOUNG: We do not.

21 VICE CHAIR JOHN: Okay. Thank you.

22 So Mr. Wallace, do you have any closing comments?

23 MR. WALLACE: No closing comments. Just thankful for
24 your time today.

25 VICE CHAIR JOHN: Thank you.

1 So at this time, I'm going to excuse the witnesses and
2 close the record. Thank you.

3 Okay. Are we ready to deliberate? Anyone?

4 Okay. I'll just go ahead and start. I thought that
5 this is a fairly straightforward case and that the temporary
6 monopole is needed to maintain the existing coverage because the
7 D.C. PS needs to make changes to the current location. I thought
8 that the Applicant did a good job of explaining the coverage and
9 the need to accommodate the three carriers, and I thought that
10 the Office of Planning's report was very helpful in showing a
11 diagram of how the application meets all of the criteria in
12 Section 1313.

13 So the only -- the application meets all of the criteria
14 in that section and the only area where the application doesn't
15 meet the criteria is in the waiver from the setback requirement,
16 which the Applicant just showed us on the site plans why there
17 was that constraint and why the Applicant could only meet the
18 -- could only provide a 14 foot setback. So I thought that that
19 was a very reasonable explanation. And so I would not have any
20 other concerns about the application. I note that, as I said,
21 OP's in support. The ANC has not provided a report and has no
22 objection. There is a letter in support from D.C. Homeland
23 Security and Emergency Management Agency, and that report states
24 that the coverage is needed for emergency operations. And so I
25 am in support of the application and I would like to hear comments

1 from other Board members.

2 May I start with you, Mr. Blake?

3 COMMISSIONER BLAKE: I agree with your analysis, Vice
4 Chair John. I do credit the information provided and submitted
5 -- I credit the information provided to the record by the
6 Applicant, the attorney, the Applicant's testimony, as well as
7 the Office of Planning's analysis and testimony in determining
8 how the Applicant has met the special conditions criteria of
9 Section C 1313.

10 This temporary monopole antenna is essential for the
11 provision of uninterrupted emergency and nonemergency wireless
12 services to the residents in this corner of Ward 8, as well as
13 the commuters. In having met the criteria outlined in Section
14 C, 1313 with the exception of the setback, I believe the proposal
15 is in harmony with the general purpose and intent of the zoning
16 regulations and maps and the proposed monopole would be located
17 within a government facility and not readily visible, except for
18 that one element we saw from the street, and therefore should not
19 affect residential uses in the neighborhood.

20 So I give great weight to the Office of Planning's
21 recommendation for approval. I note that DDOT has no objection,
22 as you pointed out. And I'd also note Homeland Security has a
23 letter submitted in support for the record. And again, I did
24 acknowledge the fact that there is no ANC report, but that the
25 Applicant had indicated that they had been in touch with the ANC

1 and had not had any -- they had positive feedback back in
2 December. So in that regard, I'll be voting in favor of the
3 application.

4 VICE CHAIR JOHN: Thank you, Board Member Blake.
5 Commissioner Hood?

6 ZC CHAIRPERSON HOOD: Yes, thank you, Vice Chair.

7 I also will be voting in favor of this application. I
8 think under Subtitle C, 1313, which has already been stated, has
9 been well laid out, especially in the Office of Planning's report
10 it has -- while it's not intrusive, I think they have made the
11 case for this. And I think as Ms. Thomas has mentioned,
12 underutilized area and it's needed in this area. The only
13 question I would have, but I didn't ask it, was was 24 months
14 enough time, but I think the experts, subject matter experts,
15 have gotten that, so I'll leave that alone. But other than that,
16 I think the record is complete and it warrants our approval of
17 this application. So thank you, Madam Chair.

18 VICE CHAIR JOHN: Thank you, Commissioner Hood.

19 So I'm also in support of the application, as I noted
20 earlier. And so I'm going to make a motion to approve Application
21 No. 2873 (sic) as captioned and read by the secretary and ask
22 for a second, Mr. Blake?

23 COMMISSIONER BLAKE: Second.

24 VICE CHAIR JOHN: Thank you.

25 Mr. Moy, would you please take the roll call?

1 MR. MOY: Yes. Yes. When I call your name, if you'll
2 please respond to the motion made by Vice Chair John to approve
3 the application for the relief requested. The motion to approve
4 was second by Mr. Blake.

5 Zoning Commission Chair Anthony Hood?

6 ZC CHAIRPERSON HOOD: Yes.

7 MR. MOY: Mr. Blake?

8 COMMISSIONER BLAKE: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: We have two Board members not present, not
12 participating. Staff would record the vote as three to zero to
13 two. And this is on the motion made by Vice Chair John to approve
14 the application for the relief. The motion was second by Mr.
15 Blake, who has also support the motion, as well as Zoning
16 Commission Chair Anthony Hood, of course Mr. Blake, Vice Chair
17 John. The motion carries on a vote of three to zero to two.

18 VICE CHAIR JOHN: Thank you, Mr. Moy.

19 So I don't believe there's anything else left for the
20 Board today.

21 MR. MOY: That's correct.

22 VICE CHAIR JOHN: That's where you nod your head and
23 say, that's correct. And so I just want to thank everybody for
24 their participation today. Good to see you, Commissioner Hood.
25 Thank you, Mr. Blake. And thank you, Mr. Moy. And I will see

1 you all next week.

2 (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

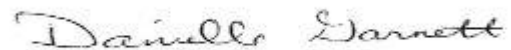
In the matter of: Public Meeting

Before: BZA

Date: 03-01-2023

Place: Teleconference

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



DANIELLE GARNETT