

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 8, 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
JOSEPH IMAMURA, Zoning Commissioner

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 8, 2023.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 20876

Application of MacArther, LLC 8

Case No. 20878

Application of Krista Heinz 18

Case No. 20877

Application of Tyrone White 30

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

(9:30 a.m.)

VICE CHAIR JOHN: The Board of Zoning Adjustment's March 8th, 2022 public hearing will please come to order. My name is Lorna John, Vice Chairperson of the District of Columbia Board of Zoning Adjustment. Joining me today are Board members Carl Blake and Chrishaun Smith and Zoning Commissioner, Dr. Joe Imamura. Today's meeting and hearing agendas 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. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised that we not we do not take any public testimony at our decision meeting sessions. 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.

At the conclusion of a decision-meeting (sic) session, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may issue. A full order is required when the decision it contains is adverse to a party, including an affected ANC. A full order may also be needed if the Board's decision differs from the Office of Planning's

1 recommendation. Although the Board favors the use of summary
2 orders whenever possible, an applicant may not request the Board
3 to issue such an order.

4 In today's hearing session, everyone who is listening
5 on Webex or by telephone will be muted during the hearing, and
6 only persons who have signed up to participate or testify will
7 be unmuted at the appropriate time. Please state your name and
8 home address before providing oral testimony or your
9 presentation. Oral presentations should be limited to a summary
10 of your most important points. When you are finished speaking,
11 please mute your audio so that your microphone is no longer
12 picking up sounds or background noise. Once again, if you
13 experience difficulty accessing Webex or with your telephone
14 call-in or if you forgot to sign up 24 hours prior to this
15 hearing, then please call our OZ hotline number at 202-727-5471
16 to sign up to testify and to receive Webex log-in or call-in
17 instructions. All persons planning to testify either in favor
18 or in opposition should have signed up in advance. They will be
19 called by name to testify. If this is an appeal, only parties
20 are allowed to testify.

21 By signing up to testify, all participants completed
22 the oath or affirmation as required by Subtitle Y 408.7. Request
23 to enter evidence at the time of an online virtual hearing, such
24 as written testimony or additional supporting documents other
25 than live video which may not be presented as part of the

1 testimony, may be allowed pursuant to Subtitle Y 103.13, provided
2 that the person making the request to enter an exhibit explains
3 how the proposed exhibit is relevant, the good cause that
4 justifies allowing the exhibit into the record, including an
5 explanation of why the requester did not file the exhibit prior
6 to the hearing pursuant to Subtitle Y, Section 206, and how the
7 proposed exhibit would not unreasonably prejudice any party.

8 The order of procedure for special exceptions and
9 variances pursuant to subtitle Y, Section 409 will be as follows:
10 preliminary and procedural matters; statement of the applicant
11 and the applicant's witnesses; report and recommendation from the
12 D.C. Office of Planning; reports and recommendations from other
13 public agencies; reports and recommendations from the affected
14 Advisory Neighborhood Commission, ANC; and the ANC witnesses of
15 any for the area within which the property is located; parties
16 in support of the application; individuals and organization
17 representatives in support of the application; parties in
18 opposition to the application; individuals and organization
19 representatives in opposition to the application; individuals and
20 organization representatives who are undeclared with respect to
21 the application; rebuttal and closing statements by the
22 applicant.

23 Pursuant to Subtitle Y, Sections 408.2 and 408.3 the
24 following time constraints shall be maintained: the applicant,
25 appellant, and all parties except an affected ANC in support

1 including witnesses, exclusive of cross-examination, maximum of
2 60 minutes collectively; the appellee, persons and parties except
3 an affected ANC in opposition, including witnesses collectively
4 have an amount of time equal to that of the applicant and parties
5 in support, but in no case more than 60 minutes collectively;
6 individuals, maximum of 3 minutes; organization representatives,
7 maximum of 5 minutes. These time constraints do not include
8 cross-examination or questions from the Board. Cross-examination
9 of witnesses by the applicant or parties, including the ANC, is
10 permitted. The ANC within which the property is located is
11 automatically a party in a special exception or variance case.

12 Nothing prohibits the Board from placing reasonable
13 restrictions on cross-examination, including time limits and
14 limitations on the scope of cross-examination pursuant to
15 Subtitle Y, Section 408.5. At the conclusion of each case, an
16 individual who was unable to testify because of technical issues
17 may file a written request for leave to file a written version
18 of the planned testimony to the record within 24 hours following
19 the conclusion of public testimony in the hearing. If additional
20 written testimony is accepted, then parties will be allowed a
21 reasonable time to respond as determined by the Board. The Board
22 will then make its decision at its next meeting session, but no
23 earlier than 48 hours after the hearing. Moreover, the Board may
24 request additional specific information to complete the record.
25 The Board and the staff will specify at the end of the hearing

1 exactly what is expected and the date when persons must submit
2 the evidence to the Office of Zoning. No other information shall
3 be accepted by the Board.

4 Once again, after the Board adjourned the hearing, the
5 Office of Zoning, in consultation with me, will determine whether
6 a full or summary order may issue. A full order is required when
7 the decision it contains is adverse to a party, including an
8 affected ANC. A full order may also be needed if the Board's
9 decision differs from the Office of Planning's recommendation.
10 Although the Board favors the use of summary orders whenever
11 possible, an applicant may not request the Board to issue such
12 an order.

13 Finally, the District of Columbia Administrative
14 Procedure Act requires that a public hearing on each case be held
15 in the open before the public. However, pursuant to Sections
16 405(b) and 406 of that Act, the Board may, consistent with its
17 rules of procedure and the Act, enter into a closed meeting on a
18 case for purposes of seeking legal counsel on a case pursuant to
19 D.C. Official Code Section 2-575(b)(4) and/or deliberating on a
20 case pursuant to D.C. Official Code Section 2-575(b)(13), but
21 only after providing the necessary public notice, and in the case
22 of an emergency closed meeting, after taking a roll call.

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

24 MR. MOY: Good morning, Madam Vice Chair, members of
25 the Board.

1 VICE CHAIR JOHN: Good morning.

2 MR. MOY: I do not -- good morning. I do not have any
3 preliminary matters for you until we get to Case No. 20877. So
4 at that point, I'll bring that to your attention. So that's all
5 I have unless you have any other questions.

6 VICE CHAIR JOHN: No, No, thanks. Please call the
7 first case.

8 MR. MOY: The first case is Application No. 20876.
9 This is of 5104 MacArthur, LLC. This is a self-certified
10 application pursuant to Subtitle X, section 901.2 for special
11 exception under Subtitle C, Section 703.2 from the minimum
12 vehicle parking requirements of Subtitle C, Section 701.
13 Property's located in the ME-3A zone at 5104 MacArthur Boulevard,
14 N.W., Square 1418, Lot 807. And that's all I have for you, Madam
15 Vice Chair.

16 VICE CHAIR JOHN: Okay. Thank you, Mr. Moy.

17 Good morning, Mr. Sullivan, can you introduce yourself
18 please?

19 MR. SULLIVAN: Good morning, Madam Chair, and Board
20 members, Marty Sullivan with Sullivan and Barros on behalf of the
21 Applicant.

22 VICE CHAIR JOHN: Okay. Can you tell us why you're
23 here today and what relief you're seeking? And you'll have 15
24 minutes to give your presentation.

25 MR. SULLIVAN: Thank you. If Mr. Young could please

1 load the slide presentation?

2 So we're here on behalf of the Palisades Montessori
3 School, and the owner of the property is 5104 MacArthur, LLC.
4 Next slide please?

5 The property's located in the MU-3A zone and it's the
6 home of the Palisades Montessori Preschool. The use is permitted
7 as a matter of right. In 2018 in BZA Case 19694, the BZA approved
8 parking relief of two spaces for this use with a condition of a
9 five-year term and the Applicant is now requesting the same relief
10 without the term limit. The Applicant's unable to provide any
11 parking spaces, two are required, and is therefore requesting
12 special exception relief under C 701.5. And the Applicant has
13 agreed to comply with the conditions suggested by the ANC and
14 DDOT and the Office of Planning, that on an annual basis the
15 Applicant will furnish DDOT and ANC 3D with any complaints
16 received regarding parking. And by the way, there haven't been
17 any in the last five years. That was a condition of the last
18 order. And the Applicant will offer employer paid transit pass
19 as a reimbursement for bicycle commuters of no less than \$20 per
20 employee per month. Next slide please?

21 We have the support of the Office of Planning and the
22 ANC 3D voted unanimously in support as well, subject those
23 conditions. And DDOT as well has no objection. They have asked
24 for a pick-up/drop-off plan to be submitted and approved within
25 three months, which the Applicant will provide. Next slide

1 please?

2 Here's a photo of the subject property there on the
3 right with the green awning. Next slide please?

4 There's no alley access behind the building, and the
5 building takes up about a hundred percent of the lot. Next slide
6 please?

7 The proposal will be in harmony with the purpose and
8 intent of the zoning regs and zoning map. Use is permitted as a
9 matter of right. And the relief is for two spaces. I'd note
10 the parking requirement's based on square footage and the square
11 footage is 2,800 square feet. In DDOT's report and in the last
12 application, it was provided that there would be 44 students
13 enrolled. There's actually only 32 under the current license at
14 that -- at this point. There's a few less enrolled, but the
15 current license approves 32 students and about a quarter of those
16 live close enough to be walked to the site, weather permitting.
17 The others are -- the drop-off plan is essentially to find a
18 legal parking space within the area and walk your child to the
19 school. Next slide please?

20 The BZA may grant a waiver as a special exception
21 subject to meeting any one of these conditions. Due to the
22 physical constraints of the property, the required parking cannot
23 be provided. Property's an interior lot with no alley access and
24 the rear of the property abuts residential properties. So the
25 required parking spaces cannot be provided on a lot within 600

1 feet either. From the Applicant's investigation, there's no
2 available parking lots that would meet the requirement of not
3 already satisfying a parking requirement on that property. And
4 also meet C 703, the -- I'm not sure what letter that is, I'm
5 sorry that's not in there, but we don't have access to a public
6 alley. And while we have not applied for curb cut, it's obvious
7 that a curb cut could not be approved here because the building,
8 it fronts the entire frontage of the property. Next slide please?

9 And that's it. Also with us here today is the operator,
10 the head of the school, Heather Gustafson, if you have any
11 questions for her as well.

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

13 Does the Board have any questions for the Applicant?

14 Okay. I'll go to the Office of Planning then.

15 MS. MYERS: Good morning, Crystal Myers for the Office
16 of Planning. The Office of Planning is recommending approval of
17 this case and of the conditions that the Applicant has just read
18 off. I will note that we also support and no longer having a
19 term limit on this relief. And we stand on the record of the
20 staff report and of course are here for questions. Thank you.

21 VICE CHAIR JOHN: Okay. Thank you.

22 Does the Applicant have any questions?

23 MR. SULLIVAN: No, thank you.

24 VICE CHAIR JOHN: Does the Board have any questions for
25 the Office of Planning?

1 Mr. Young, is there anyone signed up to testify?

2 MR. YOUNG: We do not.

3 VICE CHAIR JOHN: Okay. Let's see. I thought I had a
4 question. So you did say, Mr. Sullivan, there was no pick-up or
5 drop-off plan provided in the previous application?

6 MR. SULLIVAN: No, we did not. And I don't know if it
7 was discussed in the transcript or not, I haven't seen it, but
8 the plan essentially is that the parents would find a legal
9 parking space and walk their child to the front so there's no
10 pick-up and -- there's no stopping on MacArthur Boulevard.

11 VICE CHAIR JOHN: Okay.

12 So does the Board have any further questions?

13 Mr. Sullivan, do you have a closing statement?

14 MR. SULLIVAN: No, I don't. Thank you.

15 VICE CHAIR JOHN: Okay. Thank you very much. So we'll
16 close the record. Thank you for your testimony. And we'll also
17 close the hearing.

18 Is the Board ready to deliberate? Yes. And does anyone
19 wish to start? Okay.

20 So this application is fairly straightforward. The
21 Applicant has been operating for five years without any
22 complaints, so there doesn't seem to be any adverse impact on the
23 neighborhood. With respect to the parking relief, the Applicant
24 has met the criteria for relief by showing that it's not possible
25 to have parking on the premises or within 600 feet close by.

1 So I think the question for the Board is whether to
2 continue the other conditions. I'm fine with removing the five-
3 year term limit because of my previous comments in the record,
4 and the record, which is fairly clear on that particular issue.
5 I'm not sure that I'm inclined to suggest that the Board include
6 the drop-off and pick-off -- and pick-up plan because, as the
7 Applicant says, most of the kids would be -- many of the students
8 will be walked to school. This is a Montessori school and the
9 parents would be expected to bring their children into the
10 classroom. So I don't have any additional comments. I agree
11 with the Office of Planning's recommendation and there, I
12 believe, is no report from the ANC or I did not see one. Do we
13 have a report from the ANC? Okay. So does any other Board member
14 have comments?

15 COMMISSIONER SMITH: Chair John, I by and large agree
16 with everything that you've stated. I do believe they've met the
17 burden of proof for us to grant of special exception. Given
18 that, it sounds like there was probably some concerns raised by
19 the neighborhood years ago and based on the other support of the
20 ANC this time around, it seems like those concerns were allayed.
21 So I'm comfortable with removing the five-year term for any --
22 for this particular special exception. I am in favor of extending
23 the other two conditions from the previous special exception as
24 recommended by the Office of Planning and the ANC. And I also
25 agree with you that we don't have to condition it tied to -- or

1 tie it to the TDM. So I'm in support of the requested special
2 exception as presented with the condition.

3 VICE CHAIR JOHN: Thank you.

4 Did I see your hand up, Mr. Blake?

5 You're muted, Mr. Blake. Mr. Blake, you're muted.

6 COMMISSIONER BLAKE: Can you --

7 VICE CHAIR JOHN: Now we can hear -- yes. Now that
8 -- we didn't hear anything.

9 COMMISSIONER BLAKE: Well, that may be the issue.
10 Having reviewed the case record, including the Applicant's
11 statement, the Office of Planning's report, DDOT's report, and
12 also the report of the ANC 3D, and having heard the testimony
13 presented here by the Applicant, clearly the Applicant has met
14 the burden of proof for the -- under Section C 703 for the parking
15 relief and as well as met the standards for X 901.2. And I credit
16 the Office of Planning's analysis on how the conditions have been
17 met. Clearly, as you pointed out, they cannot provide the space
18 given the logistics of the site and surrounding area. The site
19 is relatively small, landlocked, there's no alley access, and it
20 covers -- the existing building covers the essentially the front
21 of the footprint, so a curb cut, even with a curb cut, it wouldn't
22 be possible to provide the required parking. And there's no
23 available parking.

24 And most importantly and additionally, there were no
25 -- we're not aware of any complaints regarding the parking in the

1 last five years. This was substantiated by the resolution
2 actually provided by ANC 3D. There's no change to the proposed
3 use or density, so I believe granting a special exception would
4 not adversely affect the neighboring properties or otherwise
5 cause any objectionable conditions. As I said, as there has been
6 no incidents of complaint over the last five years, I am
7 comfortable removing the term limit. The intention was to give
8 the opportunity to see the impact of it as the transcript relays,
9 so I'm comfortable incorporating -- I'm also comfortable
10 incorporating other conditions from the order 19694 that is for
11 the annual review and for the paid transit passes. Both, of
12 course, were part of the transit demand management plan from the
13 prior order. And I give great weight to the Office of Planning's
14 recommendation to remove the term limit, but continue to
15 remaining the condition of the original order. OP also doesn't
16 propose any other conditions. I also note that DDOT has no
17 objections and I'm comfortable with the Applicant's -- and
18 acknowledge the Applicant's agreement to provide DDOT with the
19 pick-up/drop-off plan. That said, I'm also not in favor of
20 including a condition requiring the Applicant to submit and
21 receive approval from DOT on a pick-up/drop-off plan. A pick-
22 up/drop-off plan is not included in the original order. It
23 doesn't relate to the parking relief, and it would delegate the
24 Board's authority. So for that reason I would not be in favor.
25 But we do acknowledge they have agreed to do that. I gave great

1 weight to the report of ANC 3D, which is in support and notes no
2 parking complaints and they -- has been received. However, there
3 is a -- they mention one additional condition and that was that
4 the special exception cease to exist with the change of use of
5 the property from a child development center, as it's unclear
6 what potential adverse impact that condition is needed to
7 mitigate. And it's unclear to me that the inclusion of the
8 provision would be contrary to the principle that a special
9 exception runs with the land, I would not be in support of
10 including that provision as a condition. But that said, I'll be
11 vating (sic) in favor of the application.

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

13 Commissioner Imamura?

14 ZC COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.
15 I just want to say Board Member Blake stole my notes, so I align
16 myself with all of his comments. And I'll keep it simple and
17 short. I'm prepared to vote in favor.

18 VICE CHAIR JOHN: Thank you.

19 And thank you all for your comments.

20 So I think what I heard is that the Board is in support
21 of removing the five-year term and allowing the annual review.
22 Is there a consensus on that? I'm not particularly, you know,
23 sold on it because there have been no complaints. But you know,
24 if the rest of the Board is in agreement with the annual review
25 of -- or actually in reporting the parking issues, I'm fine with

1 that one. And the ANC, I agree with Mr. Blake that the ANC
2 recommendation to which it says -- let me read that condition
3 again. Oh, well, the special exception will cease to exist with
4 the change of use in the property. And thank you, Mr. Blake,
5 for bringing that up, because I agree it is contrary to the
6 regulation. Okay.

7 So then I will make a motion to approve Application
8 20876 as captioned and read by the secretary with the condition
9 that there is the annual review of parking issues and I believe
10 the employer-paid transit. I believe those are the two
11 conditions. Does anyone have any comments? Okay. And ask for
12 a second.

13 COMMISSIONER BLAKE: Second.

14 VICE CHAIR JOHN: Mr. Moy, please take the roll call?

15 MR. MOY: Thank you, Madam Vice Chair. When I call
16 your name if you'll please respond to the motion made by Vice
17 Chair John to approve the application with -- she noted two
18 conditions, the first being the Applicant providing an annual
19 review of the parking issue as well as the Applicant offering
20 -- property owner in this case -- offering employer-paid transit
21 passes for reimbursements for bicycle commuters. Motion to
22 approve was granted by -- was second, rather, by Mr. Blake. Zoing
23 Commissioner Dr. Imamura?

24 ZC COMMISSIONER IMAMURA: Yes.

25 MR. MOY: Mr. Smith?

1 COMMISSIONER SMITH: Yes.

2 MR. MOY: Mr. Blake?

3 COMMISSIONER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Staff would record the vote as four to zero
7 to one and this is on the motion made by Vice Chair John to
8 approve. The motion was second by Mr. Blake, who is in support
9 of the motion, as well as support from Zoning Commissioner Dr.
10 Imamura, Mr. Smith, of course Mr. Blake, Vice Chair John. We
11 have a Board member not present, not voting. The motion carries,
12 Madam Vice Chair, on a vote of four to zero to one.

13 VICE CHAIR JOHN: Thank you, Mr. Moy. Okay. Please
14 call the next case when you're ready.

15 MR. MOY: This would -- this case would be Application
16 No. 20878 of Krista, K-R-I-S-T-A, Heinz. This is as amended a
17 self-certified application pursuant to Subtitle X, Section 901.2
18 for special exception under Subtitle U, Section 513.1(a), which
19 would permit an annual -- annual -- an animal boarding use on
20 the second floor of an existing building, not being the matter
21 of right provisions of Subtitle U, Section 512.1. Properly
22 located in the MU-18 zone at 1632 17th Street, N.W., Square 155,
23 Lot 250. And let's see, one more thing. I believe -- that's
24 all I have for you, Madam Vice Chair.

25 VICE CHAIR JOHN: Thank you.

1 Good morning, Mr. Cross. Please introduce yourself for
2 the record.

3 MR. CROSS: Good morning, my name is Michael Cross, I'm
4 the architect responsible for this project. And I'm joined here
5 today by Elisabeth Stewart, project coordinator, as well as Ryan
6 Dunlap, project designer. Elisabeth Stewart will be presenting
7 today.

8 VICE CHAIR JOHN: Okay. Thank you.

9 Good morning, Ms. Stewart. Please introduce yourself
10 for the record.

11 MS. STEWART: Good morning. Elisabeth Stewart, project
12 coordinator.

13 VICE CHAIR JOHN: Thank you. Could you give your name
14 -- I'm sorry, your address for the record?

15 MS. STEWART: My home address?

16 VICE CHAIR JOHN: Yes.

17 MS. STEWART: Is in Maryland, 6212 44th Avenue,
18 Riverdale.

19 VICE CHAIR JOHN: Thank you. And do you expect Mr.
20 Dunlap to present as well? Oh, I'm sorry, I have the wrong name.
21 Okay. Please go ahead, Ms. Stewart, and tell us why you're here
22 today and what relief you're seeking. And you'll have 15 minutes
23 to give your presentation.

24 MS. STEWART: Perfect. Thank you so much. One moment.
25 I'm going to share my screen here.

1 VICE CHAIR JOHN: I don't believe you can do that. Do
2 you have a presentation that Mr. Young can pull up?

3 MS. STEWART: Oh, I don't believe we uploaded a
4 presentation. And to be honest, with the use, I don't know if
5 we really need the presentation. It showed a picture of the
6 building that we're talking about, so I can continue with the
7 presentation from our notes here.

8 Okay. Good morning. We are here today to present the
9 project at 1632 17th Street, N.W. The property is located mid-
10 block on the west side in between R Street, N.W. and Cochran
11 Street, N.W. We're seeking your support for our requested relief
12 from Section U -- Subtitle U, 512.1 to allow animal boarding in
13 a level above the basement in the MU-18 zone.

14 This relief is for the animal boarding use only. The
15 rest of the business is matter of right, and construction is
16 currently underway with renovations for the primary business and
17 retail uses. We're seeking this relief to allow a cat boarding
18 on the upper levels of the semi-detached three-story commercial
19 building. The project is currently being renovated to
20 accommodate a retail store with an accessory pet grooming and
21 training. The company is acting -- or seeking to add this
22 boarding accommodation for cats only on the upper level.

23 We have received support from the ANC on their meeting
24 February 8th and also have received support from the Office of
25 Planning. The owner has been running the business in this area

1 since 2002 and has been a part of the neighborhood for many years.
2 They have received the general support of the public during this
3 relocation and are excited to maintain and expand their services
4 to the area. We are glad to answer any questions you may have
5 and appreciate your support of this project. Thank you.

6 VICE CHAIR JOHN: Thank you, Ms. Stewart. Did you or
7 Mr. Cross have any comments on how the application meets the
8 criteria for relief? I believe that's in U, 513?

9 COMMISSIONER BLAKE: I can't hear Mr. Cross.

10 MS. STEWART: I'm going to pull up the section that Mr.
11 Cross was trying to present, one moment.

12 Okay. So we believe that we meet the criteria. While
13 looking at 513.1, it says that the animal boarding use shall take
14 place entirely within an enclosed building. This use is to be
15 on the second floor of the structure, which is fully enclosed.
16 The building is designed and constructed to mitigate noise and
17 limit negative impacts on the adjacent properties, including the
18 residential units in the same building. The animal boarding is
19 fully within the structure again, therefore we do not anticipate
20 any additional noise. Further, the client is seeking to do pet
21 -- or I'm sorry, cat boarding only, and therefore is not
22 anticipated to add additional noise to the neighborhood. The
23 windows and doors of the space are devoted to the animal boarding
24 and shall be kept closed, and all doors facing the residential
25 use shall be solid core. Again, this use is only on the second

1 floor, and therefore we will not have any doors on the exterior
2 facing a residential use, and all windows and doors shall remain
3 closed per the Code.

4 Number four, the animals shall be permitted in an
5 external yard on the premises. Since this is a cat only, we do
6 not anticipate any external yard use.

7 Number five is about the animal waste shall be placed
8 in closed waste disposal containers and shall be collected by a
9 waste disposal company at least once a week. The Applicant has
10 agreed to this requirement and shall conform, and has stated at
11 the ANC meeting that it will most likely be more often than
12 weekly.

13 Number six, the odor shall be controlled by meaning of
14 an air filtration system. This again shall be in place per the
15 mechanical drawings. The specification for this system is also
16 uploaded into our case file.

17 Number seven, the finished floor material and wall
18 finished materials shall be a minimum of 48 inches from the floor
19 and shall be impervious and washable. Again, we are -- to comply
20 with this and all finished floor materials and finished wall
21 materials are to be impervious and washable in this area.

22 Number eight, the external yard and other exterior
23 facilities for the keeping of animals shall not be permitted.
24 And again, this is to be on the second floor only and the animals
25 are to be kept indoors.

1 Number nine simply says about the BZA may impose
2 additional requirements, and we of course are happy to work with
3 the BZA to adhere with any requirements they deem necessary.

4 VICE CHAIR JOHN: Thank you, Ms. Stewart.

5 Does the Board have any questions for the Applicant?

6 Dr. Imamura?

7 ZC COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.
8 Ms. Stewart, Mr. Cross, I don't believe, and I might have
9 overlooked this, there are any mechanical drawings in the record.

10 MS. STEWART: They definitely were included in our
11 permit set. And I do know we have the spec for the filtration
12 system. I'm happy to upload those approved mechanical drawings
13 into the set if the Board would like.

14 ZC COMMISSIONER IMAMURA: Yes, I think that's --

15 VICE CHAIR JOHN: Yes.

16 ZC COMMISSIONER IMAMURA: -- (indiscernible).

17 MS. STEWART: Absolutely. We can do that.

18 VICE CHAIR JOHN: So we'll give you time to do that.

19 Now, I don't believe we can deliberate. Do you need
20 those drawings to make your decision, Dr. Imamura?

21 ZC COMMISSIONER IMAMURA: I think this is fairly
22 straightforward, Madam Vice Chair, but I do want them in the
23 record. But I don't think that that will prevent me from voting.

24 VICE CHAIR JOHN: All right. Thanks.

25 Does any other Board member have a question?

1 Board Member Blake?

2 COMMISSIONER BLAKE: Well, not -- yeah, one quick
3 question is the pet shop on the first level, which is a matter
4 of right, of course, owned by the same and operated by the same?
5 Okay. And it's in operation currently, correct?

6 MS. STEWART: So currently their business is around the
7 corner. I don't recall the exact address, but they're in that
8 neighborhood. They're moving to this new space to be able to
9 expand their services to the community. And it all is the same
10 owner.

11 COMMISSIONER BLAKE: Okay, thank you.

12 VICE CHAIR JOHN: Dr. Imamura?

13 ZC COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.
14 It occurred to me that in a separate case, we've seen this happen
15 before, and so I just wanted to remind Mr. Cross that the same
16 set of plans that you put forward to your permitting set should
17 also be uploaded in the record set. So I remember or recall that
18 in previous cases there have been two different sets. So I want
19 to highlight this and remind you that moving forward in future
20 cases to make sure that you upload a full set and the same set
21 that you put forward for your permitting set.

22 VICE CHAIR JOHN: You're muted. You're muted, Mr.
23 Cross. Can't hear you.

24 MR. CROSS: Can you hear me now?

25 VICE CHAIR JOHN: Now we can.

1 MR. CROSS: That is duly noted. I understand the case
2 you're alluding to. In this case, the drawings that will be
3 uploaded are approved permit drawings that contain all the
4 mechanical systems that are in the process of being built now.

5 VICE CHAIR JOHN: Okay, thank you very much.

6 MR. CROSS: Thank you.

7 VICE CHAIR JOHN: Are there any other questions?

8 I'll go to the Office of Planning.

9 MR. MORDFIN: Good morning, Chair and -- or Vice Chair
10 and members of the Board. I'm Stephen Mordfin with the Office
11 of Planning. The Office of Planning finds this application to
12 be in conformance with criteria 513.1(b), Subtitle U and
13 therefore recommends approval of the application. Thank you.
14 And I'm available for any questions.

15 VICE CHAIR JOHN: Thank you, Mr. Mordfin.

16 Does the Board have any questions for Mr. Mordfin?

17 Does the Applicant have any questions for Mr. Mordfin?

18 Thank you.

19 Mr. Cross, are you able to upload those drawings now?
20 Okay. And while you're doing that, Mr. Young, is there anyone
21 signed up to testify?

22 MR. YOUNG: We do not.

23 VICE CHAIR JOHN: Thank you.

24 And there's a Mr. Dunlap joining us today. Is he part
25 of your team, Ms. Stewart?

1 MS. STEWART: Yes, he is the project designer.

2 VICE CHAIR JOHN: Okay. All right. I didn't want to
3 overlook anyone. So if the Board has no further questions for
4 the Applicant or the Office of Planning and there's no one signed
5 up to testify, do you have any closing comments, Ms. Stewart?

6 MS. STEWART: I do not. Thank you for your time.

7 VICE CHAIR JOHN: Okay. Thank you.

8 So I'll go ahead and close the record and thank you for
9 your testimony and close the hearing as well.

10 Is the Board ready to deliberate? Does anyone want to
11 start? Okay. Did I see you take your -- Mr. Smith, were you
12 volunteering? Thank you. I can't hear you.

13 COMMISSIONER SMITH: To the credit of the Office of
14 Planning, just a fairly straightforward application. And also
15 to the credit to the Applicant, while it'd been great to get some
16 additional architectural and engineer plans to show that sound
17 attenuation, I'm fairly comfortable with proceeding with the
18 application at hand to grant special exception. I do believe
19 that they've met the burden of proof for us to grant that special
20 exception. Based on the information that was presented by the
21 Applicant, I do believe that they meet all the criteria specified
22 under X 901 whereby this particular use will be in harmony with
23 the general purpose and intent of the zoning regulations, which
24 particular use is allowed in the zone by special exception. I
25 do not -- but based on the information that I received about

1 noise attenuation and also that this is a commercial strip, I do
2 not believe that the particular use would significantly adversely
3 affect the uses -- the surrounding uses in the neighborhood.
4 Matter of fact, it's -- I believe it's next to a grocery store.
5 So again, there's a multitude of different intents -- different
6 commercial uses of different intensities within the area. With
7 that, I will also note that the ANC is in support of this
8 application and DDOT has no objection to the application and I
9 will also support the special exception again.

10 VICE CHAIR JOHN: Thank you. Board Member Smith.

11 Dr. Imamura?

12 ZC COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.
13 I align myself with Board Member Smith and his comments. And
14 just want to make sure that the correct set of plans are uploaded
15 into the record. I want to also compliment Ms. Stewart for
16 walking us through U 513.1 on the fly. That was very evident in
17 that Mr. Cross provided the right material into the record to
18 support that and specifically for 513.1, paragraph (b) (6) and
19 (6) the floor finished materials and wall finished materials, we
20 should see elevations of those as well, so. But that said, I'm
21 prepared to vote in favor and I'm waiting to hear what Board
22 Member Blake has to share, if he stole my notes again.

23 VICE CHAIR JOHN: Board Member Blake?

24 COMMISSIONER BLAKE: Dr. Imamura, I believe you stole
25 my notes on this case. But I'm -- the specific criteria of U

1 513.1, they are designed to protect neighboring properties from
2 adverse effects that may result from the use. And based on all
3 the information we heard today from the Applicant on the fly and
4 the report from the Office of Planning, it's clear that the
5 proposed use would be designed in conformance with provisions of
6 U, 513.1(a), and it does meet the general standards. So I give
7 great weight to the Office of Planning's recommendation for
8 approval and I do agree and note that DDOT has no objection as
9 well as the ANC's in support with no issues or concerns, so I
10 will be voting in favor of the application.

11 VICE CHAIR JOHN: Thank you.

12 I agree with your comments, Commissioner Blake, and all
13 of the comments so far. Thank you, Board Member Smith, for
14 volunteering to go first. And I am also in support of the
15 application. And so with that, I will make a motion to approve
16 Application No. 20878 as captioned and read by the secretary and
17 ask for a second, Mr. Blake?

18 COMMISSIONER BLAKE: Second.

19 VICE CHAIR JOHN: Mr. Moy?

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

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Right.

1 Zoning Commissioner Dr. Imamura?

2 ZC COMMISSIONER IMAMURA: Yes.

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: And we have a Board member not present, not
10 participating nor voting of course. Staff would record the vote
11 as four to zero to one, and this is on the motion made by Vice
12 Chair John to approve. The motion to approve was made by -- was
13 second by Mr. Blake, who is also in support of the motion to
14 approve, as well as support from Zoning Commissioner Dr. Imamura,
15 MR. Smith, of course Mr. Blake, and again Vice Chair John. Motion
16 carries on a vote of four to zero to one.

17 VICE CHAIR JOHN: Thank you, Mr. Moy. So it's 10:23,
18 and I'm going to suggest that we take a ten-minute break and
19 return at 10:33. Thank you.

20 (Whereupon, there was a brief recess.)

21 VICE CHAIR JOHN: Mr. Moy, can you call us back into
22 session please?

23 MR. MOY: Yes, thank you. After a quick recess, the
24 Board has returned to its public hearing session and the time is
25 now at or about 10:42 in the morning.

1 The next case, Madam Vice Chair, is Application No.
2 20877 of Tyrone White. This is an application pursuant to
3 Subtitle X, Section 1002. This is for a use variance to allow a
4 fast-food establishment in the MU-3 zone. Property located at
5 4505 Sheriff Road, N.E., Square 4126, Lot 849. The only other
6 thing I have for you, Madam Vice Chair, is that the Applicant
7 filed R point (phonetic) application yesterday, so that's within
8 the 24-hour block. And that's it for me, Madam Vice Chair.

9 VICE CHAIR JOHN: Thank you. So we'll go ahead and let
10 that into the record.

11 MR. MOY: Thank you.

12 VICE CHAIR JOHN: Thank you.

13 Good morning, Mr. White.

14 MS. JALLAH: Good morning, Madam Vice President, this
15 is Coran Jallah, Karen Giles, and I'll be speaking on behalf of
16 Mr. White and the Carrie (phonetic) Parker Trust in this case.

17 VICE CHAIR JOHN: Okay. Thank you. Is there a letter
18 of representation in the record?

19 MS. JALLAH: Yes, there is.

20 VICE CHAIR JOHN: Okay. All right. Please give your
21 address for the record, and you'll have 15 minutes to give your
22 presentation.

23 MS. JALLAH: Okay. My address is 1611 Fort Davis Place,
24 S.E., Washington, D.C. And good morning to everyone, good morning
25 to the panel and all of the participants. Thank you all for your

1 time today in hearing our case. And I believe it's, Mark or Mr.
2 Young, if you could please share or if we should share the slides
3 that were submitted?

4 VICE CHAIR JOHN: Mr. Young will please put that
5 presentation up for us.

6 MS. JALLAH: Okay. Perfect. Thank you so much, Mr.
7 Young.

8 So today we are here sharing our Case No. 20877 for
9 4505 Sheriff Road, N.E. Next slide please?

10 Just in summary, this case is to request the use of a
11 fast-food establishment in the existing detached one-story
12 building which is located in an MU-3A zone, and the relief type
13 is a use variance and the matter right use is Subtitle U, 510.1,
14 and pursuant to Subtitle X, 1001. Next slide please?

15 And again, my name is Coran Jallah with Capital City
16 Restaurant Group and Mr. White, who apologized because he wanted
17 to speak here today, but we had multiple catering orders this
18 morning, so he's managing those. Next slide please?

19 To provide some background information on this case,
20 the property we are speaking about today, 4505 Sheriff Road,
21 N.E., has been in the Deanwood community for over 60 years. It's
22 owned by the Parker family, which in 2010 was switched over to
23 the Carrie Parker trustee, but the building has been owned by the
24 Parkers for, again, more than 60 years. It was built by their
25 father and passed on to the children. We leased the property in

1 2019. Mr. White leased it with Capital City Restaurant Group,
2 d/b/a MLK Deli following our years of owning the MLK Deli location
3 in the Congress Heights neighborhood on MLK. The previous uses
4 of this establishment were the Parkers CarryOut and also Jumping
5 Out the Pan, which were both fast food establishments and have
6 existed in the community for many years. Next slide please?

7 Upon acquiring the property in 2019, we began
8 construction, which was halted due to the pandemic. Following
9 that, we received the Food Access Fund funding by Mayor Bowser's
10 office in 2022 and concluded construction in August 2022. Upon
11 that time in our application to change the ownership of the
12 existing certificate of occupancy, we were informed by the Office
13 of Zoning that this property was located in an MU-3A zone and
14 that we would require a use variance which started this process
15 that we are here today. Next slide please?

16 Okay. So our goal today is to sort of share our case
17 and demonstrate why we meet the BZA's criteria to grant the use
18 variance, permitting 4505 to operate as a fast-food
19 establishment, establishing the three conditions here, how the
20 property is affected by an exceptional situation or condition;
21 the strict application would result in practical difficulty for
22 the property owner; and also the substantial detriment to the
23 public good, nor a substantial impairment to the no intent purpose
24 and integrity of the MU-3A zone. Next slide please?

25 Okay. So as far as the exceptional situation in this

1 case upon signing the lease we were under the assumption that
2 this property has always functioned as a fast-food establishment.
3 In the 40 years it was expressed to us by the Parkers that they
4 had run a fast-food. The business that functioned in there prior
5 was Jumping Out the Pan, which was a fried fish business, which
6 obviously is a fast-food. Also, upon signing the lease, the
7 business had a preexisting hood in the space, which we just did
8 updates in kind. As you'll see in the exhibits that we submitted,
9 Exhibit 22, you'll see the 2009 certificate of occupancy, which
10 we were in the process of transferring ownership of, which states
11 the approved use as a fast-food establishment, A2. You'll also
12 see Exhibit 26, which shows our signed 2019 list, which includes
13 the permitted use and the operation of a deli. And to our
14 understanding with having the existing MLK Deli in the menu at
15 Deanwood Deli being the same as that, that we would be allowed
16 to have the same offerings that we did at MLK Deli. And also
17 Exhibit 25, our initial electrical permit, which was submitted
18 and issued by DCRA at the time, included that our existing use
19 and proposed use were both fast-food establishments and that
20 permit was issued without any issue or error. So again, that
21 gave us the assumption that we were allowed to operate as a fast-
22 food establishment and that the building was zoned as a fast-
23 food establishment. Next slide please?

24 In regards to the practical difficulty that this will
25 cause to the owner, I think the biggest one for us is financial

1 hardship. So it was a heavy lift in getting the space ready for
2 opening as a fast-food establishment. The current uses allowed
3 in the MU-3A zone as regards to food service are a full-service
4 restaurant, which given that space is almost impossible without
5 doing additional construction, and construction which we believe
6 would be a detriment to the community because it would change the
7 existing layout of the space and the flow of traffic there that's
8 currently existing. And then also to go to a prepared food
9 because of the hood that currently exists there would require,
10 again, additional construction. We've submitted to Mr. Young
11 -- and apologies because we thought we submitted this before and
12 double checked and it wasn't there -- so we submitted this within
13 the last 24 hours, but it's the budget showing the cost that we
14 incurred to get the space to where it is now and the additional
15 costs to go through permitting and structural to prepare for this
16 case here today and how that would cause us financial hardship,
17 because we have not been able to open and have been leasing this
18 space since 2019. The -- also the practical difficulty, which I
19 think is the biggest one for us as we are a business with a
20 mission to service the community is that we don't have any food
21 options for the community. The Deanwood community is very limited
22 in their food options at the moment. Within the one-mile radius
23 of Deanwood Deli, the 4505 Sheriff Road location, their only
24 fast-food service options: McDonald's, Wendy's, and Subway, and
25 there are no healthy food options within a one-mile radius and

1 no healthy food options in that MU-3A Sheriff Road corridor.
2 We've included here on the slide examples that were included in
3 a letter submitted by one of our community members just showing
4 the different options if you are on 8th Street how many food
5 options you have versus being in that Deanwood community and
6 understanding that Ward 7 and Ward 8 are food deserts and there
7 are no healthy food options to service the community. Next slide?

8 As far as the public good, we believe that this will
9 not negatively impact the community at all. In fact, we believe
10 that this will really help to improve the neighborhood zoning and
11 the intentions of the MU-3A zone in improving that corridor by
12 allowing a fresh food option because there's no food options on
13 the Sheriff Road corridor as it exists now. We've submitted
14 Exhibit 24 which we'll see our Deanwood deli menu, and though it
15 states fast-food establishment, we offer many healthy food
16 options. All of our food is made fresh to order. We offer
17 salads, sandwiches, grilled chicken, so a lot of options for the
18 community there. And to service, there are a lot of schools,
19 churches, and residents in the community that are just really
20 excited about having that offering, having something that they
21 can walk to. And in speaking of walking and transportation,
22 you'll see our lot plan located here, which is also submitted in
23 Exhibit 27, and that lot plan shows the parking lot which has a
24 minimum of ten spaces and it also shows a flow of traffic. We
25 are located on the back of two alleyways that exit out into, I

1 think, 48th and 47th, or 46th, which provide ample opportunities
2 for flow of traffic for the community, so not deterring any
3 traffic or creating any increased traffic on the road. Obviously,
4 I believe we know just from the excitement of the community that
5 this will have an increased traffic to that area. But we've
6 received support from all of our neighbors, which I believe some
7 are here to testify on our behalf, that this would be a benefit
8 to the community and not a detriment. You'll also see the trash
9 located in the back of the lot, which will be picked up twice
10 weekly in a community lot that we created an aside just again be
11 able to provide some green space in the community for communities
12 to gather and residents to gather. You'll also see Exhibit 35,
13 we have a letter of support from Valerie Lehman, a Deanwood
14 resident of over ten years, and I think she makes some really
15 good points in her letter about just the offerings for the
16 community being able to walk to a fresh food option, bike to a
17 fresh food option, and reduce emissions in the community by
18 reducing the need for the community to have all of their food
19 offerings delivered via DoorDash or Uber Eats, because they have
20 to have food brought in from outside of the Deanwood community.
21 Next slide.

22 In conclusion, we believe that it would be a great
23 benefit in granting the use variance to 4505 Sheriff Road. It
24 would be a huge improvement for the community. We've received
25 support from our ANC, from the Deanwood Citizens Association,

1 from the Office of Planning, as well from DDOT with one caveat
2 of having the owners submit a letter to agree at any time that
3 DDOT can close those curb cuts and with feedback from the
4 community for us to be able to provide bike parking racks so that
5 they're able to bike to the location and just create options for
6 them to be able to get in and out quickly. Next slide?

7 And thank you, thank you so much to all of our
8 panelists. And thank you -- I would like to give a really huge
9 thank you to all of our community, our ANC, the Office of
10 Planning, DDOT. As you see, we're representing ourselves in this
11 case and this is our first time. And without the support of
12 those offices and the community, we wouldn't have been as prepared
13 as we are today. So thank you all for your time.

14 VICE CHAIR JOHN: Thank you, Ms. Jallah.

15 MS. JALLAH: Jallah, yes.

16 VICE CHAIR JOHN: Jallah, okay.

17 Does the Board have any questions for the Applicant?

18 Mr. Smith?

19 MR. SMITH: Yeah, I do have a couple questions. And
20 just as a note, Ms. Jallah, and, you know, I've -- I fully
21 received everything you stated in your presentation, but I will
22 note that on a technicality, technically a lot of the variance
23 criteria is based on the hardship of the owner, not necessarily
24 related to the hardship of the lessee. So our evaluation has to
25 be more so tied to how is it a hardship of the owner to use the

1 property. And the use variance has to be based on that, not
2 necessarily hardship of the lessee.

3 MS. JALLAH: And my apologies because I think I forgot
4 to note that and that was in our participation, that on behalf
5 of the owners the hardship for them is the risk of losing the
6 lessee because of our financial hardships. So on behalf of the
7 Parkers and them trying to sustain that space and them having the
8 understanding that they've always been allowed to use that space
9 as a fast-food establishment, it's a hardship for them because
10 we've leased the property since 2019 without opening, and they
11 understand that it would be hard to have a -- have someone in
12 that space without having that use because that is the use that
13 they've that they've always run the space as.

14 COMMISSIONER SMITH: Okay. And I just --

15 VICE CHAIR JOHN: Thank you, Ms. Jallah. If I could
16 just ask you to wait until the Board member is finished for the
17 question.

18 MS. JALLAH: Okay.

19 VICE CHAIR JOHN: And I will ask for a response if it's
20 necessary. Thank you.

21 MS. JALLAH: Thank you.

22 VICE CHAIR JOHN: Go ahead please, Mr. Smith.

23 COMMISSIONER SMITH: Duly understand, but, you know,
24 just stating that that -- it has to be -- that the burden is on
25 the owner. So we would need some additional information from the

1 owner on how it is difficult for them to use the property for
2 any other use that is permitted by right or by special exception
3 within it. So another question that I have is, and maybe you
4 can fill in the blanks on this, and you stated that you leased
5 the property in 2019 and you've been in contact with the owners
6 of the property. When did the fish fry restaurant close?

7 MS. JALLAH: I go?

8 VICE CHAIR JOHN: Yes, please go ahead.

9 COMMISSIONER SMITH: Yes, you can go.

10 MS. JALLAH: Okay. Sorry. I would like to say 2016,
11 I'm not 100 percent sure, but I believe it's around 2016 that
12 Jumping Out the Pan closed. And they didn't have any tenants
13 there until we leased. And then it's been closed since.

14 COMMISSIONER SMITH: 2016. Okay.

15 MS. JALLAH: Yeah.

16 COMMISSIONER SMITH: I think that's all the questions
17 that I have for now. So I would just, you know, just note we
18 -- I, me personally, I would need some additional information
19 probably to -- if you are in regular contact with the owner, if
20 they can provide that information that shows, you know, the
21 business license, close down 2016, you know, there wasn't any
22 bank roll between 2016 and 2019, that would also be helpful.
23 That's all the questions I have for you.

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

25 Board Member Blake, I saw your hand up.

1 COMMISSIONER BLAKE: I think Board Member Smith has
2 captured my question. But you are authorized, Ms. Jallah, just
3 to represent the owner as well; is that correct?

4 MS. JALLAH: Yes.

5 COMMISSIONER BLAKE: Okay. Yes. So the information
6 that Board Member Smith pointed out with regard to just the
7 history, I think you did touch very briefly on that history with
8 the family, that would be very helpful. Do you know when the
9 building was built? I couldn't find that information.

10 MS. JALLAH: That's interesting because I was looking
11 for that as well. I believe it was in the late '60s or '50s.
12 The building was built by the Parkers. But because the building,
13 I believe it's 1960, because at the time the building was built,
14 there's not a lot of on record of the actual building on D.C.
15 record, but I believe it was the '60s and their father who built
16 it has since passed on.

17 COMMISSIONER BLAKE: Okay. Yeah, it would be helpful,
18 and I appreciate that commentary, it would be helpful to get a
19 little sense of that history. It sounds like there are only been
20 two uses of the property -- also -- and also talk a little bit
21 about, if you could get this information, if not now, later about
22 the exact service that the Parkers offered. What did they provide
23 there? That would be actually kind of interesting as well. My
24 thought is to see that -- just to be more transparent, my thought
25 is to understand better the continued use of the property, how

1 it was used over the years, was it built as a, I will call it,
2 fast-food service restaurant. What was it built as initially,
3 and how has its history evolved, that's what I'd like to get a
4 sense of. And if there's any licensing or anything like that
5 that could support that as well, that'd be helpful.

6 MS. JALLAH: Okay. And just to provide from what our
7 understanding is that in the '60s the property was originally
8 built as a carryout, offering fast-food options, and then they
9 transitioned from -- Parkers CarryOut with the initial use of the
10 building and then they transitioned into -- so I think in our
11 slide we show the original renderings of the building where you
12 see the Jumping Out the Pan sign in the front and was transitioned
13 into Jumping Out the Pan. So started as Parkers CarryOut into
14 Jumping Out the Pan. But all of the exhaust system and the hood
15 that was in there were the original, the original equipment that
16 was in the building. But we can try to work on getting, I guess,
17 the offerings or menu, but I'll be transparent as well, the
18 Parkers are kind of old school, so trying to find out as much
19 -- like our current landlord, it has to be clear in his 80s or
20 90s, Mr. Parker, who owns the barbershop adjacent to 4505 Sherriff
21 Road, and their family owns much of the property on that Sheriff
22 Road corridor. But all of that property was left to the children
23 and those children are in their 80s. So doing some digging has
24 not been the easiest process.

25 COMMISSIONER BLAKE: Okay. Thank you very much.

1 MS. JALLAH: No problem. Thank you for your question.

2 VICE CHAIR JOHN: Board Member Smith?

3 COMMISSIONER SMITH: Well, I'll ask one additional
4 question. So as part of our -- the criteria for evaluation of a
5 variance, we have to evaluate -- and since you're representing
6 the owner -- we have to evaluate whether was there any attempt
7 or was there any attempt to convert it to a use that is allowed
8 by right or by special exception within the zone? One of the
9 -- and are you able to do that? And you have to demonstrate that
10 it would be an undue hardship for you to be able to convert it
11 to a use that is allowed within the zone. One of the uses that
12 is allowed within the zone by special exception is a restaurant.
13 Could you speak to was there a difficulty in attempting to convert
14 it to a restaurant? And a restaurant means that you have to have
15 seating, you have to meet the criteria to be considered a
16 restaurant establishment. Can you speak to that?

17 MS. JALLAH: Yes, definitely. So the two allowable
18 uses currently in the MU-3A zone are restaurant, full-service
19 restaurant or prepared food. To speak to the restaurant, to be
20 zoned as a restaurant, it requires seating, indoor seating for
21 participants. It also requires participants be served food on
22 real plates and given their food and then pay afterward. The
23 current space we have is, I think, about a thousand square feet,
24 which has absolutely -- it barely has room for the kitchen, which
25 we had to go through in construction, but it definitely doesn't

1 have any room for seating in that building, which we only
2 converted equipment in kind in the remodel. The building itself,
3 in order for us to service as a restaurant, would require an add-
4 on to the building, which would take away from the space that's
5 currently there. So that building which you saw on the slide
6 sits on a pretty decent lot, but would require additional
7 construction, which we believe could be a detriment to the
8 community because it would require us to add on to the building,
9 which is a pretty hefty cost to take on outside of the costs.
10 And that's why we submitted into record the budget for what we've
11 spent to date on just remodeling the space, but what it would
12 cost. And then additional for a prepared food, to be zoned and
13 permitted as a prepared food, the equipment that currently exists
14 in the space cannot exist there. So that would also require
15 additional hardship because it would require us to do additional
16 construction to remove all of the hood and exhaust system that
17 existed in the property once we leased it. So when we originally
18 -- the originally in the property at the time of lease not at
19 any thing or change that we've done, there was a hood and exhaust
20 in the space because they've always functioned at that. I believe
21 it was 2016 when the Office of Zoning changed the allowable zoning
22 use from the A-2 to the MU, and I believe at that time that's
23 when the Parkers changed theirs to satisfy with the prepared
24 food, but continued to run as a fast-food establishment. And as
25 you see on the certificate of occupancy that we submitted, the

1 approved use is stated as a fast-food establishment on the
2 existing certificate of occupancy that's on record now.

3 COMMISSIONER SMITH: Okay. Do you have cost estimates
4 for how much it would cost to expand this building to make it
5 compliant? Now, I understand, you know, you've submitted in the
6 record how much you have spent to renovate the existing space,
7 but you have to demonstrate, you know, again, undue hardship and
8 the undue hardship can be costs associated with making it a
9 compliant use. So do you have cost estimates that show how much
10 it would cost to expand it to make it a conforming use? And if
11 not, I would recommend that you put that into the record.

12 MS. JALLAH: Yeah, but we have to submit that into
13 record.

14 COMMISSIONER SMITH: Okay. That's all the questions I
15 have for now.

16 VICE CHAIR JOHN: Board Member Blake?

17 COMMISSIONER BLAKE: And you said -- I don't believe,
18 as Board Member Smith pointed out, that the expense you've had
19 to date upgrading has -- is actually as germane to this discussion
20 as would be the cost estimate for developing it into the fas-
21 -- a full-service restaurant. Those would be very helpful to
22 understand that and also the costs it would take to make this a
23 prepared food service facility would also be helpful, just so
24 -- those two costs would be very helpful.

25 VICE CHAIR JOHN: Dr. Imamura?

1 ZC COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.
2 Ms. Jallah, thank you. I noted that you made the comment that
3 this is your first time coming before the BZA preparing your
4 case. So I just want to compliment you that you did a great job.

5 MS. JALLAH: Thank you, appreciate that.

6 ZC COMMISSIONER IMAMURA: I align myself with the
7 requests and comments made by Board Member Smith and Board Member
8 Blake, and hopefully Ms. Jallah, you can see and differentiate
9 your presentation from what the regulations state about the owner
10 of the property. That's what it was (audio blank). I can
11 certainly understand your reliance on previous use. I feel
12 personally that this is really a sort of the cart before the
13 horse sort of thing. You all have gone in, renovated the space
14 based off of your assumption that the use was permitted. I'm
15 curious, zoning regulations, there's a nuance to it, they're
16 complicated. I'd like to know, just from your experience with
17 this process, what you have learned and what you'll pass on to
18 other restaurateurs or business owners as they take on -- you
19 know, as lessees or take on properties to expand their business.
20 So I'm just kind of curious what your experience has been and
21 what you've learned from this process?

22 MS. JALLAH: A contractor once told me in looking at
23 properties before you decide to lease a property, before you put
24 any effort into a property, check the zoning. And I understand
25 now why that was said to me because that has been the biggest

1 hiccup for us, this zoning matter again. Construction concluded
2 in August. We had plans. We are a small business native to
3 D.C., and had all plans to open, all money in, ready to go, kind
4 of counting on that revenue. And this zoning issue has sort of
5 been the biggest hiccup for us. I've been waiting for this case
6 since August or September, and just understanding that process,
7 so I think for me, for future restauranteurs would just be do
8 your due diligence. Like we sort of went on the assumption of
9 the property owner, of the certificate of occupancy, of our lease
10 and not doing our due diligence in checking the zoning, the zoning
11 for that area and that property, to sort of do that due diligence.
12 An in trusting expediters. And an expediter will tell you hey,
13 we can do this. And we have permits on record from contractors,
14 electrical, plumbing that state fast-food establishment. And
15 they didn't know and they didn't check it. So it was sort of
16 until we went to Office of Zoning on our own and sort of got that
17 understanding of what the existing zoning was and what we needed
18 that we really understand it, so I think that would be my advice
19 to any future restauranteurs is just to do your due diligence on
20 your own, don't trust what someone says because people tell you
21 anything to try to sell you.

22 ZC COMMISSIONER IMAMURA: Really pleased to hear that,
23 Ms. Jallah, and want to thank you for your honesty and
24 forthrightness. You know, we want to help you get to yes, right?
25 But we need a few more things into the record to get there. And

1 I asked that question because, you know, small businesses can be
2 the economic engine of a neighborhood. And so they're really
3 important. Also, you know, your experience in this process, you
4 can be an advocate for the BZA and for your neighborhood and for
5 other restaurateurs as well. Say, yeah, do your due diligence.
6 Right? (Audio blank) through this process. Learn from my
7 experience, lessons learned, so to speak. So those are all the
8 questions that I have, Madam Vice Chair. As I said before, I
9 align myself with the requests and comments made by Board Member
10 Blake and Board Member Smith.

11 VICE CHAIR JOHN: Thank you, Commissioner.

12 So Ms. Jallah, the only question I have -- I support
13 the other questions and requests for additional information to
14 show the undue hardship from the point of view of the owner. And
15 so -- and it's the owner who would incur the expense of having
16 to build out the property. And so that's what your information
17 should focus on. I would also like to know the history of the
18 use of the property. It seems to me if it was built in in the
19 '60s or '50s and has been used continually as a fast-food
20 establishment, that would be relevant to my evaluation. You can
21 show that through, you know, different means. So to the best of
22 your ability, if you could do that?

23 Board Member Smith, your hand was up?

24 COMMISSIONER SMITH: Just to expand on what you're
25 stating to help demonstrate the history, if you're in regular

1 contact with the previous owners, if they can put their hands on
2 the business license history that they have for this site, this
3 will be helpful for you to show your -- to show the hardship. I
4 will also just up front and state if the business went out of
5 business in 2016, based on the zoning regulations and if it was
6 a nonconforming use even when they were operating it, as you say,
7 that it changed to an MU-3 zone as they were operating it, when
8 the business went out of business in 2016, there's a three-year
9 clock to get another use of that particular type that isn't
10 allowed within the zone within the space. So it looks like you're
11 right on that edge with it continuing as a nonconforming use.
12 And there may be a reason why there's been some difficulty with,
13 you know, getting the C of O through the Zoning Administrative
14 Office because you're right on that cusp of that three years. So
15 you know, getting this use variance would overcome that hurdle,
16 but we do need that additional information for us to make that
17 determination of whether you meet the criteria for a special
18 exception or a use variance. So just to, you know, put all the
19 -- put the dots together. So, you know, I fully support
20 everything that Chair John stated, if you can get the additional
21 information and we can, you know, proceed with the hearing
22 hopefully fairly soon with this case.

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

24 And I'll go to the Office of Planning.

25 MR. MOY: Madam Vice Chair?

1 VICE CHAIR JOHN: Yes?

2 MR. MOY: Just like to refresh your memory that the ANC
3 is present to testify, all right?

4 VICE CHAIR JOHN: Yes. Yes. I planned to go to the
5 ANC after Office of Planning, but thank you for reminding me. I
6 see Mr. -- Commissioner Green waiting patiently, and I have some
7 questions for Mr. Commissioner Green as well. Thank you.

8 Mr. Cochran, could you please --

9 MR. COCHRAN: Thank you, Madam Vice Chair and members
10 of the Board. I'm Steve Cochran for the record, representing OP
11 in Case 20877. And as you know from our report, the Office of
12 Planning does recommend approval for the requested variance. We
13 think the case would be made even stronger with the submission
14 of the information that various Board members have suggested
15 today. But that's what we are still and already in support of
16 it.

17 With respect to the exceptional attributes, it seems
18 like the Applicant had a reasonable expectation that the building
19 could be used as a fast-food establishment. You can see the
20 pictures of the building before the renovation. With that
21 existing equipment that included a grill, an exhaust grill,
22 various other things, it's all -- all of that equipment is from
23 the previous uses of the property. You look at it and it does
24 say fast-food establishment. And then you look at the signs for
25 Jumping Out the Pan, Cooking with D.C. Flair, it's rather -- and

1 I saw the menu for that establishment, it's rather difficult to
2 serve fried catfish without a grill and an exhaust fan, neither
3 of which are permitted for a prepared food establishment. All
4 you could do in a prepared food establishment is use a microwave
5 or a toaster, which would have been fairly difficult for the kind
6 of pre- -- uses that existed there before the Applicant signed
7 the lease.

8 There's also that 2009 certificate of occupancy that
9 indicated that the then existing use was as a fast-food
10 establishment. I believe on two out of three places on that 2009
11 C of O, it shows a fast-food establishment. However, it does, I
12 believe, show that it would be a prepared food establishment in
13 the future, which would have included that same restaurant
14 Jumping Out the Pan. I cannot explain how they were able to do
15 the kind of cooking they did with a microwave and a toaster oven;
16 I rather doubt that they did. But that was their C of O as of
17 2009.

18 They also -- the Applicant this time out had permits
19 that clearly indicated fast food. The one that they submitted
20 to the record was for the electrical permit. And then of course,
21 they have the lease which said that it was authorized to operate
22 as a deli. The Applicant was authorized by the owners to operate
23 as a deli. Unfortunately, a deli or a delicatessen is not a
24 defined term in the zoning regulations, so the Applicant didn't
25 have anything to go on there to disabuse themselves of the notion

1 that they could do a fast-food restaurant -- establishment,
2 rather.

3 With respect to the undue hardship, the Applicant has
4 submitted the information that indicates they've spent over
5 400,000 on the renovations. And it's pretty logical that if
6 denied, they would have the additional expense of removing the
7 hood, removing the grill, and various other things to make it
8 conform to a prepared food establishment. Otherwise, they'd have
9 to spend probably even more to -- they or the owner would have
10 to spend even more to convert it into a full restaurant, which
11 of course would require various additional parking and just yet
12 more expense where they've incurred considerable expense during
13 a period not just when they were under renovation, but when it
14 was difficult for anybody to get a business started because they
15 pretty much started at the beginning of COVID, and finished their
16 construction close to the end of COVID.

17 However, we acknowledge that OP was looking more at the
18 hardship to the Applicant than we were to the owner. And I
19 apologize for that. And but I'm confident that the Applicant
20 will be able to submit information to make up for what we did
21 somewhat overlook.

22 With respect to the zone plan and public good, there,
23 at least to me, seems to be no question about that. The operation
24 is not likely to have any kind of a detrimental effect or be at
25 all inconsistent with what constitutes a neighborhood commercial

1 area on Sheriff Road. DDOT is okay with their circulation plan,
2 which would be one way in from Sheriff, one way out, or actually
3 as you get to the alley, two -- an option of two ways out from
4 the alley. They -- the Applicant has established, how it would
5 address the needs of an area that does seem to be underserved by
6 fresh food options. There seems to be, as you'll undoubtedly
7 learn from the ANC, considerable support. The ANC's support was
8 contingent on submission of a letter of support from the Deanwood
9 Citizens Association, which has been submitted to the record.

10 And by the way, they won't be having a drive-thru,
11 unlike many other fast-food establishments. That means less
12 trash, smoother circulation patterns, et cetera. In short, it
13 seems like it would be a very worthwhile establishment for the
14 neighborhood, that the Applicant had a reasonable expectation
15 that the -- what they have spent money on building and equipping
16 was a use that they could do, and where their argument may not
17 be as strong as it should be, is that they established hardship
18 to themselves as opposed to the Parkers, the longtime owners of
19 the property.

20 Finally, I would note that DDOT did say something about
21 the landscaping in public space. The Applicant and DDOT will be
22 dealing with that because in the Applicant's desire to have some
23 recreation for the neighborhood and some beautification, they may
24 have strayed with some of their sodding into what is actually
25 owned by the city, DDOT, public space. But that will be addressed

1 later on with DDOT. So that concludes my testimony. I'm happy
2 to answer any questions that you have.

3 VICE CHAIR JOHN: Thank you, Mr. Cochran.

4 Before I go to the Board, I wanted to go back to Ms.
5 Jallah and ask a question which I forgot to ask you. In your
6 experience when you saw the building at first, was it in the
7 condition that could have been, you know, been operated at that
8 time with the existing equipment?

9 MS. JALLAH: Yes.

10 VICE CHAIR JOHN: Okay.

11 MS. JALLAH: Yeah. It was a full-service hood, a full-
12 service exhaust. Granted, the equipment was old, but all of it
13 was operational. They had a grill, they had a fryer, they had a
14 hood, and they had a working exhaust system, which you can see
15 from the photos of the exterior of the building.

16 VICE CHAIR JOHN: Right. So I'm getting to the
17 \$400,000. I guess why was it necessary to spend that much on
18 the upgrade? That's something I had difficulty with.

19 MS. JALLAH: And I'm checking that because that
20 includes all proposed construction. So a lot of it was equipment.
21 We changed out everything in kind just to meet the standard of
22 what we wanted to service and offer the community. So updating
23 the exhaust, updating the hood, and bringing in all new equipment,
24 and the exterior of the building. So we redid the entire exterior
25 of the building and interior. And --

1 VICE CHAIR: And so --

2 MS. JALLAH: Sorry, go ahead.

3 VICE CHAIR JOHN: Had you not spent that money, would
4 the owner have had to make similar upgrades in order to bring
5 this, you know, facility up to current standards? Because I
6 guess what I'm trying to get to is if the tenant didn't undergo
7 the expense of the upgrade, is that something the owner would
8 have had to do as well? In other words, instead of the owner
9 providing you, you know, a turnkey operation you elected or agreed
10 with the owner to do that buildout instead of having the owner
11 do it and charge you a higher rent. Was that something as part
12 of your calculation?

13 MS. JALLAH: To be honest -- and I know that's something
14 that happens -- that's not something we explored. So with the
15 owner and at the point that they had just sort of had the property
16 sitting and the lessee, Mr. White, being from the Deanwood
17 community, I think similar to our space in Congress Heights, the
18 owner just wanted to pass it on to someone in the community and
19 they did not explore the options of the owner paying for the
20 build-out versus us doing it. And a lot of those expenses were
21 -- had been incurred just because of the timeframe. So again,
22 we acquired the property in 2019. The following year, the
23 pandemic happened. So we've been paying rent and through that
24 time where we couldn't do construction, we couldn't do the build-
25 out. We had to continue paying rent for the property, which I

1 believe is included in that cost estimate. And then also because
2 of the timeframe of the building sitting, so we finished
3 construction and had plans to open in August before understanding
4 that we had to address the usage and zoning. And during that
5 time the building was broken into, so a lot of things that we
6 had previously done, like all of our exterior windows, we had to
7 get done again, improve security system to just stop -- all of
8 the original equipment that we purchased prior to 2020 was stolen
9 from the rear of the building from the, what do you call those,
10 sort of like mobile storage units that we had in the back of the
11 building. So we had to purchase the equipment all over again.
12 It's just been a lot of -- because of just the unique
13 circumstances in that timeframe of when we acquired the building
14 in the time that we had to wait, it's just been a lot of additional
15 cost that we've incurred.

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

17 So I'll go back to the Office of Planning and
18 Commissioner -- Board Member Blake, you have a question for --

19 COMMISSIONER BLAKE: Sure. Well, yeah, I've got a
20 couple of questions. So first I want to go back with this cost
21 issue again. I appreciate your comment, Vice Chair John, about
22 that element of the lease negotiation. That is an interesting
23 point. To that order I would appreciate having, and, Mr. Cochran,
24 you mentioned this in your report as well, and I have not been
25 able to locate the breakdown of this cost that's been incurred,

1 in the context that we did get that explanation it'd be very
2 helpful to have it, hard cost versus soft cost and that which is
3 attributable to the other factors as well because on the surface
4 to hear \$400,000 for in-kind repair is a little bit challenging.
5 But to -- when you kind of dissect it -- it is \$4,000 perhaps,
6 but to dissect it, say, really the cost of, you know, the
7 equipment was this, the impact of the theft was this, which may
8 have been insured. I mean, there are a lot of issues that would
9 be, you know, just to get it -- to be transparent about it would
10 be very helpful.

11 Mr. Cochran, in looking at this, you did cite that cost
12 structure as well. I didn't see that in the documents. If you
13 had that, we would be curious to see it. But in looking at this,
14 it would be very helpful as well if you were able to work with
15 the Applicant to kind of make sure that we cover the owner-based
16 perspective. As you pointed out in your analysis, it didn't
17 really approach it as much from the owner perspective. It would
18 be very helpful if your analysis did reflect that, if you would
19 be able to -- and not to push too far, but if you would be able
20 to provide the analysis based on the, you know, what we've talked
21 about today with the materials that the Applicant would provide,
22 it'd be extremely helpful to me. Would you -- would that be
23 possible?

24 MR. COCHRAN: I'd be happy to.

25 COMMISSIONER BLAKE: Great. That's my

1 question/comment. Thank you.

2 MS. JALLAH: And I have a last-minute request. And
3 again, apologies because you guys know this is my first time
4 here. And I must say, just in the presence of everyone, I have
5 to publicly thank Mr. Cochran because he really did help prepare
6 us in really being able to speak to the criteria for this case.
7 And I don't believe we would have been prepared nearly as what
8 we were today without his help. So I definitely would like to
9 give him his flowers in front of everybody. But then we've also
10 -- Mr. White has been able to pull up on Mr. Parker, Reginald
11 Parker, who is the property owner. So I'm not sure how it goes
12 for last-minute testimonies, but would like to see if we can
13 submit a testimony to have Mr. Parker speak, the owner of the
14 building, on his behalf during this hearing.

15 VICE CHAIR JOHN: Sure. Ms. Jallah, we'll just have
16 Mr. Moy swear him in. But I'd like to go to the Commissioner
17 who's been waiting patiently before that and finish the segment
18 with the Office of Planning. So --

19 MS. JALLAH: Thank you.

20 VICE CHAIR JOHN: Okay. So Mr. Cochran, I see you have
21 your hand up?

22 MR. COCHRAN: This is only for the record. Ms. Jallah
23 referred to the Office of Zoning several times. I believe that
24 she meant to be referring to DCRA, now the Department of
25 Buildings. That's where she got that information, not from the

1 Office of Zoning.

2 MS. JALLAH: Yeah, it's confusing because you have the
3 Board of Zoning and then you have OZA, which is under DOB. So
4 you are correct, I'm referring to zoning within the --

5 VICE CHAIR JOHN: DCRA, yes.

6 MR. COCHRAN: Just for the record, not to cast blame
7 on anyone.

8 MS. JALLAH: Thank you for that.

9 VICE CHAIR JOHN: Thank you.

10 Okay. Are there other questions for the Office of
11 Planning?

12 Okay. Commissioner Green, you have been waiting
13 patiently. So please go ahead and give your statement.

14 ANC COMMISSIONER GREEN: Thank you. I want to thank
15 you, Madam Chair, and the entire Board of Zoning for this
16 opportunity to testify today. My name is Anthony Lorenzo Green.
17 I am the Advisory Neighborhood Commissioner for Single Member
18 District 7C04 which includes this property. I've been serving
19 as the commissioner for 7C04 since 2017 and I'm a Deanwood native.
20 So I'm -- out of all the community leaders, I'm the one that's
21 been in the community the longest and recall when Mr. Reginald
22 Parker used to sell fried fish out of the facility before the
23 upgrades were made. And just to tag on the last point before I
24 even bring up the approvals by the ANC and the Deanwood Citizens
25 Association, the importance about the equipment being replaced

1 really had a lot to do with the community's feedback with Mr.
2 Parker when he was last open about just making sure that we're
3 working on improving the quality and taste of fish. When you're
4 frying fish you want to make sure you have good oil, make sure
5 you have great equipment that can give you good quality fish.
6 And we are a community that loves seafood. So this is really
7 trying to -- the community worked with Mr. Parker and get a good
8 tenant in that place to get some activity in that building. That
9 building was constructed in 1956. And the fact that the Parker
10 family is still invested in Deanwood all these years, down to the
11 children and great grandchildren, not just at this building, but
12 the barber shop right next door, the corner store, the block
13 over, suburban market. This is a family that is deeply invested
14 in our community, hires from our community, and wants to try to
15 fix our healthy food option problem that we've been having in our
16 community. I believe the last food option we had in Deanwood
17 was Sonny's CarryOut at the corner of Eastern Ave and Sheriff,
18 and that that wasn't something that anybody really wanted because
19 they weren't -- they didn't have the exact same menu as what
20 Deanwood Deli will be offering to us. But it was all that we
21 really had other than the Subway and the Wendy's and the
22 McDonald's. Tyrone White is from the Deanwood community. And
23 for disclosure, we both attended Merrit Elementary, which is now
24 on 60, police headquarters. Merrit Elementary, went from
25 kindergarten to 8th grade. And we have a lot of people who grew

1 up in Deanwood who call themselves Merrit Jaguars. And many
2 people are still connected with each other. That's why we're
3 very happy that Mr. White was able to not only expand his business
4 from where he at in Ward 8, but to come back home, come back home
5 and give back directly to the community because he was already
6 hiring from our community to work at his other locations, so he
7 now actually planting a flag and where -- on the place that
8 actually helped build you up.

9 Our commission has been very engaged in trying to make
10 sure that this is a successful project. We have long wanted and
11 fought for, and I'm sure members of this commission can attest
12 to that in previous hearings about different cases that we really,
13 really need more healthy food options in Deanwood. And the fact
14 that Mr. White is stepping up and the Parker family is stepping
15 up to make that happen is the reason why we want this Commission,
16 this Board and the Office of Planning to really work together to
17 make this happen. We shouldn't wait any longer. This is
18 something that many residents in the community have come to me
19 directly over several months, over the last year to ask me what's
20 going on, when is it going to get open. Many folks thought it
21 was going to open last fall. And I get pressed out -- I'm going
22 to use that language -- get pressed out a lot about a opening
23 date. People are very excited to see what can happen.

24 And the changes that have been made to the property
25 have definitely been very pleasing to the eyes. For many who

1 live here a very long time have been wondering like when is this
2 something going to be done because it's been sitting looking in
3 the same condition since it was constructed, you might as well
4 say. It's definitely something that we're very happy that Mr.
5 White -- yes, it's a lot of money invested to try to spruce up
6 this property and make it presentable and make sure that it has
7 the right equipment, that does not impact the quality and taste
8 of the food that he will be serving, but just the changes to how
9 that block looks and the fact that there's a school directly
10 across the street, that allow our schoolchildren to be able to
11 have a food option and the neighborhood, and a safe place, safe
12 passage location, in the neighborhood.

13 We're excited that it's not going to have a drive-thru
14 option because we do believe that would create some more traffic
15 issues in our community. We have been working directly with DDOT
16 to improve traffic safety on Sheriff Road. They've recently
17 completed a traffic safety improvement plan on Sheriff Road last
18 Fall that saw just a few parking spaces removed, but definitely
19 made some changes to try to slow down the traffic a little bit.
20 But that for us, that work is not complete. That is work that's
21 ongoing. And but we know that where this property is located,
22 where it's right at a traffic light, it's right at where we know
23 that many people, pedestrians, cross that road every day just to
24 get to the school or get to the corner stores or to get to a
25 church, because we have a church just about on every corner,

1 every block on Sheriff Road.

2 So that's the gist of what I wanted to highlight and
3 really thank my colleagues on the commission who gave a unanimous
4 vote wanting to give the opportunity for Deanwood Citizens
5 Association to weigh in because they do have new leadership, and
6 their president has been on a medical leave of absence. So we
7 definitely wanted to make sure that they were not cut out from
8 the process of giving comment to be included. And I'm very
9 thankful that they were able to meet with the Applicant directly
10 and go through the details of this project and issue their
11 support.

12 The Applicant did come to two public ANC meetings this
13 year, in January and February, to present on this project, to
14 take any feedback from the community. And let me tell you, the
15 community is very excited to see this move in. We've waited a
16 very long time. It doesn't mean that we're accepting any food
17 option. Let me tell you, people would tell you we don't want no
18 more burgers and all that. But when you're selling things like
19 club sandwiches, crabcakes, turkey sandwiches, and throw some
20 wings in th3ere, you know, these are things that we eat. And
21 making sure there are vegetarian options, vegetarian wraps on the
22 main, this is what we eat and this is what we prefer to eat,
23 other than the grease that has been poured into our community for
24 decades.

25 So I'm hoping that the issues that have came up here

1 in this hearing, just to give further clarification in regards
2 to the impact to the owner, I believe that that can be answered
3 in due time because the owner has really tried his best, Mr.
4 Reginald Parker has tried his best to get something done with
5 this property. He literally goes every day back and forth from
6 the barbershop to this property, it's right next door, just to
7 keep it up, clean up any trash, you know, anything that he feels
8 he needs to do. This is what he does every day. He does it
9 every day. And he's at that barbershop every day, including
10 Sundays and Mondays. So he is a community institution upon
11 himself. And the fact that he's still -- and this is a proud
12 man, you know, I ain't trying to, you know, put him all out there
13 like, you know, like need a lot of help or anything, like this
14 is a real very proud man who, you know, even his own shortcomings
15 with himself, he's still able to get up every day, every day, to
16 take care of that block and to ensure that people, our kids, our
17 seniors, are safe and get addressed and make sure that his
18 barbershop is a community space that anybody can come to, not
19 just for a haircut, but if you need someone to talk to, you need
20 some extra money to get something from the store, anything, that's
21 our culture. We are a self-reliant people, it's in our history,
22 and we take pride in that every day. So I'm hoping and I'm
23 prayful that BZA will be in support of this Applicant and get
24 this moving, this project moving, as soon as possible.

25 VICE CHAIR JOHN: Okay. Thank you, Commissioner.

1 Does the -- just a minute, Ms. Jallah -- does the Board
2 have any questions for Commissioner Green?

3 ANC COMMISSIONER GREEN: Look, y'all about to have me
4 crying up here. I'm sorry.

5 VICE CHAIR JOHN: It was very useful information and I
6 appreciate your taking the time to come down and to wait patiently
7 to give us the history of the building and the, I want to say
8 the, context in which this business will operate, because as a
9 Board we depend on community engagement to give us that
10 information. So it's very helpful.

11 So the Board has no additional questions.

12 So Ms. Jallah, do you have any questions for the -- oh,
13 just a minute please.

14 Board Member Blake?

15 COMMISSIONER BLAKE: Sorry, I had a couple of quick
16 questions. One was for Mr. Cochran if we're kind of -- I know
17 there's some other comments that have to be made, but I had one
18 question for Mr. Cochran if he's still available. In looking at
19 this, I just want to be clear that the as-constructed plans and
20 as-existing plans of this facility meet generally the development
21 standards for a fast-food establishment in the zone that is
22 consistent with, say, U, 511.1 generally, but just the
23 development standards for a fast-food restaurant otherwise. I
24 mean, I know the standalone facility and 30 percent of gross
25 area, those two, no, but generally speaking everything else is

1 consistent with that; is that right?

2 MR. COCHRAN: Just to be clear, do you mean the zoning
3 standards or the building standards?

4 COMMISSIONER BLAKE: Building standards. Building
5 standards.

6 MR. COCHRAN: Okay. I would have to see if Department
7 of Buildings could get an inspector over there. I'm not qualified
8 to evaluate whether they meet the building standards.

9 COMMISSIONER BLAKE: The zoning perspective though,
10 they're fine, correct?

11 MR. COCHRAN: Yes.

12 COMMISSIONER BLAKE: Okay. Thanks.

13 MR. COCHRAN: As far as I can tell, yes.

14 COMMISSIONER BLAKE: Thank you.

15 MR. COCHRAN: Would you like -- do you want me to
16 contact DOB or?

17 COMMISSIONER BLAKE: No, that would not necessarily be
18 within our purview, that's fine.

19 MR. COCHRAN: Great, thank you.

20 VICE CHAIR JOHN: You have another question, Board
21 Member Blake?

22 COMMISSIONER BLAKE: Oh, no, I'm fine, thank you. Thank
23 you, Ms. John, thank you though.

24 VICE CHAIR JOHN: Let's see, before I take public
25 testimony, Mr. White, can you hear me?

1 MR. WHITE: Yes, ma'am.

2 VICE CHAIR JOHN: Okay. You did sign up to testify
3 earlier, so there's no need for you to be sworn in again if you
4 would like to speak now.

5 MR. WHITE: Good morning, everyone. I have Mr. Parker,
6 the owner, right here.

7 VICE CHAIR JOHN: Yes.

8 MR. WHITE: I'm trying to operate the camera so I can
9 be visible, but I'm not sure.

10 MS. JALLAH: And I think, Madam Vice President, we
11 wanted to swear in Mr. Parker since Mr. White had already done a
12 swear in. And then really quickly, I forgot to address a comment
13 from Board Member Blake. That budget that you referenced with
14 the breakdown was submitted into record to Mr. Young this morning,
15 and I think he said it just had to get approval since it was
16 under 24 hours in the submission. We thought we had submitted
17 it earlier, but it was not added into record.

18 COMMISSIONER BLAKE: Thank you.

19 VICE CHAIR JOHN: Thank you.

20 MR. WHITE: Can you guys see me?

21 VICE CHAIR JOHN: Not yet. But if you like, you could
22 give your testimony without the video. And I can ask Mr. Moy to
23 swear in Mr. Parker.

24 MR. WHITE: Okay. Hello, you guys. My name is Tyrone
25 White. My address is 2622 Sheridan Road, S.E., Washington, D.C.

1 I am the owner of MLK Deli and Deanwood Deli. I grew up in
2 Washington, D.C., in the Deanwood area like Lorenzo said. Growing
3 up in the community where it was far from little options for
4 food, I just wanted to come back to my community and give a better
5 option and just show some leadership and change the narrative
6 over here in the community. When I when I first met Mr. Parker,
7 he discussed that it was already operating as a carryout, so my
8 thought -- I didn't know anything about the zoning, so I thought
9 since it was already operating as a carryout and they had grills
10 and fryers in there that it was zoned as a carryout. So this is
11 a big learning experience for me. But with the testimony and
12 the information we have, I just hope that we will be able to move
13 forward and try to get this issue resolved.

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

15 Does the Board have any questions for Mr. White?

16 MR. MOY: Madam Vice Chair, may I swear Mr. Parker in?

17 VICE CHAIR JOHN: Yes. Let me just ask if the ANC had
18 any questions for Mr. White.

19 MR. MOY: Of course. Of course. Of course. I'm sorry.

20 VICE CHAIR JOHN: Okay.

21 ANC COMMISSIONER GREEN: I don't have any questions for
22 Mr. White. Well, actually, I do. If this is approved by the
23 Board, which I'm hoping that it is, when do you think you're
24 going to be able to get the business open?

25 MR. WHITE: I would be able to open almost effectively

1 immediately, probably the first week of April.

2 VICE CHAIR JOHN: Okay. Thank you.

3 Does the Applicant have any questions for Mr. White?
4 Did I ask you before? No. But Mr. White is the applicant. Okay.

5 MR. WHITE: Am I displaying now?

6 MS. JALLAH: Yeah, we can see you.

7 VICE CHAIR JOHN: Mr. Parker, I'm going to have Mr. Moy
8 swear you in. Could you please state your name and address for
9 the record?

10 MR. PARKER: My name is Reginald Parker, and I also
11 live in the Deanwood area, which is about three blocks from the
12 carryout and the barbershop and the store. I live 4701 Meade
13 Street, N.E. Washington, D.C., zip code 20019.

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

15 Mr. Moy, would you please administer the oath?

16 MR. MOY: Yes. Thank you.

17 Mr. Parker, do you solemnly swear or affirm that the
18 testimony that you're about to present and what you have already
19 presented is the truth, the whole truth, and nothing but the
20 truth?

21 MR. PARKER: Yes, I do.

22 MR. MOY: Thank you, sir.

23 VICE CHAIR JOHN: Please go ahead and give your
24 testimony, Mr. Parker. I'll put 15 minutes on the board.

25 MR. PARKER: Hello, my name is Reginald Parker. I've

1 been working on Sheriff Road ever since the '60s, ever since out
2 of high school. My father opened up the store. Then he opened
3 up the carryout for my mother. She ran the carryout for over 20
4 something years, and then after she left the carryout and --
5 while she was in the carryout, she made macaroni cheese, fresh
6 greens, string beans, fried fish, we did, also did, chicken wings
7 and other parts of the chicken. And then after she retired
8 because of age, Jasparel (phonetic) took over. Jasparel business
9 had the same thing that my mother had. She did fried chicken,
10 fish, fried wings, macaroni cheese, fresh greens, potato salad,
11 and other things, pies, cakes. And then Jumping Out the Pan came
12 in, and Jumping Out the Pan, he did fish, he did -- he did fish
13 also, but he did more fish than we did because of the name Jumping
14 Out the Pan. He did fried fish, he did chicken, he did macaroni
15 cheese, he did fresh greens, ad potato salad, and the rest of
16 the menu. And it's always been a carryout that sold fish,
17 chicken, chicken wings and things like that.

18 VICE CHAIR JOHN: Thank. Thank you, Mr. White. So
19 after Jumping Out the Pan left, what efforts did you make to get
20 a new tenant?

21 MR. PARKER: Well, after Jumping out the pan left, I
22 tried -- my brother and I, we tried to run it, and we did run it
23 until my brother passed. And he passed in 2018. And I was trying
24 to run the barbershop and the carryout at the same time, I
25 couldn't do it. And so I was luckily I happened to look up and

1 find Mr. White. And he was a blessing to me because after I
2 talked to him and he said that he would like to run the business
3 to carry it on, we thought everything was all right. And he told
4 me that he had a menu of chicken, fish, fresh greens, potato
5 salad, macaroni and cheese, and things like that. And I was --
6 I thought I was in heaven when I found him, until he ran into
7 the problems he ran into.

8 VICE CHAIR JOHN: So Mr. Parker, so you stopped -- your
9 brother died in 2018, and then you took over for a little. How
10 long did you run the business after Mr. Parker died?

11 MR. PARKER: Until I met Mr. White. I didn't stop, but
12 I found out that I couldn't do both.

13 VICE CHAIR JOHN: Okay. So you stopped in 2019 or
14 2018?

15 MR. PARKER: It was right at the end of 2018 to '19.

16 VICE CHAIR JOHN: Okay. All right. That's all the
17 question I have.

18 Does any other Board member have another question?

19 COMMISSIONER BLAKE: I have a quick question for Mr.
20 Parker. Just that your father built this building back in, say,
21 1956, as Mr. White pointed out -- as Mr. Green pointed out,
22 Commissioner Green. And it operated pretty much in that capacity
23 from that point forward, that's correct?

24 MR. PARKER: My father, he didn't build the building,
25 he bought the building. He built the store, he didn't build the

1 -- that building was there, he bought -- he purchased it. He
2 had another business at uptown on New Jersey Avenue and he brought
3 that business out here because urban renewal took the building
4 that he had in New Jersey and I from him and he moved that
5 business out here.

6 COMMISSIONER BLAKE: Oh, okay. I see. Okay. And this
7 is in the late '50s, early '60s, correct?

8 MR. PARKER: Yes.

9 COMMISSIONER BLAKE: Okay. Thank you.

10 VICE CHAIR JOHN: Any other questions? Okay.

11 Thank you so much, Mr. Parker, for coming in. It was
12 very helpful to hear the history of the building.

13 MR. PARKER: Thanks for having me and thankful Mr.
14 White is going to continue our success over here.

15 VICE CHAIR JOHN: Okay. Thank you. I'm hungry just
16 listening to that menu. Thank you.

17 So I've forgotten where I am. I believe I go to
18 witnesses now. Did I forget anyone? No.

19 So Mr. Young, is there anyone signed up to testify?

20 MR. YOUNG: Yes, we have two witnesses signed up.

21 VICE CHAIR JOHN: Okay. Could you bring in the first
22 witness please? Ms. Muhammad, can you hear me?

23 MS. MUHAMMAD: Yes, I can, thank you.

24 VICE CHAIR JOHN: Okay. Please introduce yourself and
25 give your home address for the record. And you will have three

1 minutes to testify.

2 MS. MUHAMMAD: Certainly. Thank you, Madam Vice Chair.
3 My name is Sherice Muhammad. I'm a native Washingtonian, resident
4 of Deanwood and former ANC commissioner and chair of ANC 7D. My
5 residence is 4409 J Street, N.E., which is 240 meters from the
6 proposed location of 4505 Sheriff Road, N.W., which is a three-
7 minute walk and a one-minute bike ride.

8 I'm submitting testimony because I want to express
9 support for this Applicant. My family has resided here since
10 1986 and my relatives sold us the house and they resided here
11 since 1948. So in '86 we took over the house and we've been
12 there -- here ever since. I graduated from Ellington High School
13 and went off to college, lived in Chicago, and returned home to
14 Washington, D.C. in 2008. And since then I've been a resident
15 as I was when I was a high school student. It's already been
16 mentioned that the dearth of healthy foods has been for decades
17 in our community and the Deanwood community. I also want to note
18 the diligence and the performance of the Applicant to meet all
19 of these demands, zoning regulation demands, as part of the
20 community, active in the community. I also want to note that my
21 family has experienced similar issues with history and records
22 regarding D.C. government. I don't have to go far in citing the
23 fact that when it was time to level the land here at this
24 location, it took my mother three years because of the lack of
25 records on the part of D.C. government. We know firsthand what

1 we had to go through, so when I hear this Board ask for historic
2 information, if the family, the Parker family, doesn't have it,
3 I would certainly hope that the District government would have
4 some sort of record. But if it did not, I would not be surprised.
5 And I hope that this Applicant is not delayed any further. I
6 think it speaks to the issue that the Office of Planning, Mr.
7 Cochran, his recommendation from the agency is to approve and
8 proceed. I do see this Board adding barriers, and I have to say
9 that I'm dismayed with what I have heard thus far. To ask this
10 applicant to jump through additional fired hoops. I think he's
11 done an extraordinary job. And I want to applaud Ms. Jallah as
12 well to have pulled information together. I do understand the
13 diligence on the part of the Board; however, the historic piece
14 of this, I think, is another barrier, unnecessary barrier. I
15 would also like to note, as a former ANC commissioner, I do
16 understand this process, so I do understand that when it comes
17 to the facility and the reports of the agencies, both Office of
18 Planning, Public Space, DDOT, I think all have aligned perfectly
19 in terms of ensuring that the basics of the application of the
20 Applicant has been met. And I would like to see support for this
21 Applicant. Now, of course, in a perfect world, the request of
22 this Board would be able to be met, but unfortunately, I would
23 say that when it comes to records on the part of D.C. government,
24 that would probably be a challenge.

25 So in closing, I thank you for the opportunity to

1 testify as a community member and I am available to answer any
2 questions if any are posed. Thank you.

3 VICE CHAIR JOHN: Thank you, Ms. Muhammad.

4 Does the Board have any questions for the witness?

5 Board Member Blake?

6 COMMISSIONER BLAKE: I have just one question/comment
7 for the witness. I think it's important, and I certainly
8 appreciate the comments that you made, they ring home and true.
9 The one thing I'd say is it's our responsibility on the Board to
10 base our decision on the evidence that's presented in the record.
11 And we need substantial evidence to support our decision. And
12 a, you know, a use variance is the highest standard of relief
13 that we give. So it's not that we would -- we're not necessarily
14 relying on D.C. government's records, but we're relying on the
15 records of this case to base our decisions. So the things that
16 we've indicated would be supportive of that is what we're asking
17 for. I just want to make that clarification.

18 VICE CHAIR JOHN: Thank you, Board Member Blake.

19 Does any other Board member have a question? Okay.

20 Thank you for your testimony, Ms. Muhammad, I'll excuse
21 you at this time.

22 Mr. Young, do we have another witness? Is that Mr.
23 Breza?

24 Mr. Breza, please introduce yourself for the record and
25 give your name and address as well.

1 MR. BREZA: Absolutely, with pleasure, Madam Vice
2 Chair. My name is Andrew Breza, I live at 1027 46th Street,
3 N.E., that's about the same distance as Ms. Muhammad lives, two
4 blocks away. And you know, I just want to address a few points
5 that have been covered here. You know, Ms. Muhammad, Commissioner
6 Green have already spoken to the public benefit that's
7 represented. I just -- it's -- there have been a lot of promises
8 over the years of, you know, we'll get a restaurant and, you
9 know, there's a McDonald's and a Wendy's down the street. There's
10 you know, they -- if I cross the state line there's a Chinese
11 carryout, but to have something that's local and fresh and, you
12 know, within walking distance for, you know, even my toddler
13 would be just tremendous, you know. And you know, it's a big
14 deal for us who live in the community. It really is. And you
15 know, Commissioner Green said that people have been saying when's
16 it opening, when's it opening, and I am absolutely one of those
17 people, you know. And but I, you know, went to the old Jumping
18 Out the Pan, you know, restaurant, you know, it was nice to have
19 a place within walking distance. But it -- the renovations that
20 had been done are just astonishing. I can -- just from walking
21 by every day I can just see -- I see how it was not a cheap
22 project. And just speaking to -- you know, it's hard to imagine
23 that anybody else is coming to fill this space if this application
24 is rejected. But I'm just saying they're -- by being in Ward 7,
25 we're already at a disadvantage for business opportunity. For -

1 - and then to say that only a prepared food establishment could
2 operate in a place that already has a hood and this other
3 equipment would be just a tremendous blow. And I cannot imagine
4 that anybody else would come to replace MLK Deli.

5 To answer some of the particular questions, from my own
6 research, it looks like the building was constructed in 1956.
7 There was renovations I found records for in 1965. You know,
8 and I can tell you, you know, I bought food there, I was a
9 customer of the old establishment. But I really look forward to
10 the improvements that have been made and just what this would
11 mean for the community, you know, and I really hope that once
12 the additional records requests are fulfilled, I understand you
13 all have a process to go through, but I hope as soon as the Board
14 can move once those -- once the additional information provided,
15 that it will vote to approve this and finally open this
16 establishment that, you know, initially we were hoping to be open
17 about five or six months ago. Thank you, Madam Vice Chair, and
18 the committee.

19 VICE CHAIR JOHN: Thank you for your testimony, Mr.
20 Breza.

21 Does the Board have any questions for the witness?

22 Does the Applicant have any questions for the witness?

23 Mr. Young, are there any other witnesses signed up?

24 MR. YOUNG: No, that was it.

25 VICE CHAIR JOHN: Thank you.

1 Ms. Jallah, at this time you may offer closing
2 statements if you wish.

3 MS. JALLAH: Thank you. I just want to take a
4 opportunity again say thank you to the Board for your time in
5 hearing this and sharing your feedback. Thank you to all the
6 witnesses that signed up. Thank you to Mr. White for getting
7 Mr. Parker on the phone, because I feel like I learned some things
8 today that I did not know about the previous use of the space.
9 And just thank you for all of your feedback.

10 And then just into close -- I guess -- I don't know if
11 I should hear the Board first or how that goes, but I just sort
12 of wanted to recap the additional items that the Board wanted if
13 they still wanted it, because, you know, if the spirit moves you
14 to just go ahead and approve it based on the testimonies here,
15 I'm okay with that as well. But if not, I just wanted to clarify
16 the items that we needed to upload into record. Again, leaning
17 on the side that if the spirit moves you, we can just approve
18 and make it the (indiscernible) --

19 VICE CHAIR JOHN: So Ms. Jallah, just go ahead and
20 recap what you understand the Board wants you to provide.

21 MS. JALLAH: Okay. So to share the undue hardship from
22 the owner providing the expenses to build out the property, I
23 feel like Mr. Parker gave some history or gave a pretty good
24 history on the use of the property, but getting documentation to
25 support that and submitting that into the record as well. And

1 then try -- and I feel like Mr. Green mentioned having a menu,
2 that's not something I've seen, but trying to get a menu as well
3 to submit to record to show that the offerings of the previous
4 establishment are in line with a fast-food establishment.

5 VICE CHAIR JOHN: Okay. But I'm sorry, Mr. Green, I
6 can't hear you. Let me finish with the Board though, let me
7 finish with the Board.

8 Mr. Smith, is that it for you? Did you need anything
9 else or?

10 COMMISSIONER SMITH: Ms. Jallah, I think -- and maybe
11 I missed it, you were going to provide costs to show how much it
12 would cost to build it out for a restaurant.

13 MS. JALLAH: Yeah.

14 COMMISSIONER SMITH: Okay. And also that business
15 license history. And to Ms. Muhammad's point that's something
16 that's within D.C. records that's fairly easily obtainable by Ms.
17 Jallah, or if Mr. Parker has been on his own -- part of his own
18 record, that's something that's fairly easily obtainable to get
19 to supplement the record. So I think that would suffice for me.

20 VICE CHAIR JOHN: Board Member Blake, did you have a
21 additional information you needed?

22 COMMISSIONER BLAKE: No. No, I don't, Madam Vice Chair.
23 I think that the comments, the testimony, we received today is
24 helpful. The question is if that testimony meets the standard
25 for us to say there's substantial evidence supporting our

1 decision or if we need this additional information. Certainly
2 the additional information that we pointed out was the cost of
3 the build-out, we have testimony with regard to the use of the
4 property over the terms, the building -- obviously a license
5 would be helpful, even an old menu would be helpful, a picture
6 of them frying fish in the '60s would be helpful. But you know,
7 we could, you know, in some ways base it on the current testimony,
8 it would be a weaker record, but we could. I'm fine with the
9 information that's been requested at this point.

10 VICE CHAIR JOHN: Thank you, Board Member Blake.

11 Dr. Imamura, do you have anything you wish to see?

12 ZC COMMISSIONER IMAMURA: Thank you, Madam Vice Chair.
13 No, I think everything's been covered. I know Board Member Blake
14 did ask for a breakdown of the 400,000 that was submitted into
15 the record. And I agree with that. I think that's just a simple
16 exercise only because, Ms. Jallah, you had mentioned that it's
17 about 1,000 square feet (audio blank) build there. So one might
18 wonder if it's \$400,000, a 1,000 square foot, it's about \$400 a
19 square foot, but I know you had mentioned that also includes the
20 rent that you had been paying as well. So just the breakdown of
21 that. A photograph of frying fish, I wish there were smartphones
22 back then, that may be a tough thing to find, but I'm certainly
23 satisfied with what's been requested by, Madam Vice Chair.

24 VICE CHAIR JOHN: Thank you.

25 And I'm fine with the testimony from Mr. Parker and

1 Commissioner Green as to the history and the use of the building
2 as a fast-food establishment. And what I would like to see,
3 although I accept Mr. Parker's testimony, if he could narrow it
4 down a little bit more as to when he stopped operating the
5 business, if he can, which was the period after 2018 when his
6 father (sic) passed away. And the reason for that information
7 is that there's a -- the certificate of occupancy would continue
8 to be in effect unless it was abandoned. And there's a three-
9 year term limit when there is an assum- -- not an assumption,
10 which is proof of abandonment. So if the use is not continued
11 for a period of three years, then it's abandoned. And it seems
12 to me that the use might not have been abandoned if the -- if
13 Mr. Parker continued to operate the business up until about 2019.
14 It's, you know, it's just additional information. So that's what
15 I'm thinking right now. And so you're clear, Ms. Jallah, that
16 you would need a breakdown of the \$400,000, and there was one
17 other thing.

18 MS. JALLAH: Just to note, that has been submitted to
19 record, the breakdown of the previous costs, the costs to date.

20 VICE CHAIR JOHN: Right. And what it would cost you
21 to come into compliance --

22 MS. JALLAH: To come to a restaurant, yeah.

23 VICE CHAIR JOHN: -- with a restaurant use.

24 MS. JALLAH: And prepared food use.

25 VICE CHAIR JOHN: And the prepared food.

1 MS. JALLAH: So (indiscernible) those costs, yes.

2 COMMISSIONER BLAKE: Yeah, either one.

3 VICE CHAIR JOHN: Right.

4 MS. JALLAH: Either or both?

5 VICE CHAIR JOHN: I think both. I think both because
6 you have to show that there is no other compliant use either as
7 a matter of right or as a special exception. That's the standard.
8 And for those who are listening, the Board is not just trying to
9 put obstacles in your way. The record has to be complete. So
10 you have to be -- the owner, Mr. Parker, has to show that during
11 the three years or two years, I'm not quite sure when the use
12 ended, but during that time there was no other use that could be
13 made of the property that was authorized either by a special
14 exception or a matter of right. And that's all the Board is
15 asking you to do, and to build out -- for the record, the harm
16 to the owner, the undue hardship to the owner, which based on
17 the testimony so far and with assistance from the Office of
18 Planning, they can show you how to make that argument, I believe.
19 So with that, I have no other comments. I want to thank everybody
20 for their testimony. And sometimes you look at these cases on
21 paper and they look one way, and then you hear from -- hear the
22 testimony and, you know, you get more information. So I want to
23 thank everyone for the testimony and excuse the witness for today.

24 I'm going to close the record, Ms. Jallah.

25 MS. JALLAH: One more question, if you don't mind.

1 VICE CHAIR JOHN: Yes?

2 MS. JALLAH: We stated we need to provide the undue
3 hardship from the owner and the expense to build out the property,
4 but is it to my understanding, from what you just said, that Mr.
5 Parker's testimony satisfies the request for the history of use
6 or would you like us to still do the search to find those business
7 licenses?

8 VICE CHAIR JOHN: That was from my perspective only.
9 But to the extent you can, the more the merrier. If you can find
10 more information, that's fine. Typically, folks come in and they
11 have everything laid out.

12 MS. JALLAH: Okay.

13 VICE CHAIR JOHN: But in this case, you didn't have
14 that information. So whatever you can do to provide some history
15 of continuous use since 2009, when the certificate of occupancy
16 was issued, that would be helpful to the Board.

17 MS. JALLAH: Okay. Okay. And we're submitting those
18 to the same case in the same format we did? Okay. Perfect.

19 VICE CHAIR JOHN: Yes. Yes. Okay?

20 COMMISSIONER SMITH: Can I just --

21 VICE CHAIR JOHN: Yes, Mr. -- yes, Board Member Smith?

22 COMMISSIONER SMITH: Yeah, so the -- I think in the
23 record it showed that the C of O was issued in 2009, so I think
24 what Ms. John is stating that showing a record of the operation
25 of the business from the issuance of that certificate of

1 occupancy. It would be great for -- and I understand Mr. Parker
2 did provide some testimony, would be great to fill in those gaps
3 with some hard documentation, you know, into the record. And
4 just as a clarification, I know that you pulled the permits in
5 2019, what occurred for the past four years that have, you know,
6 slowed that process down, was it the pandemic or?

7 MS. JALLAH: COVID

8 COMMISSIONER SMITH: Okay.

9 MS. JALLAH: Yeah, COVID and funding occurred.

10 COMMISSIONER SMITH: Okay.

11 MS. JALLAH: Funding obstacles. So that's why we were
12 able to wrap in 2022 after receiving that food access fund grant.

13 COMMISSIONER SMITH: Yes, okay.

14 VICE CHAIR JOHN: So please put all of that in the
15 record.

16 COMMISSIONER SMITH: Yes.

17 VICE CHAIR JOHN: Okay?

18 COMMISSIONER SMITH: It can only help you, honestly.
19 We're not trying to be difficult, as Ms. John stated, we just
20 want to complete the record.

21 VICE CHAIR JOHN: Okay.

22 And with that, were you finished with your closing
23 statement, Ms. Jallah?

24 MS. JALLAH: Yeah. Well, just one more question,
25 because you guys know it like a process. Once we submit that

1 -- and I don't know if you guys would be the best person to go
2 or back to Mr. Reed and his team, how do we then -- because I'm
3 assuming we would have to then come back for an additional
4 hearing?

5 VICE CHAIR JOHN: I will ask the Board -- I was not
6 going to schedule another hearing. I was going to set that case
7 down for decision unless the Board wants to hear additional
8 testimony.

9 MS. JALLAH: No, yeah, let's go, my bad. I just wanted
10 to clarify.

11 COMMISSIONER SMITH: I don't think I need any
12 additional testimony. We get that additional information. We
13 just keep the record open to get, you know, that additional
14 information, I'm comfortable with it being a decision case.

15 VICE CHAIR JOHN: Okay.

16 Commissioner Blake -- Board Member Blake?

17 COMMISSIONER BLAKE: Yes, I agree. A decision meeting
18 would be in order assuming that information is submitted as
19 quickly as possible.

20 MS. JALLAH: Today.

21 VICE CHAIR JOHN: I would take some time to make sure
22 you have the information.

23 MS. JALLAH: Yes, ma'am.

24 VICE CHAIR JOHN: Commissioner Imamura?

25 MR. MOY: Thank you, Madam Vice Chair. It appears to

1 use the term Ms. Jallah used, the spirit has moved the Board for
2 a decision, so I'm certainly supportive of that and I think, Ms.
3 Jallah, essentially we're just looking for a timeline, it's that
4 simple. So just a little more homework, but the light at the
5 end of the tunnel (audio blank).

6 VICE CHAIR JOHN: Thank you.

7 Okay. So I'm going to excuse you and the witnesses and
8 thank you so much again, Commissioner, and close the hearing and
9 the record, except for the information that's to be submitted by
10 the Applicant. Thank you all.

11 Okay. So Mr. Moy, do we have a date for -- a decision
12 date?

13 Yes, Mr. Blake?

14 COMMISSIONER BLAKE: Madam Vice Chair, we also wanted
15 to potentially have some follow-up from the Office of Planning
16 to just, you know, in response to what the Applicant has --
17 they're going to work together so I was hoping to get something
18 from the Office of Planning as well.

19 VICE CHAIR JOHN: Thank you.

20 So this is information from the Applicant and a
21 supplemental report from the Office of Planning with respect to
22 their finding on the hardship to the Applicant. Okay.

23 Did someone speak?

24 COMMISSIONER BLAKE: The hardship to the owner, that's
25 what I --

1 VICE CHAIR JOHN: To the -- well, yes. Owner. Thank
2 you. Thank you.

3 Mr. Moy, do we have a date for a decision date?

4 MR. MOY: Yes, Madam Vice Chair, I'm going to suggest
5 one -- I'm going to suggest a timeline for you that might not be
6 popular. So I'll work backwards.

7 VICE CHAIR JOHN: Okay. You're saying a date for
8 decision making.

9 VICE CHAIR JOHN: Yeah.

10 MR. MOY: And my suggestion would be Wednesday, April
11 12th, and the responses from the Office of Planning and the ANC
12 if they -- or the Deanwoord if they wish to by April the 5th,
13 and the Applicant to make their substantial filing by Friday,
14 March the 31st.

15 VICE CHAIR JOHN: Okay.

16 MR. MOY: Which gives them almost three weeks or two
17 and a half weeks.

18 VICE CHAIR JOHN: Okay. All right. So the case will
19 be continued for decision on April 12th.

20 MR. MOY: Correct.

21 VICE CHAIR JOHN: Okay. Thank you. Is that all for
22 today, Mr. Moy?

23 MR. MOY: There's nothing from the staff for the Board,
24 so you take it from here.

25 VICE CHAIR JOHN: Thank you.

1 And so we will now close the hearing, and I will see
2 you all on next week. Thank you.

3 (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: 03-08-2023

Place: Teleconference

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

CHRIS HOFER