

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 22, 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  
ANTHONY HOOD, Zoning Commission Chairperson  
ROBERT MILLER, Zoning Commission Vice Chair  
JOSEPH IMAMURA, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

TRACEY ROSE, Senior Zoning Specialist (acting secretary)  
PAUL YOUNG, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

RYAN NICHOLAS, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on March 22, 2023.

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

2 (9:30 a.m.)

3 CHAIRPERSON HILL: Good morning, ladies and gentlemen,  
4 and Board of Zoning Adjustment. Today is March 22nd, 2023. This  
5 public hearing will please come to order. My name is Fred Hill.  
6 I am the chairperson of the District of Columbia Board of Zoning  
7 Adjustment. Joining me today are Vice Chair Lorna John, Board  
8 Members Carl Blake and Chrishaun Smith, Zoning Commissioners,  
9 Chairman Anthony Hood, Dr. Joseph Imamura, and Vice Chair Robert  
10 Miller for the day. Today's meeting and hearing agenda are  
11 available to the Office of Zoning's website. Please be advised  
12 that this proceeding is being recorded by a court reporter, and  
13 is also webcast live via Webex and YouTube Live. The video of  
14 the webcast will be available on the Office of Zoning's website  
15 after today's hearing. Accordingly, everyone who is listening  
16 on Webex or by telephone will be muted during the hearing. Also  
17 please be advised that we do not take any public testimony at  
18 our decision meeting session. If you're experiencing difficulty  
19 accessing Webex or with your telephone call-in, then please call  
20 our OZ hotline number at 202-727-5471 to receive Webex log-in or  
21 call-in instructions.

22 At the conclusion of a decision meeting session, I  
23 shall, in consultation with the Office of Zoning, determine  
24 whether a full or summary order may be issued. A full order is  
25 required when the decision it contains is adverse to a party,

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

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

23                   By signing up to testify, all participants completed  
24 the oath or affirmation as required by Subtitle Y 408.7. Requests  
25 to enter evidence at the time of an online virtual hearing, such

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

10                   The order of procedures for special exceptions and  
11 variances are pursuant to Y 409. At the conclusion of each case,  
12 an individual who was unable to testify because of technical  
13 issues may file a request for leave to file a written version of  
14 the planned testimony to the record within 24 hours following the  
15 conclusion of public testimony in the hearing. If additional  
16 written testimony is accepted, then parties will be allowed a  
17 reasonable time to respond as determined by the Board. The Board  
18 will then make its decision at its next meeting session, but no  
19 earlier than 48 hours after the hearing. Moreover, the Board may  
20 request additional information specific to complete the record.  
21 The Board and the staff will specify at the end of the hearing  
22 exactly what is expected and the date when persons must submit  
23 the evidence to the Office of Zoning. No other information shall  
24 be accepted by the Board.

25                   Finally, the District of Columbia Administrative

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

10                   Ms. Rose, do we have any preliminary matters?

11                   MS. ROSE: Yes. Good morning, Mr. Chairman, members  
12 of the Board. First, (audio glitch) Application No. 208 (audio  
13 glitch) has been withdrawn. Application No. 17702B of District-  
14 Properties.com was administratively rescheduled to May 10th,  
15 2023. Other preliminary matters can be addressed when we call  
16 the cases.

17                   CHAIRPERSON HILL: Okay. Thanks. Ms. Rose, if you  
18 could just call our first decision meeting case?

19                   MS. ROSE: Yes, that is Application No. 20867 of  
20 Stephanie Ajello, as amended, a self-certified application  
21 pursuant to Subtitle X, Section 1002 for a use variance from the  
22 nonconforming use requirements of Subtitle C, Section 204.1, area  
23 variances from the lot occupancy requirements of Subtitle D,  
24 Section 1204.1, and from the rear yard requirements of Subtitle  
25 D, Section 1206.2 to construct a third-story addition with roof

1 deck to an existing two-story building two-unit flat and  
2 nonconforming use in the R-20 zone at 1934 35th Place, N.W.,  
3 Square 1296E, Lot 312.

4 CHAIRPERSON HILL: Okay, thanks.

5 All right. I don't know -- I appreciate -- good  
6 morning, everybody. I appreciate Chairman Hood coming back for  
7 this this morning. There are new items in the record that we  
8 had asked the Applicant for and there's a supplemental submission  
9 from the attorneys for the Applicant that -- I guess for the  
10 clarify the argument that was made during the hearing last week.  
11 I don't know where anybody else is and/or if they have changed  
12 their mind. I would be -- I think that we all are -- you know,  
13 we always want to do as we can for what the applicants before us  
14 submit. You know, unfortunately, what we end up having to do, I  
15 shouldn't say unfortunately, is we're supposed to look at the  
16 regulations and determine as a Board whether or not these things  
17 are permitted and can be permitted given the standards and  
18 criteria that we have before us. The use variance is the highest  
19 bar that we have in terms of things that we need to look at in  
20 terms of the three prongs to see whether or not an applicant has  
21 made the case for us to grant the use variance, which seems to  
22 be again, the sticking point with discussion with the Board. I  
23 have reviewed the submissions. And I don't mean to waffle and  
24 put this back on everybody else, but I'm going to somewhat do  
25 this. You know, I'd be able to take -- if anyone has changed

1       their opinion, I would be willing to take a look at this again  
2       this week even harder and see what I could do in terms of my  
3       opinion. It hasn't changed. However, I -- I shouldn't say it  
4       hasn't changed. I was listening to my fellow Board members last  
5       week and I was also swayed in that direction that they didn't  
6       necessarily meet the criteria for the use variance -- I'm sorry,  
7       yeah, for the use variance. However, I would take another week  
8       if my fellow Board members think they would be swayed to continue  
9       to take a look at this and see if anyone had any different changes  
10      in their opinion or if I would be able to make a better argument  
11      for my understanding of approving this application. Now, again,  
12      I do not mean to stick this on my fellow Board members because  
13      it's often that we don't have -- well, a three-two vote is very  
14      -- isn't regular for us. And so -- and regular being the wrong  
15      word, but anyway. So I appreciate my fellow Board members'  
16      opinions and I don't know who would like to go next, as I have  
17      just basically said I'm still on the fence I guess. And so does  
18      anybody want to be the first person to speak up?

19                   Chairman Hood?

20                   ZC CHAIRPERSON HOOD: Again, thank you. Good morning,  
21      everybody. Thank you, Mr. Chairman. I will say that I re-  
22      listened to what the Board members said yesterday. And so the  
23      vote would not be three-two. I'm not sure where you are, it'd  
24      be four to one. I'm going to join them because I'm -- by me not  
25      being here every week, sometimes -- and I thought about it --

1 this is not -- this use variance issue has always been a big  
2 issue and I think that the Board is exactly right. And the  
3 submissions that I've gotten that have come in recently that  
4 we've gotten, I think for me has muddied the waters. So I'm  
5 going to align myself with the Board members who could not see a  
6 way -- fit to approve the use variance. So that's where I am.  
7 Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Thank you, Chairman Hood. And I  
9 thank you for stepping up.

10 Mr. Smith?

11 COMMISSIONER SMITH: So my opinion hasn't changed in  
12 light of the additional information within the record. You know,  
13 given the testimony that we received last week, you know, I can  
14 reiterate what I said last week. And again, looking at the first  
15 and second and third prongs of the use variance test, because I  
16 think that's the one that we need to, you know, evaluate first,  
17 because if we don't find that it meets the use variance criteria,  
18 then the area variance request can't go forward. So you know,  
19 putting the chicken before the egg in a sense. So with the first  
20 prong, I agree that the Applicant may have met the first prong  
21 that the property is located on a small lot, smaller than other  
22 lots located within the square, which may create an exceptional  
23 situation for an expansion of any dwelling unit on a lot of that  
24 size. Regarding the second prong, as was the strict application  
25 of the zoning regulation would result in exceptional and undue

1 hardship upon the owner of the property, my opinion hasn't  
2 changed. I do not believe that the Applicant's met the burden  
3 of proof for this particular prong. The zoning regulations allow  
4 for the continued operation of the building as a flat, which may  
5 be renovated internally in a manner that could yield additional  
6 usable square footage I believe. The Applicant still has the  
7 option to turn one into an IZ unit whereby all they would need  
8 is a special exception or could choose to live in one of the  
9 units permanently and thereby request a special exception from  
10 some of the -- to expand both of the units, one as an ADU. So  
11 there are options within the zoning ordinance now whereby the  
12 Applicant can keep a two-unit dwelling -- two-unit building in a  
13 manner that, you know, would probably be more restrictive than  
14 the Applicant would like from a financial standpoint. But there  
15 are options within the zoning ordinance that she can pursue. The  
16 third prong, the relief would not result in detriment to the  
17 public good and would not substantially impair the intent,  
18 purpose, and integrity of the zone plan. Again, the public good  
19 is for nonconformity to gradually go away, not to be expand. The  
20 Applicant is looking for -- and to me the request before us would  
21 in essence make a nonconforming use a viable use in perpetuity,  
22 which is contrary to the zone plan. So again, the Applicant has  
23 other options within the zoning regulations to make this a  
24 conforming use via special exception. And you know, I'll just  
25 note, just based on the information that was provided in the

1 record by the Applicant from their counsel, to me it seemed the  
2 counsel seemed to conflate because the use may require a special  
3 exception that it, you know, it's nonconforming. The use  
4 discussed by the Board at last week's hearing would be a  
5 conforming use per the zone. There are two different types of  
6 conforming uses actually, those can be done as a matter of right  
7 and those that can be a conforming use with a special exception.  
8 And the Applicant has two options to have a conforming use via  
9 special exception. What the Applicant is seeking to pursue is a  
10 use variance to grant the allowance of a use that without the  
11 variance would not be conforming otherwise to the zone plan.  
12 There are multiple quotes of previous Board actions that may be  
13 similar, but again I will state, as counsel knows, we have  
14 repeatedly said multiple times in previous hearings that  
15 variances are standalone cases with their own merits for us to  
16 evaluate and we are not held to a "precedent" based on the action  
17 of a previously decided variance. And I just want to put that  
18 out there because this seems to be a common refrain from this  
19 particular counsel that likes to bring up previous cases. But  
20 again, my opinion hasn't changed. I do not believe they've met  
21 the second and third prong. And there are options before the  
22 Applicant that they can take with a special exception. And, you  
23 know, I would recommend, highly advise, that the Applicant  
24 probably pursue that route. And they have counsel and counsel  
25 can advise them on whether within the zoning ordinance a special

1 exception of this particular nature, in their opinion, may meet  
2 the standards for us to grant special exception. The decision  
3 is ultimately ours, but my recommendation is to pursue those  
4 routes. And that's all I have to say.

5 CHAIRPERSON HILL: All right. Thanks, Mr. Smith, and  
6 thank you so much for your clarity.

7 Mr. Blake? I mean, I see where this is, but I -- so  
8 Mr. Blake?

9 COMMISSIONER BLAKE: Yeah, I want to just -- I agree  
10 with the comments made by Board Member Smith and I want to add a  
11 couple of small points. And I -- first I'd point out that the  
12 Applicant in its recent filing indicated that we were looking at  
13 the ADU or felt that the variance relief was not necessarily  
14 warranted because we had seen an option for the ADU. But we  
15 learned in subsequent filings that the ADU is just not consistent  
16 with the Applicant's personal goals, objectives, or interest,  
17 which is not a criteria that we can actually base that on. In  
18 looking at the variance, I agree with Board Member Smith that the  
19 issue for me was the hardship issue. I don't believe the  
20 Applicant has demonstrated that the project is unremarkable or  
21 unfeasible without the variance. I don't believe that the  
22 Applicant has provided sufficient evidence to support the  
23 argument of a financial hardship. Has the Applicant proven that  
24 the principal and accessory unit is less valuable? Has the  
25 Applicant proven that the bank will not finance it, even though

1 that would be a personal decision, which would be the direct  
2 result of the owner's actions and not necessarily something tied  
3 to the land, so again, I can't use that -- the mortgage issue as  
4 a criteria. But also the inability to put the property to a more  
5 profitable use or loss of economic advantage is not sufficient  
6 to constitute a hardship. And so therefore, again, the personal  
7 issues and personal situation objectives are what I see at issue  
8 here. And for those reasons, and again agreeing primarily with  
9 what Board Member Smith said, I would not be in support of the  
10 application for a use variance.

11 CHAIRPERSON HILL: Thank you, Mr. Blake.

12 Vice Chair John?

13 VICE CHAIR JOHN: Thank you, Mr. Chairman. So my  
14 opinion has not changed either. And I did not find the  
15 information that was submitted persuasive. Essentially, the  
16 Applicant is seeking variance to achieve a more profitable use.  
17 So I agree with my Board members in that respect, and I continue  
18 to reiterate that a special exception is available and should the  
19 Applicant wish to pursue that route for the same size building,  
20 and I would also be inclined to look at the area of variance for  
21 the stairs and the lot occupancy because that is -- the area  
22 variance is not as high a burden as the use variance, and it only  
23 requires a showing of practical difficulty. So because I believe  
24 there's an exceptional condition and I think that the Applicant  
25 could possibly make a showing of exceptional difficulty, although

1 not undue hardship, I don't see any undue hardship there, and I  
2 think because the lot occupancy relief is not significantly  
3 greater, you know, it would not be quite the reach for me to get  
4 there. But I -- we've been working with this Applicant now for  
5 two hearings and we've given numerous opportunities to make a  
6 suggestion, a suggested suggestion for a design that would be  
7 consistent with the regulations. So I don't know what you would  
8 like to do, Mr. Chairman. We could, if the Board were so inclined  
9 to approve the area variance so the Applicant could pursue the  
10 accessible dwelling unit on the first floor and could end up with  
11 the same size building, I believe, if we were to go that route.  
12 But it's up to the Applicant. We can decide today, give them an  
13 opportunity to amend the application or I don't know what you'd  
14 like to do, Mr. Chairman, or what the Board would like to do.

15 CHAIRPERSON HILL: Yeah, I don't -- I mean, is the  
16 Board interested in arguing about the area variance or the rear  
17 yard requirements? Okay. All right. I got a no from my shaking  
18 of the heads. Okay. Then, Ms. John, I guess -- so the Board is  
19 inclined to go ahead and vote with it the way we are, correct.

20 COMMISSIONER SMITH: Correct. Well, I'll speak to  
21 myself.

22 CHAIRPERSON HILL: That's all right. I got a Mr. Smith  
23 yes. And I don't hear anyone else objecting to that suggestion.

24 ZC CHAIRPERSON HOOD: Mr. Chairman, I guess I'm just  
25 unclear. I think we, as the Vice Chair has mentioned, we have

1 sent -- there have been messages sent. And if they were inclined  
2 to move things to a special exception, as I think they should,  
3 and I agree with what my colleagues have said about that, they  
4 would have done it, or do we give them another opportunity? I'm  
5 just -- I think the strong messages were clear, but if they come  
6 back -- if we were to put this off until next week, and they --  
7 not that I want to come back next week, but if you were to put  
8 this off to next week and they come back with the same thing,  
9 they're sending us a clear signal. I just don't see the clear  
10 signal. They've heard what they heard today. I know what they  
11 heard last week, so I'm just unclear, do we do we turn them down  
12 totally or do we give them an opportunity to amend it? I'm just  
13 curious.

14 CHAIRPERSON HILL: I got you, Chairman Hood. Mr. Blake  
15 has -- Chairman Hood, I'm happy to put this off for a couple  
16 weeks. It's not going to -- I'm not here next week. And so you  
17 know.

18 But Mr. Blake has his hand up?

19 COMMISSIONER BLAKE: Yeah, I was going to say that the  
20 Applicant indicated in the subs- -- in the supplemental filings  
21 that one of the reasons for the concern was with the bank  
22 agreement. And as I pointed out, the issue was they were not  
23 comfortable doing that because they had some uncertainty. With  
24 regard to the variance, I think -- the use variance -- I'm totally  
25 comfortable where I am and I would vote not in favor of that.

1 And there is some exploration that could take place with regard  
2 to the others if the Applicant chose to do so. The Applicant  
3 does not have the benefit of the information from the bank  
4 definitively stating whether they would or would not be  
5 comfortable and the impact it would have on the value. So those  
6 two issues cleared up may clear up in the Applicant's mind other  
7 than the personal objective of not having -- living in the  
8 building, that might actually make it more comfortable for them.  
9 So there is an opportunity for the Applicant to clarify some of  
10 these issues which may clarify whether they wish to go the other  
11 route or not. However, on the current application as written, I  
12 would vote currently no just to be clear.

13 CHAIRPERSON HILL: Okay. Well, I don't have a strong  
14 opinion -- I shouldn't say. I don't mind putting this off for a  
15 couple weeks and see what happens. And it seems like Chairman  
16 Hood doesn't mind coming back, which is nice for the Applicant,  
17 and we'll just give one more opportunity I suppose. That would  
18 be April 5th, Chairman Hood, if you can join us in the morning  
19 first thing. All right.

20 ZC CHAIRPERSON HOOD: April 5th, yes.

21 CHAIRPERSON HILL: Okay.

22 VICE CHAIR JOHN: Mr. Chairman, could we clarify why  
23 we are putting this off? We're putting this off to give them an  
24 opportunity to come back with a special exception, is that what  
25 we're doing?

1                   CHAIRPERSON HILL: I don't think we're -- I don't think  
2 we're advising anything. I guess what I think we're doing is  
3 -- and I don't want to get too deep in the weeds as to what, you  
4 know, we're deliberating about. Like we have this application  
5 before us, it does not seem as though the Board is able to get  
6 past the use variance, which really is, you know, the threshold  
7 issue to even get to the area variance of the rear yard  
8 requirements. It sounds as though if the Applicant were to come  
9 back, you know, take some cues from the Board and come back in a  
10 different manner, then we're just giving them an opportunity over  
11 the next couple weeks to do so. I don't want to get into, again,  
12 a discussion about what they may or may not do.

13                   Mr. Smith?

14                   COMMISSIONER SMITH: Chairman Hill, you know, I'm kind  
15 of of the same mind as Board Member John and Board Member Hood.  
16 I think the record is fairly clear where they stand on where they  
17 want to proceed. And it seems that -- I wanted to be careful  
18 with, from a legal standpoint, continuing this to a point on --  
19 or 'til April 5th hoping that something changes because legally  
20 what we're entitled -- what we're supposed to do is act on the  
21 application as presented. So I'm -- and we've continued it once.  
22 And you know, they heard the dialog last week and it seems to me  
23 that based on what was presented in the record, that the intention  
24 is for us to act on what was presented. So my recommendation is  
25 to act on what is presented and if the Applicant wants in the

1 future to come back with a special exception, they can do that.  
2 They don't have to wait a year. Yes, they may have to wait longer  
3 than April 5th, but honestly it does a disservice to other people  
4 that may be scheduled on April 5th to continue this, out of a  
5 sense of fairness. So I would recommend that we act on what is  
6 presented today. And if they do want to pursue a special  
7 exception, they have that opportunity.

8 CHAIRPERSON HILL: Yeah. Well, I guess, Mr. Smith --  
9 and I do appreciate your clarification. I wish we were all  
10 together in person, it'd be so much easier to see people. But I  
11 still could -- and I'm being very clear, like I could take more  
12 time just to look at the filings. Right? And I was already kind  
13 of waffling a little bit as to what I thought. So you know, I'm  
14 not -- again, I'm not suggesting they change anything or do  
15 anything differently, I was just going to take more time to look  
16 at the filings. But let's see, if I took more time to look at  
17 the filings --

18 VICE CHAIR JOHN: Mr. Chairman, could I hear from --

19 CHAIRPERSON HILL: Yeah.

20 VICE CHAIR JOHN: Could I hear from Commissioner Hood?

21 CHAIRPERSON HILL: Sorry, I didn't see anybody's hand  
22 up.

23 Commissioner Hood?

24 ZC CHAIRPERSON HOOD: I didn't have my hand up.

25 VICE CHAIR JOHN: Oh, I'm sorry, I thought --

1                   ZC CHAIPERSON HOOD: Oh, I thought you wanted to hear  
2 from me.

3                   VICE CHAIR JOHN: I just wanted to hear from you. Yes.

4                   ZC CHAIPERSON HOOD: Okay. I appreciate that, Ms.  
5 John. Nobody never has asked me that. I want you to know you're  
6 the first person that ever wanted to hear from me. So I will  
7 say -- I was sitting here thinking when I heard Board Member  
8 Smith, and again at a disadvantage, I know, and I agree what I  
9 hear Board Member Smith saying, because it's -- if we deny it  
10 outright, then we put this Applicant -- I don't know whether it's  
11 a year or year and a half, that's always fluid for me. But I  
12 was trying to give them an opportunity to be able to -- they've  
13 heard the discussion, opportunity to correct things -- and I know  
14 we've done that in other cases. My issue is I don't know how  
15 often the BZA does it. I know on the Commission, I've done it  
16 maybe -- after the second time, that's it. But I just -- I think  
17 that we give them -- or if somebody can just ask them now, you  
18 know, y'all want us to deal with it now 'cause we will. But I  
19 also hear you, Mr. Chairman. You asked for additional time to  
20 be able to satisfy your mind set, I believe, to make a decision.  
21 And I think we owe you that as well. So you know, I can go either  
22 way.

23                  CHAIPERSON HILL: Okay. All right. Thanks, Chairman  
24 Hood. And I appreciate Mr. Smith. If y'all -- I mean, if y'all  
25 don't mind, I'm going to take a little bit more time to look at

1 the filings. Okay? So I'm not asking the Applicant -- I want  
2 to be very clear for the record, I'm not advising the Applicant  
3 to do anything. Right? I'm just saying I'm going to take a  
4 little bit more time to look at the record. I will keep the  
5 record open until the 31st of March for any filings the Applicant  
6 may want to put forward. And then we will come back on the 5th  
7 for a decision.

8 Ms. Rose, do you got that? I mean, did you hear me?  
9 Sorry, Ms. Rose.

10 MS. ROSE: Yes, I do have it. Thank you.

11 CHAIRPERSON HILL: Okay.

12 VICE CHAIR JOHN: Mr. Chairman, I think we're muddying  
13 the waters. I'm not requesting any information on economic  
14 hardship because clearly from the records, the Applicant is  
15 trying to obtain a more profitable solution. So in my view, if  
16 the Applicant wants to submit another design between now and then  
17 or withdraw the application or something, that's what I'm looking  
18 for because, I mean, I've read this record twice. I've read the  
19 -- I've read the landlord -- the first -- the deed of trust and  
20 the rider. I don't need any more real estate experience at this  
21 time, so. And it's outside of our purview. So I don't know --  
22 I don't know what the Applicant is going to be able to show to  
23 change what's already in the record, except to come up with a  
24 solution that the Board can get behind. And I think my only  
25 interest in not deciding today is see if the Applicant wants to

1 take advantage of the opportunity to come in with a design that  
2 is consistent with the regulations.

3 CHAIRPERSON HILL: Right. And all I was -- and Ms.  
4 John, I appreciate that, and all I was clarifying for me was that  
5 we're not necessarily giving the Applicant any advice per se.  
6 Right?

7 VICE CHAIR JOHN: Okay. Okay.

8 CHAIRPERSON HILL: And so that's what I'm saying. I'm  
9 just -- whoever knows what's going to happen on the 31st. Right?  
10 I think the Applicant's watching. I'm sure they're very smart  
11 people and they understand what has been the discussion thus far.  
12 And so I'm just going to keep the record open until the 31st to  
13 see if the Applicant has anything that they would like to submit  
14 additionally. I myself am just going to look at what was  
15 submitted to see what my thoughts are about the application that  
16 is before us now.

17 So Ms. Rose, so did you hear that, Ms. Rose?

18 MS. ROSE: Yes.

19 CHAIRPERSON HILL: Okay. I'm the one pulling this back  
20 because I want to take a look at what was in there. Okay? I'm  
21 not asking for new stuff. Whatever happens on the 31st, that's  
22 up to them. But I'm leaving it open and we'll come back for a  
23 vote on April 5th. Okay, Chairman Hood?

24 ZC CHAIRPERSON HOOD: That's great. And again, thank  
25 you, Board Member John, for wanting to hear from me. You all

1 have a great day.

2 CHAIRPERSON HILL: All right, Chairman, Hood, thank  
3 you.

4 COMMISSIONER SMITH: Have a good one.

5 CHAIRPERSON HILL: Bye-bye.

6 All right. Ms. Rose, we're going to do that for the  
7 5th, a decision. And then -- all right. So we do have a  
8 preliminary matter before us I think, Ms. Rose, if we can go  
9 ahead and handle that, if you could call the case in the  
10 preliminary matter.

11 MS. ROSE: Yes, the preliminary matter is a request for  
12 party status in opposition from Harry and Alma Gates in  
13 Application No. 20843 of Christian Genetski and Anabel Genetski.  
14 This is a self-certified application pursuant to Subtitle X,  
15 Section 901.2 for special exceptions under Subtitle D, Section  
16 5201 from the lot occupancy requirements of Subtitle D, Section  
17 304.1 and the location restriction of Subtitle D, Section  
18 5004.1(a) where an accessory building may not be located within  
19 a required rear yard, to construct a pavilion within the rear  
20 yard of an existing detached principal dwelling unit, three-story  
21 will cellar, in the R-1B zone at premises 2234 49th Street, N.W.,  
22 Square 1399, Lot 33. And we have a statement from Harry and Alma  
23 Gates at Exhibit 30.

24 CHAIRPERSON HILL: Okay. Mr. Young, can you bring in  
25 the parties?

1                   Mr. Sullivan, if you could hear me, if you could  
2 introduce yourself for the record?

3                   MR. SULLIVAN: Yes, thank you, Mr. Chair. Marty  
4 Sullivan with Sullivan & Barros on behalf of the Applicant.

5                   CHAIRPERSON HILL: Great. Thanks, Mr. Sullivan.

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

8                   MS. GATES: Yes, I can hear you.

9                   CHAIRPERSON HILL: Could you introduce yourself for the  
10 record, Ms. Gates?

11                  MS. GATES: Pardon?

12                  CHAIRPERSON HILL: Could you introduce yourself for the  
13 record?

14                  MS. GATES: I have a real echo here. Should I go out  
15 and come back in?

16                  CHAIRPERSON HILL: Okay. Why don't you turn off your  
17 -- can you turn off your -- maybe -- let me think. I don't know  
18 if you have another phone on. Do you have another phone on?

19                  MS. GATES: Let me see -- that -- can you

20                  CHAIRPERSON HILL: That's okay. Ms. Gates, can you  
21 hear me?

22                  MS. GATES: Yes.

23                  CHAIRPERSON HILL: Can you introduce yourself?

24                  MS. GATES: Yes.

25                  CHAIRPERSON HILL: I just need you --

1 MS. GATES: I -- pardon?

2 CHAIRPERSON HILL: Please introduce yourself.

3 MS. GATES: Glad to. Good morning, Chairman Hill and  
4 members of the Board. I'm Alma Gates, a 50-plus-year resident  
5 of 4911 Ashby Street, the property which abuts the Applicant's  
6 property to the west for its entire width along the rear lot  
7 line. With me is Harry Gates.

8 CHAIRPERSON HILL: Okay. Thanks, Ms. Gates. You can  
9 put yourself on mute now.

10 MS. GATES: Okay.

11 CHAIRPERSON HILL: And then what's going to happen is  
12 the Board's going to deliberate on your party status, and then  
13 I'm going to tell you how this is possibly going to go if you  
14 are to get party status.

15 Mr. Sullivan, I saw that you were in objection to this.  
16 Is that -- does that continue to be your stance?

17 MR. SULLIVAN: Yes, Mr. Chairman.

18 CHAIRPERSON HILL: Okay. All right.

19 Ms. Gates, again, you're the property below the  
20 property -- the Applicant's property, correct?

21 MS. GATES: Yes.

22 CHAIRPERSON HILL: Okay. Just put yourself on mute,  
23 Ms. Gates. The reason why I'm asking is like we'll fix your  
24 sound later.

25 Does the Board have any questions for Mr. Gates?

1                   Go ahead, Mr. Blake.

2                   COMMISSIONER BLAKE: Presumably, I think we've got the  
3 answers, but if the question was was this application in  
4 opposition or in support? The party status request. I just  
5 wanted to clarify that. I believe it wasn't quite clear.

6                   MS. GATES: Thank you for the question, Mr. Blake. I  
7 actually left that blank on purpose because I feel the Applicant  
8 -- the application is not ripe for a hearing at this point. The  
9 plat is inaccurate, as is the lot coverage percentage. So I left  
10 it open for the Board to decide how they want to handle moving  
11 forward with this. But I don't see how you can make a decision  
12 when you have incorrect information. And if you read my  
13 statement, there's a lot of incorrect information.

14                   COMMISSIONER BLAKE: Okay. Thank you.

15                   CHAIRPERSON HILL: Okay. Ms. Gates, it seems to me at  
16 this point, you're in opposition to the application. I think you  
17 do need to choose I think. I'd have to go back to legal, but I  
18 mean, you're in opposition, correct?

19                   MS. GATES: Yes.

20                   CHAIRPERSON HILL: Okay. All right. Okay. So I'm  
21 looking at my fellow Board members, does any other Board members  
22 -- I'll get to you, Mr. Sullivan, does any other Board members  
23 have any questions for the Applicant -- I mean, I'm sorry, not  
24 the Applicant, for the party in opposition's application? I  
25 thought I saw Ms. John's hand.

1                   Go ahead, Ms. John, you're on mute.

2                   VICE CHAIR JOHN: Thank you. So Ms. Gates, do you  
3 understand that this application is just for the pavilion  
4 covering the pool?

5                   MS. GATES: I do. However, I also understand that  
6 there are provisions in the zoning regulations covering occupancy  
7 and numbers of structures or buildings, accessory buildings, on  
8 a lot.

9                   VICE CHAIR JOHN: Okay. Yes, there is. I just want  
10 to be clear that your opposition is to the pavilion only because  
11 the pool is already built. So it's just the structure on top of  
12 the pool that they're seeking relief for, is -- do you understand  
13 that part of it?

14                   MS. GATES: I do.

15                   VICE CHAIR JOHN: Okay. All right. Thanks.

16                   CHAIRPERSON HILL: Okay.

17                   Go ahead, Mr. Sullivan.

18                   MR. SULLIVAN: I just wanted to make clear where the  
19 property is and in the -- and in context with the Applicant's  
20 property, it's not adjacent to the south. It's not one of the  
21 two abutting north and south. It's perpendicular on Ashby Street  
22 so that the rear portion of Mrs. Gates' rear yard abuts the rear  
23 yard of the Applicant.

24                   VICE CHAIR JOHN: I think I got that. I think I got  
25 that. Is it possible for Mr. Young to pull up a slide? I believe

1 I saw it in one of them.

2 CHAIRPERSON HILL: I think -- if -- it's oddly enough,  
3 I think, in the Applicant's PowerPoint.

4 Mr. Young, if you go to Slide 4, it looks like.

5 MR. SULLIVAN: And my opposition wasn't necessarily  
6 based on oh, she's not close enough, it's just that the issues  
7 raised are either completely unrelated to the pavilion or they're  
8 issues that are of general concern, not distinctive concern, such  
9 as we should have asked for a variance instead of a special  
10 exception or the plat -- the technical requirement of the plat  
11 wasn't met. These are issues just of general concern, not  
12 regarding the pavilion. And as it's still taking a year at least  
13 to get our orders, you know, normally I might not care as much  
14 about party opposition, but I don't really want to have to wait  
15 a year for a pavilion if it's not otherwise necessary. That's  
16 all I have to say. I won't beat it to death. Thanks.

17 CHAIRPERSON HILL: Ms. Gates, you're that little house  
18 in the bottom left corner, correct?

19 MS. GATES: Right.

20 CHAIRPERSON HILL: I shouldn't say little. I have no  
21 idea how big the house is, but like so right there in the bottom  
22 left corner. Okay.

23 Ms. John, is that what you wanted to take a look at?

24 VICE CHAIR JOHN: I am looking at it again because I  
25 didn't understand what Mr. Sullivan was saying because I thought

1 that the rear yards shared a property line. So that's what I -  
2 -

3 MS. GATES: Ms. John, do you see on the -- in that same  
4 picture right behind the Applicant's house, there's a brown patch  
5 of -- sort of a beige patch of ground?

6 VICE CHAIR JOHN: I'm having some technical  
7 difficulties here, but let me try again. Okay. That's Slide 4?

8 CHAIRPERSON HILL: Yes.

9 VICE CHAIR JOHN: Okay.

10 MS. GATES: That's my --

11 CHAIRPERSON HILL: Ms. John, that ground can --

12 MS. GATES: That's part of my rear yard.

13 VICE CHAIR JOHN: So you're not across the street?

14 MS. GATES: No. No.

15 VICE CHAIR JOHN: Okay.

16 MS. GATES: There's no street there.

17 VICE CHAIR JOHN: Okay. All right. Thank you. I  
18 don't have any other questions.

19 CHAIRPERSON HILL: Okay, thanks.

20 All right. Well, let me let me do this. I'm going to  
21 -- Ms. Gates, I'm going to explain to you what might happen if  
22 you're given party status. Okay? And then I'm going to excuse  
23 everybody and the Board can deliberate as to whether or not you're  
24 given party status. Okay? So if you are given party status,  
25 what that means is that you're a party for this application. So

1 you're able to give a presentation, you're able to ask questions  
2 of the Applicant, you're able to ask questions of the Office of  
3 Planning. The Board will then ask questions of you. The  
4 Applicant would then be able to ask questions of you. The  
5 Applicant would then be able to rebut any of the comments that  
6 you bring forward. And that's basically the way that would work  
7 if you're given party status. If you're not given party status,  
8 then you would still have an opportunity to testify as a member  
9 of the public when the public testimony portion of the hearing  
10 takes place. The reason why I'm doing this preliminary matter  
11 first and why I try to do this first is that we're going to now  
12 put you at the end of the day so that now that you understand  
13 what is going to happen, if you are to get party status, you have  
14 a little bit of time to prepare. Okay? And so that's what that  
15 is all about.

16 Again, do my fellow Board members have anything they'd  
17 like to say before I excuse everyone for us to deliberate?

18 Chairman Miller -- I mean, Vice Chair Miller, you look  
19 like you're trying to say something? No?

20 ZC VICE CHAIR MILLER: No. Well, you're very  
21 perceptive, Mr. Chairman. I -- what I was thinking was not only  
22 does she have time to prepare, but there is the potential that  
23 the part -- Ms. Gates and the Applicant's representative might  
24 be able to work something out, although I don't know if that's  
25 the case and something that's already been discussed between the

1 parties all this time. But there is that potential as well.

2 CHAIRPERSON HILL: Okay.

3 So again, Ms. Gates, I think that, you know, there has  
4 been some clarity that they're here before us for the pavilion,  
5 right, not the pool. And some of the issues that -- I also have  
6 read your filing -- some of those issues might not be exactly  
7 germane to the case, but we would find that out if you have party  
8 status or not as we go forward at the end of the day. And what  
9 that -- what Vice Chair Miller is saying is that if the  
10 Applicant's attorney were to reach out to you or if you guys were  
11 able to kind of clarify things over the course of our day, perhaps  
12 you would have a different outlook or not on the application.

13 Ms. Gates, do you have something to say, are you okay?

14 MS. GATES: I'm okay, thank you.

15 CHAIRPERSON HILL: Okay.

16 All right. Mr. Sullivan, you got anything to say?

17 MR. SULLIVAN: No, thank you.

18 CHAIRPERSON HILL: Okay. Mr. Sullivan, is it clearer  
19 with the headphones on?

20 MR. SULLIVAN: It's clearer on my end. I hope it's  
21 just as clear on your end.

22 CHAIRPERSON HILL: Okay. Yeah. No, it's clear. We  
23 can hear it very well.

24 MR. SULLIVAN: Okay.

25 CHAIRPERSON HILL: Okay. All right.

1                   Mr. Young, if you could please excuse the Applicant and  
2 the party status requester?

3                   Okay. I'm hesitant in not granting party status  
4 because it is somebody who abuts the property and it hasn't  
5 necessarily been -- it's not like in the regulations that if you  
6 abut the property you can get party status or not, but I do think  
7 that that is the most distinctly an affected property if your  
8 property borders the application -- I'm sorry, the application.  
9 And whether or not we want to argue now about -- or I shouldn't  
10 say argue -- whether we want to deliberate now whether or not  
11 the requester has any -- is arguing the correct argument, we can  
12 have that discussion as well. But I am currently leaning towards  
13 voting in favor of the party status. Who would like to go next?

14                   COMMISSIONER SMITH: I'll go next.

15                   CHAIRPERSON HOOD: Mr. Smith?

16                   COMMISSIONER SMITH: Chairman Hill, you know, I  
17 completely agree with you. I do understand that probably they  
18 need to have a little bit more dialog, but I am inclined to grant  
19 her party status because she is directly adjacent, most impacted  
20 by the proposed structure that would be built if we granted this  
21 special exception. So you know, I won't belabor that. I do  
22 agree that we should -- I believe that we should grant her party  
23 status.

24                   CHAIRPERSON HILL: Okay.

25                   Mr. Blake?

1                   COMMISSIONER BLAKE: Yeah, thank you, Mr. Chair. I  
2 agree the Applicant -- that the requester should be granted party  
3 status on account of the proximity to the property. While there  
4 are people who are clearly closer to the property and aren't  
5 in objection, the person is relatively close, more so and would  
6 be more so affected than the general public. So for that reason  
7 I would be in favor of granting party status.

8                   CHAIRPERSON HILL: Vice Chair John -- I mean, Vice  
9 Chair Miller?

10                  ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I  
11 support the party status request, and just would like to say in  
12 response to the Applicant, I for one, and I think the Board --  
13 we're working to try to reduce that amount of time for decisions  
14 to be reduced to writing. A year is not an acceptable time  
15 period, even when there's a party status request. And we're  
16 working hard with our staff to try to improve that situation. I  
17 think there has been improvement, but I just wanted to put that  
18 on the record since the comment was made about the time it takes  
19 to get a written decision, and we share that concern.

20                  CHAIRPERSON HILL: Thank you, Vice Chair Miller.

21                  Vice Chair John?

22                  VICE CHAIR JOHN: Thank you, Mr. Chairman. So I support  
23 the application for party status as well. And I believe Mr.  
24 Miller was speaking for the Commission and I think the BZA is  
25 also working on that same process to reduce the backlog to the

1 extent there's one. So yes, so the issue is whether or not the  
2 pavilion, not the pool, will have an adverse impact on the -- on  
3 Ms. Gates' property. So I'm in support of the application.

4 CHAIRPERSON HILL: Okay. Thanks.

5 All right. And so I'm sure Ms. Gates and the Applicant  
6 are listening. Ms. Gates, what has been discussed is that due  
7 to the backlog of orders that we have, it takes time for an order  
8 that involves someone who has party status longer than someone  
9 who doesn't have party status. So that's why if there was  
10 something that you thought could be resolved, we discussed that,  
11 but I don't want to get to the point -- and I'm putting this on  
12 the record -- I don't want to get to the point where I'm like  
13 doing something because we're worried about whether it's a full  
14 order or a summary order. And that's not what I'm -- that's not  
15 what I'm doing. I believe this person should be getting party  
16 status and therefore they're getting party status. But I share  
17 Commissioner Miller's comments as well as Vice Chair John that  
18 we are doing our best for the backlog, but -- okay. So I'm going  
19 to go ahead and make a motion to approve the party status of Ms.  
20 Gates and ask for a second, Ms. John.

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: The motion has been made and  
23 seconded, Ms. Rose, if you could take a roll call?

24 MS. ROSE: When I call your name, please respond.

25 Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MS. ROSE: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MS. ROSE: Board Member Smith?

5 COMMISSIONER SMITH: Yes.

6 MS. ROSE: Board Member Blake?

7 COMMISSIONER BLAKE: Yes.

8 MS. ROSE: Commissioner Miller.

9 ZC VICE CHAIR MILLER: Yes.

10 MS. ROSE: Staff would record the vote as five to zero  
11 to zero to approve the party status as requested. This is on a  
12 motion by Chairman Hill, seconded by Vice Chair John with Mr.  
13 Smith, Mr. Blake, and Mr. Miller in support of the motion.

14 CHAIRPERSON HILL: Okay. And I would also refer Ms.  
15 Gates to the Office of Planning's report that details the issues  
16 that are going to be before us. So therefore, those are where  
17 we are going to continue to focus our attention during the  
18 application. And it might be helpful for Ms. Gates to read that  
19 Office of Planning's report if they haven't already done so.

20 All right. I'm going to go ahead and take a break, if  
21 that's okay. Mr. Miller, you look like you want to say something?  
22 No? Okay. All right. So then it's -- let's try to take ten  
23 minutes. Is that fair? Okay. See you guys in ten minutes.  
24 Thank you.

25 (Whereupon, there was a brief recess.)

1 CHAIRPERSON HILL: All right. Ms. Rose, you can call  
2 us back in and also call our next case please.

3 MS. ROSE: Yes. After a brief break, we're returning  
4 at 10:46 a.m. The next case, this is a limited scope hearing  
5 continued from December 21st, 2022. It is Application No. 20821  
6 of 1717 E Street, N.E., LLC, as amended, a self-certified  
7 application pursuant to Subtitle X, Section 901.2 for special  
8 exceptions under Subtitle C, Section 305 to allow a theoretical  
9 lot subdivision under Subtitle E, Section 205.5, to permit a rear  
10 wall to extend further than ten feet beyond the farthest rear  
11 wall of an adjoining residential building, and pursuant to  
12 Subtitle X, Section 1002 for area variances from the front setback  
13 requirements of Subtitle E, Section 305.1 and the rear yard  
14 requirements of Subtitle E, Section 306.1, and a use variance  
15 from Subtitle U, Section 301, matter of right uses in RF-1 to  
16 allow two new apartment houses. The Applicant proposes to combine  
17 three existing lots in one record loft, create two theoretical  
18 lots on the new record lot, and construct new three-story  
19 buildings, three-unit apartment houses, on each theoretical lot  
20 in the RF-1 zone at premises 1717 E Street, N.E., Square 4546,  
21 Lots 165, 166, and 167. Zoning Commissioner Imamura is  
22 participating in this case. In terms of preliminary matters, the  
23 Applicant has submitted a shadow study and PowerPoint  
24 presentation that need waivers, and there is testimony in  
25 opposition from Thomas Hines filed within the 24-hour period that

1 needs a waiver.

2 CHAIRPERSON HILL: Okay. Thank you.

3 Unless the Board has any objection, I'd like to go  
4 ahead and allow everything into the record so that we can have a  
5 full record and take a look at everything.

6 So Ms. Rose, if you could put everything into the record  
7 please, so that the Board can take a look.

8 MS. ROSE: Thank you.

9 CHAIRPERSON HILL: Ms. Wilson, if you can hear me, if  
10 you could go ahead and introduce yourself for the record?

11 MS. WILSON: Hi, Alex Wilson from Sullivan & Barros on  
12 behalf of the Applicant in this case.

13 CHAIRPERSON HILL: Okay. Thank you. All right. Ms.  
14 Wilson, I'm going to go ahead and allow you to walk us through  
15 the application as to why you believe your Applicant has met the  
16 burden of proof for us to grant this application. I know we were  
17 here before concerning this application, and a lot has changed  
18 since then. I do have your PowerPoint up and you can begin  
19 whenever you like.

20 MS. WILSON: Great. Thank you so much. I'll try to  
21 summarize the updates and then we do have the architect here to  
22 walk through the plan changes, as well as the owner to summarize  
23 our ANC efforts. Next slide please?

24 Also, if after our presentations there are any  
25 questions about the pro forma we submitted, we do have our --

1 the broker here, Mr. Anthony Mason, he signed up to testify. He  
2 helped Mr. Damani put the pro forma together, if there are any  
3 specific questions about that.

4 So we've done a lot of work since the last hearing.  
5 The primary issues with the relief were related to the number of  
6 units and to the height relief. OP was recommending denial. And  
7 there were significant discussions by the Board that we were not  
8 -- we did not provide enough information to the record for the  
9 eight units and that we should look at this again. So we've  
10 reduced the number of units in each building from four units to  
11 three units. So now we are proposing a total of six units and  
12 this is consistent with the number of units that would be  
13 permitted on the site, but for that easement. The property is  
14 made up of three record lots. So ordinarily each could be  
15 improved with two-unit building, but for that easement running  
16 through the middle of the property preventing the construction  
17 on the buildings. So we are proposing the same density that  
18 would ordinarily be allowed on these lots just in a different  
19 configuration. Instead of six units in three buildings, we have  
20 six units in two buildings. And this is still a block of a four  
21 -- of four-unit apartment buildings. It's consistent with the  
22 character of the block in this case. And then we reduced the  
23 height and stories to 35 feet and three stories, and so the height  
24 relief is no longer needed. As part of our supplemental  
25 submission, we submitted an updated pro forma, which removed any

1 expense from the issues related to the D.C. Water delays and  
2 negotiations. I know that was another point discussed at the  
3 last hearing that those delays and costs associated with those  
4 delays should not be included in the financial analysis. So the  
5 pro forma demonstrates that without the six units we would have  
6 a net loss as the matter of right use here would be four units  
7 total or two units in each building. OP is now recommending  
8 approval for the use variance in addition to the other areas of  
9 relief. There were a number of smaller items and questions raised  
10 at the December hearing. In our supplemental filing in Exhibit  
11 53, we've provided a detailed response -- a response to each of  
12 those points. The items we submitted included a shadow study,  
13 an updated shadow study, and additional renderings, which  
14 detailed the redesign of the building to be in character with the  
15 existing apartments on the block. We also continued our community  
16 outreach efforts. We were originally located in ANC 6A. We had  
17 unanimous support from that ANC. And then we switched ANCs in  
18 January. We attended a special ANC meeting with ANC 7D, it's  
19 the new ANC, and a full ANC 7D meeting. We've obtained unanimous  
20 support from -- for the project from that ANC as well. They've  
21 submitted something to the record. It was a very thoughtful  
22 letter and we really appreciated that. So we now have unanimous  
23 support from two ANCs and over ten letters in support. Next  
24 slide please?

25 So in terms of the relief, I already discussed the

1 change in the use variance and the removal of the height relief.  
2 None of the other areas of relief have changed. The project  
3 effectively just removed the top floor of each building, reducing  
4 the height and reducing the number of units. So the Applicant  
5 provided again additional information to the record to further  
6 support the burden of proof for these areas as discussed at the  
7 previous hearing, such as an updated shadow study related to the  
8 10-foot rule. And the shadow studies are favorable and show  
9 limited impact on light and air to the property to the west. And  
10 that is, of course, also related to the reduction in the building  
11 height, which should help reduce that original shade impact.  
12 There were also more detailed renderings provided to show the  
13 view from the sidewalk level as that related to the front setback  
14 relief. We've had discussions with the community about a  
15 potential mural or green wall on that side, and if this project  
16 is approved, there will be some future meetings to take place to  
17 talk about that and other items as this progresses. And so I  
18 thought the ANC report perfectly summarized the discussions about  
19 the front setback relief. The project has over 11 letters of  
20 support, and while two residents would prefer a greater setback  
21 distance, the developer faces extenuating circumstances that  
22 warrant the variance relief. And it also evidences that, you  
23 know, in the view of both of these ANCs we have proposed to  
24 successfully mitigate any impacts from that relief. And so with  
25 that, I'll turn it over to Mr. Markus, our architect, to highlight

1 the plan changes.

2 MR. MARKUS: Hi, I'm Rich Markus. Can everyone hear  
3 me okay?

4 CHAIRPERSON HILL: Yeah, could you introduce yourself  
5 for the record, Mr. Markus, when you get a chance?

6 MR. MARKUS: Sure. Rich Markus, I'm the architect for  
7 the project. And I'll just -- this project's been before you  
8 before, so I'll just do a brief summary and stick to the changes.  
9 Next slide please?

10 Just a cover page showing the context. Next slide?

11 This is the lot, shows the hardship that we have. So  
12 just to refresh everyone's memory, rectangular lot, it's  
13 currently three lots. Proposing on the right to create two  
14 theoretical lots. And you can see the D.C. Water pipe going  
15 diagonally through the property. It's a 22-foot-wide pipe, but  
16 beyond that there's a 50-foot easement, so substantial impact  
17 that we cannot build on top of. Next slide please?

18 There's the easement. So you start to see the impact  
19 of the 50-foot easement on the lot going diagonally across the  
20 lot. Next slide please?

21 There's the general footprint. So we're using the two  
22 buildable areas, which are triangular areas at the top and the  
23 top left and the bottom right on this slide. And you can see  
24 there's six parking spaces there, six units total. So there's  
25 one parking per unit. Next slide please?

1           The footprint of the building has not changed. So  
2 there are one unit per floor on each building and it's now three  
3 stories. Previously, we were four stories, and 45 feet, and now  
4 we are three stories and under the 35-foot requirement. Next  
5 slide please?

6           Is the second floor, there's one unit on each building.  
7 Next slide please?

8           Third floor is one unit on each building. Next slide  
9 please?

10           There's the general roof. Next slide please?

11           There's both the street elevation, the E Street  
12 elevation on the top and the alley elevation on the bottom. You  
13 can see it's a three-story building now. Next slide please?

14           This is the two side elevations, the area that's clear  
15 in the middle is the two adjacent buildings. Next slide please?

16           This is the full street elevation, and also the west  
17 elevation of the building coming from the inside, so you can see  
18 the full building. Next slide please?

19           This is the impact that the section through the site,  
20 you can see how large that pipe is and how much space it takes  
21 from the lot, and those are our two buildings above. And we had  
22 to space them out. They're building on the buildable areas of  
23 the lot, so the footing's do not disturb and do not sit on top  
24 of the pipe. Next slide please?

25           Here's some three -- the revised images. You can see

1 it's a three-story. This is coming from E Street. Next slide  
2 please?

3 The closer up view. You can see the two buildings and  
4 the area in between. Next slide please?

5 This is a view from the top, you see the two triangular  
6 shapes and the easement is clearly going through the diagonal of  
7 the lot. Next slide please?

8 That's coming from the other side of E Street. Next  
9 slide please?

10 That's inside between the buildings and showing the  
11 parking and some of the landscaping. Next slide?

12 Again, this just shows the easement and the red area  
13 highlights the area that would be matter of right versus you can  
14 see how small a buildable area that is. That's why the building  
15 is -- goes into the front yard setback. Next slide please?

16 Here's the shadow study. This is what was added. So  
17 we did a shadow study with the existing conditions with no  
18 building. And it's March and June. And next slide?

19 Shows that December with no building there. And then  
20 we just updated. If you go to the next slide?

21 This shows the proposed condition with the three-story  
22 building with the building -- the two buildings shown in the same  
23 configuration with March and June here. And then last slide  
24 please?

25 That's the December view. And that's it. If you have

1 any questions, be happy to answer.

2 MS. WILSON: Reza, do you want to say a few words about  
3 the community outreach before we end the presentation?

4 MR. DAMANI: Yes, thank you. Thank you, Alex. If  
5 everybody can hear me.

6 CHAIRPERSON HILL: Yes, could you introduce yourself  
7 for the record please?

8 MR. DAMANI: Yes. My name is Reza Damani. Good  
9 morning, Honorable Board Chairperson and Board members. I just  
10 want to talk about a few things without taking too much of time,  
11 because I may be repeating something which Alex and Richard have  
12 already spoken about, but I do want to repeat and share just a  
13 couple of things I want to share item, which I feel it's important  
14 to share. Our first one is the community outreach. I -- we  
15 conducted outreach even in the community in order to go over the  
16 project and in order to get feedback, in order to get support.  
17 And I wanted to share that the feedback, which we got few times  
18 we were able to also incorporate in our elevation. For example,  
19 our original elevation was more modern. However, one of the  
20 neighbors who suggested it does not fit the block or the Rosedale  
21 community, and so we were able to change that elevation from our  
22 previous elevation, if you would remember. We had more glass at  
23 the time and now it's more brick. And so I just wanted to share  
24 that one point that we were able to incorporate and accommodate  
25 suggestions also with those multiple efforts of outreach, which

1 we had. So and also want to thank all in the community who opened  
2 their doors for us and heard me and understood this unique  
3 hardship and supported our project. So with this on this  
4 platform, I wanted to share that because I've been there multiple,  
5 multiple times in the last six months or eight months.

6           Secondly, I also want to again bring this up, which  
7 Alex has talked about, about the ANC. As you may know, that we  
8 had a previous ANC last year who we went through the project, we  
9 thoroughly talked about the project, reviewed the project and  
10 supported our project last time. And however, we couldn't get  
11 through to BZA for various reasons now. We had the new ANC with  
12 which we also did the whole -- all of that again with a special  
13 meeting earlier this month and went over the project and details,  
14 a lot of questions back and forth, concerns and so on. However,  
15 in the end we received a unanimous support again. And so  
16 basically I wanted to share that, that it's been -- and very  
17 detailed reviewed and talked about within the community and  
18 within the ANC. Other than that, I just want to, you know, thank  
19 everybody here who was -- supported our project. And I want to  
20 share that it's overwhelming support we have other than one or  
21 two who have -- who we have also met and talked few times.  
22 However, I think they are not as supportive, but I would say  
23 overwhelming support we have. And so with that, I just want to  
24 end there and I want to thank everybody to listening to me.  
25 Appreciate it.

1 CHAIRPERSON HILL: Okay. Thanks --

2 MR. DAMANI: Reza Damani.

3 CHAIRPERSON HILL: Thanks, Mr. Damani.

4 All right. Does the Board have questions of anyone  
5 before I go to the Office of Planning?

6 Mr. Blake?

7 COMMISSIONER BLAKE: Sure, Mr. Chair, I do have one  
8 question. I've reviewed -- I want to first of all applaud the  
9 Applicant for really doing a good job bringing together this  
10 project more in line with the spirit of the regulations and the  
11 character of the neighborhood. In reviewing your application,  
12 the thing I came across when looking at the use variance was that  
13 a critical component of the undue hardship argument is the  
14 financial element, which is that makes the matter of right option  
15 uneconomic. And if the Board looks at an application and the  
16 financial hardship, we really do have to make sure we have good  
17 evidence, substantial evidence, to support the reasoning behind  
18 that. And certainly the analysis that you guys presented in  
19 Exhibit 53E does suggest that the matter of right project would  
20 be unfeasible without a variance given all the added costs of  
21 construction. However, in looking at that analysis, I do have  
22 some concerns about the numbers supporting it and I would like  
23 to get a little bit clarification on that. Specifically, if I  
24 look at exhibit 53E, you use an assessed value as the property  
25 basis, which ends up being about 1.386 million value for the

1 land. I don't believe that's the price you paid for the property.  
2 It's also not the cost used in the previous analysis which was  
3 presented in Exhibit 34, which I think then was the Office of  
4 Tax Revenue assessment based on the time -- the time of the  
5 acquisition to be more objective at 205. Now you've excluded the  
6 costs, as we talked about, 403,000, but the basis is now  
7 substantially higher. So if you can explain to me how you chose  
8 -- arrived at that number and why that would be the appropriate  
9 value for the land, and -- in the analysis, and also just  
10 reconcile that with some of the numbers that were in Exhibit 34G?

11 MS. WILSON: Sure. We do have our broker here, although  
12 I'll jump in because I know that number came from the Office of  
13 Tax and Revenue assessment of the property, and we ran the pro  
14 forma numbers based on the as-is conditions because we were not  
15 allowed to take a look back. But again, we do have our broker  
16 here, Mr. Anthony Mason.

17 MR. DAMANI: So if I may respond, because I could shed  
18 some light here. So originally we were using the price which we  
19 paid ten years ago in 2013, and we added the cost from then 'til  
20 now. However, in the last BZA meeting, we were advised that what  
21 has happened in the last ten years is not something one can use  
22 and add up the cost. You want to look at the project today as a  
23 fresh project because, you know, eight years ago we were awarded  
24 eight units, for example. And however, the Board was not looking  
25 to go back and say okay, we have -- the Board awarded eight units,

1 then we'll do it now. So the part was to look at this project  
2 as the way you're getting it now. Now, the assessed value over  
3 the last ten years have kept going up, up, and up. And I have  
4 been paying property taxes on the assessed value as it keeps  
5 creeping up from 10 years ago, like 10, 11 years ago. So it's  
6 our basis of valuing is based on what I -- we pay property tax  
7 bill on today and yesterday. Like for example, D.C. government  
8 is increasing the property value for each lot this year by  
9 \$50,000. And so the three lots are going to go up by \$150,000  
10 in value, hence the property tax, which I am paying, is  
11 accordingly. And that's what has been happening over the last  
12 ten plus years. Originally last year when we brought to the BZA,  
13 I thought that I should -- we should not be using today's value  
14 because we bought it ten years ago cheaper. However, it costed  
15 us all this money. So it's like either we do take that or we  
16 take this. And from the last year -- the BZA meeting which we  
17 had in December, we were told -- and Alex, please correct me if  
18 I'm wrong -- that this project needs to be looked at as fresh  
19 work today's -- what today it is basically, and hence we are  
20 using the assessed value. If I have answered the questioning.

21 COMMISSIONER BLAKE: And looking at that, I appreciate  
22 that. If you go back to Exhibit 34, the number that you used  
23 was not the purchase price, it was the 205,000, which was the  
24 purchase price quotations based on -- off of structure and land  
25 value at the time of purchase, not actual purchase price to be

1 objective. I don't believe we did get clarity on what the actual  
2 purchase price was.

3 MR. DAMANI: So if I may, I believe we -- when we  
4 prepared the cost of the property, we started off with the  
5 purchase price of \$285,000 plus closing cost. And then from  
6 there on, and just real quickly we added up the cost from then  
7 'til now in order what it would cost to develop as far as the  
8 architects, the engineers, and the property taxes and so on. And  
9 probably -- and I agree with you that the cost is still less than  
10 what today's assessed value is; however, we were told that you  
11 have to look at this project fresh because the precedent was like  
12 the BZA awarded us eight units and there was a comment that we  
13 don't -- don't worry about that, use this as a fresh project.  
14 And so that's what -- and I asked our attorney is this how we  
15 should do it, she suggested yes. And Alex, if you could shed  
16 some light on that.

17 MS. WILSON: Sure. So we tried to take away the  
18 personal -- or I guess the issues unique to the ten-year  
19 development of this property and looked at it as if, okay, if  
20 someone were coming in brand new today what would this look like,  
21 because if we don't do that, then there is this look back. And  
22 there are a number of additional costs related to that, that if  
23 they're not -- like I just didn't know how to do it. It couldn't  
24 be both ways. It couldn't be okay, take a look back, and brand  
25 new it has to be looked at as a, you know, an objective brand

1 new view. And so that's why I thought the current value would  
2 make the most sense if we were going to do that.

3 COMMISSIONER BLAKE: The only issue with the current  
4 value is it substantially skews the number and return  
5 calculation. When you add \$1.1 million to your cost, it obviously  
6 causes a lot to be uneconomic because at \$101 million -- \$101.1  
7 million, it's disappeared. I think that it would be interesting  
8 -- I think if you go back to Exhibit 34G, I think it's G, yeah,  
9 where you actually go through those line items, there is -- it  
10 does actually have -- separate the 208,203 which was associated  
11 with the taxes, penalties, and interest added from the -- over  
12 the period. So that would have been a number adding back to the  
13 285 which would not have included the additional development  
14 costs which would have taken you up to about 493 as a basis. If  
15 you did something a little different, adding even the 403 that  
16 you had additionally done, you'd end up with a \$688,000 basis.  
17 Both those are substantially less than the 1.386 million that you  
18 used as a basis, which while I, again, agree that the analysis  
19 you provided on the surface does provide complete justification  
20 for this, it -- the numbers that you actually chose to use skewed  
21 that in a way that kind of I think is a little bit misleading.  
22 So I just -- having said that, if you give some thought to how  
23 we might be able to recast those costs to be more in line with  
24 either of those other two numbers, I would prefer just to see it  
25 that way. I think I've kind of done it myself, but if you would

1 present it that way, it would probably be a little bit more  
2 digestible for me.

3 MR. DAMANI: So I appreciate. So basically in ten  
4 years the cost -- what has costed us is what we added last time  
5 around. But it was rejected in a way that you have to look at  
6 the project today. And so the values have gone up, right? And  
7 I have paid interest and property taxes to that effect. So it's  
8 like we want to go back, but we don't want to -- we don't want  
9 to go back because you have all this cost. But at the same time,  
10 we want to go back because the value is low, right? So it's like  
11 we got to pick and choose either and or, so we chose the other  
12 one last time, which was rejected. And now we chose this one,  
13 which apparently has concerns. So if you understand what I'm  
14 saying. And I think D.C. government is assessing it and I'm  
15 paying taxes on that is I think it would be fair to value it that  
16 today because it's not been a year or two, it's been ten years.  
17 Like I tell my attorney, my son was in elementary school then,  
18 now he's in university. So it's really been ten years since  
19 2013. So if, you know, I'm happy, we are happy to look at the  
20 way you suggest. Yeah.

21 MS. WILSON: Yep. We can take another look at it.

22 COMMISSIONER BLAKE: I understand totally what you're  
23 saying, and it does somewhat make sense. However, you did not  
24 -- to -- the calculation that you did is not reflective and it's  
25 not reasonable given the fact that what you just described to me,

1 you're right, two different things, unclear which one would make  
2 sense. I believe that the 1.3 is an unreasonable number to put  
3 in there for various reasons. The other numbers that you had  
4 presented before had elements that were unattractive as well.  
5 However, they were more reasonable than the number that I just  
6 saw presented to me with the 1.3, because that has no bearing  
7 whatsoever to any cost that you bore in this transaction. So  
8 anyway, that's just my thoughts on that. I have no other  
9 questions.

10 CHAIRPERSON HILL: Thank you, Mr. Blake.

11 Anyone else for the Applicant at this point?

12 Go ahead, Dr. Imamura.

13 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman. And  
14 thank you, Board Member Blake. I think you raise some very good  
15 points. I'd like to shift the conversation to pictures that are  
16 easier for me to follow. So this is a conversation question for  
17 Mr. Markus. And Mr. Young, if we can pull up Slide No. 11 I  
18 think. Thank you, Mr. Young.

19 Mr. Markus -- I believe it's Slide 11. This is a rather  
20 really easy fix. And --

21 CHAIRPERSON HILL: Which slide are you looking at Dr.  
22 Imamura?

23 ZC COMMISSIONER IMAMURA: 11.

24 CHAIRPERSON HILL: 11, okay.

25 ZC COMMISSIONER IMAMURA: I think it's the site plan.

1 Yeah, that's perfect, that works.

2 All right. Mr. Markus, I should have caught this  
3 earlier, I think there was just a lot of moving parts in the last  
4 case and this is going to be low hanging fruit for you to discuss  
5 with the Applicant, Mr. Damani, but in short there's a couple  
6 planting beds that are -- I guess we're looking at the root plant  
7 here on Plan East and Plan North, it's those planting strips.  
8 Nothing is going to grow there. And I think that's going to  
9 become kind of a maintenance issue. I would encourage you to  
10 either for Plan East, either connect them to the tree beds or  
11 expand and make it a third island there. Perhaps you could kind  
12 of compress them, but make it three distinct sort of tree beds  
13 there. That's up to you, Mr. Damani. But nothing is going to  
14 grow on this strip. Likewise, Plan North where the first  
15 (indiscernible) is, there's two planting strips there with what  
16 appears to be sort of brick pavers. I would either encourage  
17 you to make that all just a planting bed or combine those in some  
18 way with the tree bed there that's already existing. So again,  
19 it's just going to be a maintenance nightmare. So might as well  
20 do something about it and make it some green space --

21 MR. MARKUS: I agree.

22 ZC COMMISSIONER IMAMURA: -- which would be kind of  
23 nice. There's a lot of paving in this area. So I'd just encourage  
24 you to do that. I think we did talk a little bit about  
25 maneuverability with the vehicles. I think it's going to be a

1 challenge, but yeah, the neighbors are going to -- that's what  
2 they have -- or the residents are going to have to, you know,  
3 just deal with it, but. That's all that I have, Mr. Chairman.  
4 Those are just some refinements that I would recommend.

5 MR. DAMANI: So I agree with the comments. I really  
6 appreciate. It's a very good thought. And I think we can -- we  
7 should incorporate that. Good idea.

8 ZC COMMISSIONER IMAMURA: Thank you, Mr. Damani. Mr.  
9 Chairman, that's all that I have. I don't have any further  
10 questions for the Applicant, other than to say that the  
11 modifications from going from a contemporary aesthetic to  
12 something that's a little more appropriate for that particular  
13 block. So my compliments to your architect, Mr. Damani. Mr.  
14 Markus did a nice job. And while this project has created  
15 probably a tremendous amount of stress, Mr. Markus, this was a  
16 nice little vignette. Very challenging site, and I think you've  
17 done a great job in terms of making the best use of it. And Mr.  
18 Damani, same goes for you. So I think it's a creative solution  
19 to a very challenging site. So that's all that I had, Mr.  
20 Chairman, thank you.

21 MR. MARKUS: Thank you.

22 MR. DAMANI: Thank you.

23 CHAIRPERSON HILL: Thank you, Dr. Imamura.

24 Anyone else?

25 MR. MASON: Yeah, if I could just -- Anthony Mason

1 here.

2 CHAIPERSON HILL: One second. One second. Who's  
3 speaking?

4 MR. MASON: Anthony Mason, I'm the real estate broker  
5 for Mr. Damani and his team.

6 CHAIPERSON HILL: Go ahead, Mr. Mason.

7 MR. MASON: Sure. Yes, sir. First of all, thank you  
8 so much for the opportunity and to just hear everything out. I  
9 just want to give my perspective as a real estate professional  
10 on this particular project. I've been in the business for 12  
11 years, been a real estate broker for 12 years. We've done over  
12 a billion dollars in real estate sales in the area. I've worked  
13 with Mr. Damani on numerous projects. We've worked on him -- we  
14 worked with him on roughly about five or six projects at this  
15 point, well over 100,000 square feet of commercial and  
16 residential space in the District. Mr. Damani's ability to not  
17 only enhance the community, but his ability to come in and do a  
18 product that is going to be an amazing opportunity in an up and  
19 coming community right there off of E Street. The presence of  
20 that public underground infrastructure to me as a real estate  
21 professional is something that is going to present a challenge  
22 and may create further hardship for Mr. Damani on the sales persp-  
23 -- on the sales side of this. One thing I want to make sure that  
24 we take into account, these are going to be condos, and when  
25 condos are put up and we have this underground utility, what this

1 can present for Mr. Damani moving forward is the ability to create  
2 an affordable house with a condo fee that is acceptable for a  
3 first-time home buyer, which typically is going to be who's  
4 targeted for those lower level units. So I want to make sure  
5 that we take into account that outside of the things that we know  
6 are present, there are additional variables that we have to  
7 consider that we will not know until we get further into this  
8 project. When it comes to insurance, for instance, with this  
9 underground utility, when Mr. Damani goes to get insurance on  
10 this property, if that insurance cost is so high it is going to  
11 have to be offset in condo fees, and condo fees are one of the  
12 driving forces that prevent future sales of a property, so I want  
13 to make sure we take that into account here as an additional  
14 hardship that Mr. Damani's going to have. But all in all, his  
15 team, they create amazing products. And as a real estate  
16 professional, I just wanted to kind of put my take on them.

17 CHAIRPERSON HILL: Okay. Thank you, Mr. Mason.

18 All right.

19 MR. MASON: Yes, sir.

20 CHAIRPERSON HILL: Let's see.

21 Go ahead, Vice Chair John. You're on mute, Vice Chair  
22 John.

23 VICE CHAIR JOHN: Thank you. I'm working with two  
24 different computers and I forget which one I'm using. So I'd  
25 like to ask the architect to walk me through the relief for

1 theoretical one and the plans. And I was reviewing it again last  
2 night and I didn't understand what was happening, so just for my  
3 clarification.

4 MR. MARKUS: Is that better answered by Alex.

5 VICE CHAIR JOHN: I would think the architect -- I  
6 needed to -- I didn't understand where the plans showed the 48-  
7 foot proposed setback on Lot 1. So it's an architectural  
8 question, but Alex is welcome to help me.

9 MS. WILSON: Sure. Are you asking what areas of relief  
10 we're asking for on that theoretical lot?

11 VICE CHAIR JOHN: Yes. One of the slides showed a very  
12 small area, and I wasn't quite sure how to read the plan.

13 MS. WILSON: Sure. Let me see what slide that is. If  
14 Mr. Young wouldn't mind pulling up the presentation again. All  
15 right. So slide -- I think it's Slide 21 shows effectively what  
16 the matter of right footprint is. And is that a good slide?

17 VICE CHAIR JOHN: That's great, but I can't understand  
18 where the as built -- the as built footprint is not identified.  
19 So that --

20 MS. WILSON: Oh, okay.

21 VICE CHAIR JOHN: -- that would help non-architects  
22 like me to quickly figure out what the request is for.

23 MS. WILSON: Sure. So let's go to Slide 7 then, Mr.  
24 Young, please.

25 So these are what we are proposing to construct. And

1 so that shows the setback from the front lot line, and that is  
2 where we're requesting front setback relief for theoretical lot  
3 one to set it back 48 feet, I believe, from the front lot line.

4 VICE CHAIR JOHN: Okay. So a note to applicants and  
5 architects, I am neither an architect or a real estate  
6 professional, and so when I look at these plans, I need you to  
7 spell it out for me like I'm a third grader. So that helps me  
8 in my review. Just speaking for myself.

9 MS. WILSON: Absolutely. That's -- I feel similarly  
10 sometimes.

11 VICE CHAIR JOHN: Yes, a hatched line or something that  
12 says, you know, third grade person, this is what we're requesting.  
13 Thanks. That's helpful. Or put in something that --

14 MS. WILSON: I'm sorry we did not make that clear.

15 VICE CHAIR JOHN: No, that's okay. It's just that I  
16 hate, you know, having to wade through these plans to figure out  
17 what I'm being asked to look at. Okay. That does it for me.  
18 Thank you.

19 CHAIRPERSON HILL: Thanks, Ms. John.

20 VICE CHAIR JOHN: Okay.

21 CHAIRPERSON HILL: All right. Anyone else?

22 Go ahead, Mr. Smith.

23 COMMISSIONER SMITH: I have one. So just to kind of  
24 piggyback off of what Ms. John was saying, and maybe for my  
25 clarification, you know, in looking at the drawings, the building

1 is set even further back from where the WASA tunnel is, what is  
2 it about 20 some, 30 feet back from the edge of the tunnel? What  
3 is the reasoning for that level of a setback?

4 MS. WILSON: We have an easement. So the WASA tunnel  
5 is about 20 feet, but the easement's even wider. So we're putting  
6 it in the only location that's possible. We cannot put it any  
7 further in. So Slide --

8 COMMISSIONER SMITH: So you're building right up to the  
9 easement?

10 MS. WILSON: Right. Exactly. Slide 6 shows that I  
11 think the best, if you have the plans up.

12 COMMISSIONER SMITH: Okay. Yeah, I have it up. Okay.

13 MR. DAMANI: So if I may. So we tried - to answer  
14 the question we tried to encroach into the easement in order to  
15 make it work. However, D.C. Water very clearly stated that do  
16 not encroach into our easement or we will not allow you to build.  
17 If -- just to share a little bit of history, back in 2014, when  
18 we had the approval of eight units off of a single building in  
19 the back from BZA, we were not allowed to build at the time  
20 because D.C. Water would -- they receded their part of allowing  
21 us to build in the easement but still away from the pipe. So in  
22 other words, the pipe is actually 22 feet wide. However, the  
23 easement is total of 50 feet, and so there is a 14 feet buffer  
24 on each side. And originally they were a little gray about that,  
25 but now they are extremely clear that we cannot encroach into the

1 easement. And to that effect, we have a very detailed criteria  
2 letter from D.C. Water because before applying in BZA, we had  
3 several meetings with D.C. Water with regards to what would they  
4 would allow us to build. In other words, if they would sign off  
5 on the civil plans, water and sewer connection plans. And so we  
6 thought we'd go to them first and then come to BZA because what  
7 happened last time was that BZA approved it and they did not  
8 allow us to build. So it -- we couldn't do anything. And so  
9 -- if that clarifies that question.

10 COMMISSIONER SMITH: Yeah, that clar- -- and again, you  
11 know, what happened previously, as previous approval is not --

12 MR. DAMANI: Sure.

13 COMMISSIONER SMITH: We're not bound to that. So but  
14 I get your point. I have another question for you, because again,  
15 as Mr. Blake stated, a lot of -- a big part of your argument is  
16 predicated on costs, or potential some costs. About \$380,000 of  
17 your construction costs would go to pilings and I recognize --

18 MR. DAMANI: For the foundation.

19 COMMISSIONER SMITH: For the foundation. I recognize  
20 the statement that you stated was to further not compromise the  
21 loss of tunnel, but was that a requirement by WASA? And also  
22 being that previously this building was a four-story building,  
23 you're proposing to shrink the size of this building. So is that  
24 still -- if it's not a WASA requirement, is that still necessary?  
25 Can this building be stick built? And that's going to Mr. Mason's

1 comment about costs with condo association because it wasn't --  
2 if you didn't have to do those foundations, you wouldn't have  
3 incurred that cost and potentially your condo association fees  
4 would be lower. So can you speak to that a little bit more on  
5 why you're still pursuing pilings?

6 MR. DAMANI: Absolutely. Absolutely. So D.C. Water  
7 is forcing us to build those pile foundation system, because what  
8 happens is that even though their pipe is away from our building,  
9 the lowered (phonetic) of the building usually travels in a  
10 diagonal manner. And so if it's built like a normal foundation  
11 system, then the lowered will travel to their pipe in a small  
12 capacity, but it will still travel. And so to avoid that, they  
13 said do a pile foundation system, hence the lowered will go  
14 directly vertically down rather than traveling towards the pipe.  
15 If that explains it. Now, I would love to get another engineer  
16 who has suggested to me that the lowered will not travel that  
17 much, and just the dirt which is sitting on top of the pipe is  
18 heavy enough after the rain compared to the lowered, which would  
19 travel in a diagonal manner. However, D.C. Water said our pipe  
20 is almost 100 years old and we do not want a smallest possibility  
21 of weight towards the pipe. And so you are -- you have to build  
22 on a pile foundation system. So they have provided us a criteria  
23 letter which clearly specifies the following. Number one, we  
24 have to build on a pile foundation system, hence the lowered will  
25 go directly vertically down rather than traveling horizontal at

1 all. Number two, we cannot build a cellar or a basement. What  
2 D.C. Water engineer is suggesting is that by digging the soil  
3 near their pipe, the pipe may be compromised in one capacity or  
4 another. And so don't build a basement. Now, you would say that  
5 hey, why are you telling me not to build a basement because I'm  
6 entirely away from your easement, in layman's term D.C. Water  
7 don't have a say, right? Once it's past the easement. However,  
8 in order to do the right thing, I think, right, to do the right  
9 thing, we want to protect the pipe, be away from the pipe so that  
10 God forbid anything happens, it doesn't happen because of us,  
11 because there is actually another building sitting on the pipe  
12 right across from our street. And you'd be like hey, in layman's  
13 terms, it doesn't make sense, right, the building is sitting on  
14 the pipe, and here you're forced to build on a pile foundation  
15 away from the pipe. And so that is the reality. That is the  
16 fact that we are trying to do the right thing, unlike next door  
17 in the front or in the back. If you see around our property,  
18 you will see that there are other development which has encroached  
19 towards the pipe, are sitting on the pipe. However, because  
20 we're trying to do the right thing, we are still here and, you  
21 know, and we are staying away so much. If that answers that  
22 question.

23                   COMMISSIONER SMITH: That answered my question. I'm  
24 glad that you, you know, alluded to what's across the street,  
25 because that's the reason why -- part of the reason why I asked

1 the question was WASA forcing it because they allowed it across  
2 the street. So it sounds like it's a change in administration  
3 there. So thank you for that.

4 MR. DAMANI: Thank you so much, Mr. Smith. Thank you.  
5 And I do want to -- but, yeah, go ahead if anybody has a question.

6 CHAIRPERSON HILL: Okay, Mr. Damani.

7 Does anybody else have a question?

8 Okay. I'm turning to the Office of Planning please?

9 Oh, and the ANC's here, I didn't realize. I'll give  
10 them an opportunity.

11 Could I hear from the Office of Planning first?

12 MS. THOMAS: Yes. Good morning, Mr. Chair, members of  
13 the Board, Karen Thomas for the Office of Planning. And the  
14 relief requested for the six units, OP believe is better justified  
15 under the criteria since three flats or six units could  
16 theoretically be permitted as a matter of right if the site was  
17 not encumbered by unbuildable easements. So we are recommending  
18 approval of the revised plans based on the analysis of original  
19 report. And I will stop here. Thank you.

20 CHAIRPERSON HILL: Thanks, Ms. Thomas. Ms. Thomas, who  
21 kind of -- all right. I think I've had this before or maybe I  
22 haven't. Who looks at financials there at the Office of Planning?  
23 Or how does the Office of Planning look at financials when they're  
24 talking about, you know, things that we're supposed to look at?

25 MS. THOMAS: We don't -- it has not been our bailiwick

1 to be looking at financial reports. But if we have to make a  
2 determination about it, we would have to pass that on to our  
3 housing economy staff (indiscernible) it's just one staff, but  
4 (indiscernible) --

5 CHAIRPERSON HILL: Okay. Okay. So your analysis is  
6 done without -- your analysis has been done without the  
7 financials?

8 MS. THOMAS: Yes.

9 CHAIRPERSON HILL: Okay. All right. Does anybody have  
10 questions for the Office of Planning?

11 Commissioner, can you hear me? Astmann.

12 ANC COMMISSIONER ASTMANN: I can, good morning, Chair.

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

15 AND COMMISSIONER ASTMANN: Sure. My name is Brett  
16 Astmann. I'm the ANC 7D07 commissioner, which is the new SMD  
17 for this property, and I'm representing the ANC 7D commission  
18 today.

19 CHAIRPERSON HILL: Okay. Great. Thanks, Commissioner.  
20 Commissioner, do you have anything you'd like to add to the  
21 discussion?

22 ANC COMMISSIONER ASTMANN: Sure. I mean, a lot's been  
23 said already. Again, this went to the 6A housing committee, it  
24 went to the 6A ANC commission and got fully unanimous support.  
25 I think the actual SMD commissioner from 6A is actually on as a

1 witness as well today. As you've heard, since the project's been  
2 -- since then, the project's been designed and modified, we think,  
3 to better match the look and feel of the neighborhood. I do want  
4 to note that the developer and owner has been very, very  
5 responsive to ANC questions and ANC requests. We met, walked  
6 around the property, staked out the footprint, left it there for  
7 the neighbors to see. We held a special meeting just for this  
8 topic, and then it went to the full ANC commission for a unanimous  
9 vote. And that's the letter of support that you have today.  
10 Just a few brief comments, although a lot's been said. This  
11 isn't perfect. I don't -- I think everybody, including probably  
12 the developer and owner, wishes we didn't have the constraints  
13 that we have and we could build something slightly different.  
14 But given all of the extreme constraints and financial drivers  
15 and pressures due to the easements, we believe this is the best  
16 possible use and design. And it'll greatly improve the  
17 neighborhood. That vacant lot's been a problem for decades and  
18 vacant lots just in our SMD and neighborhood don't do well. We  
19 have 11 letters of support, and as mentioned there's a couple of  
20 neighbors across the street and they have concerns about the  
21 shading and the setback. And I understand, I understand where  
22 they're coming from. The conversations with them have been if  
23 not this, what? There's already a parking lot one block south  
24 that nobody uses and attracts problems. It's private property.  
25 But even if it was public property, as somebody mentioned, you

1 can't grow -- there's not enough light for a vegetable garden,  
2 there's a dog park already a few blocks away. Like this is the  
3 most practical and practicable use for this property. And if  
4 something similar -- this or something similar doesn't get built,  
5 it's going to be a vacant lot forever. So that's why it has our  
6 ANC support. And I do want to note that Mr. Damani has offered  
7 to work with us in terms of landscaping, in terms of the look  
8 and feel of some of the east-west facing facades and what we can  
9 potentially do there to make it nice for the neighborhood. And  
10 that that's what I -- all I have. Thank you.

11 CHAIRPERSON HILL: Okay, Commissioner, thank you very  
12 much. Does anybody have any questions for the commissioner? All  
13 right. I'm going to see -- Mr. Young, is there anyone here  
14 wishing to speak?

15 MR. YOUNG: Yes, we do, we have three witnesses.

16 CHAIRPERSON HILL: Okay. Can I get their names as you  
17 let them in please?

18 MR. YOUNG: Yes. We have Sondra Phillips-Gilbert,  
19 Willie Smith, and Lloyd Smith is calling in by phone.

20 CHAIRPERSON HILL: Okay. Ms. Phillips-Gilbert, can you  
21 hear me?

22 MS. PHILLIPS-GILBERT: I can.

23 CHAIRPERSON HILL: Could you please introduce yourself  
24 for the record?

25 MS. PHILLIPS-GILBERT: Yes, my name is Sondra Phillips-

1 Gilbert. I am a resident at 1744 E Street. I live on the street  
2 where the development will take place.

3 CHAIRPERSON HILL: Okay. Great. Thank you. Miss  
4 Phillip-Gilbert. Is it Phillip-Gilbert?

5 MS. PHILLIPS-GILBERT: It's Phillips-Gilbert.

6 CHAIRPERSON HILL: Phillips-Gilbert.

7 MS. PHILLIPS-GILBERT: And also I'm the former ANC  
8 commissioner for the community.

9 CHAIRPERSON HILL: Well, thanks for your service.

10 MS. PHILLIPS-GILBERT: Thank you.

11 CHAIRPERSON HILL: Ms. Phillips-Gilbert. As you know  
12 then, you'll have three minutes to give your testimony and you  
13 can begin whenever you like.

14 MS. PHILLIPS-GILBERT: Okay. I just want to say as a  
15 witness, I support my 7D ANC letter of support for development  
16 and the special exceptions, and as a neighbor who live close to  
17 the site. I've worked closely with Mr. Damani during -- while  
18 we were under 6A ANC, and as we're currently under 7D I attended  
19 the community meeting that my current commissioner, Mr. Astmann,  
20 had pulled together. He and another 7D commissioner attended,  
21 along with a larger group of neighbors, and we were able to  
22 discuss -- and we -- the great thing was that Mr. Damani told  
23 the backstory and the history of the area. He took in  
24 consideration of all of the neighbors' concerns as well as the  
25 commissioners, and he did everything that everyone has asked. We

1 attended the special meeting, which I'm just very grateful that  
2 we were able to really, you know, 7D could really discuss that.  
3 And then I attended also the regular meeting where the  
4 commissioners supported -- gave a letter of support. I've been  
5 here on this block since 1990 and I have seen nothing develop  
6 there. All I've seen is a -- it's a permanent location, the  
7 front and the back, for dumping. It's a serious problem for  
8 dumping. At one time, it was used by someone to illegally fix  
9 cars. They parked on the property. And that was an eyesore as  
10 well. And we've had a lot of different drug activities in the  
11 front as well as the -- as well as in the back. The neighbors  
12 -- I mean, Mr. Damani has met with so many neighbors on this  
13 street, and I have walked with him like over four or five times,  
14 introducing him to the neighbors. And they are excited. Of  
15 course, everybody doesn't agree, but the majority of the  
16 neighbors on this street, we want to see change. We want to see  
17 a look, a different look, on this street. We're just tired of  
18 looking at that that empty lot. And I'd just say I hope that  
19 you all give him the support he needs because like under the  
20 circumstances, it's not much to build on. He's losing a lot of  
21 land and space that he could have built on if the sewer  
22 infrastructure underneath was not there. And the property across  
23 the street is humongous. And I just ask if you guys haven't,  
24 visit E Street and you'll see exactly how did this property get  
25 built. And you know, Mr. Damani has to go through loops and

1 loops. But anyway, I just thank you guys for allowing me to  
2 speak, and I just hope that you support him. Thank you so much.

3 CHAIRPERSON HILL: Thank you, Ms. Phillips-Gilbert, and  
4 thank you for taking the time. Oftentimes we don't get people  
5 that come that are in support of things, but they most of the  
6 time, as you know, as a previous commissioner, people that have  
7 objections usually show. But that's not to say that they aren't  
8 well served. But thank you for taking your time in your day.

9 The next --

10 MS. PHILLIPS-GILBERT: Yes, sir.

11 CHAIRPERSON HILL: Thanks, Ms. Phillips-Gilbert.

12 The next person is Mr. Smith or Ms. Smith, I can't --  
13 oh, Mr. Smith, can you hear me?

14 MR. W. SMITH: Yes, I can.

15 CHAIRPERSON HILL: Okay. Could you introduce yourself  
16 for the record please, sir?

17 MR. W. SMITH: Yes, I'm Willie Smith.

18 CHAIRPERSON HILL: All right. Sir, if you could go -  
19 - if you'd go ahead and I'll give you three -- I have two Mr.  
20 Smiths, I'm sorry. Let's go ahead and go with Willie Smith first.

21 MR. W. SMITH: Okay.

22 CHAIRPERSON HILL: Mr. Smith, Mr. W. Smith, if you  
23 could go ahead and give us your testimony and you'll have three  
24 minutes, you can begin whatever you like.

25 MR. W. SMITH: Very good. I'm Willie Smith, and I'm

1 born and raised in the community. And I volunteer at the  
2 community centers since '94, so I've been in the community just  
3 about all my life. And I just met Mr. Reza recently that he's  
4 really concerned about the community and that we had  
5 conversations that what he'd like to get done for us, making the  
6 community better. So what I just seen on the blueprints and the  
7 prints that he just showed on the slide, I'm very impressed about  
8 this project 'cause he did everything y'all asked him to do. He  
9 scaled down, he moved away from the pipe, he did everything, you  
10 know, everyone asked him to do. And I'm really encouraged that,  
11 you know, yeah I support the project, you know, to enhance our  
12 community. And this guy that really, really, really want to do  
13 work in this community. So I wanted to welcome aBoard Mr. Reza  
14 and do credit this project and so we could do create a work in  
15 our community, so I just want to thank y'all for the time and  
16 thank him. Just that slide itself today, I'm very pleased that  
17 he went back and redid what he had to do. And the building look  
18 awesome. And that was -- that's an awesome building that he  
19 trying to build. And I'm very impressed with it. Thank you.

20 CHAIRPERSON HILL: Thank you, Mr. Smith. And again,  
21 thank you for taking the time to be with us today.

22 Mr. E Smith, are you on the phone?

23 MR. L. SMITH: Lloyd Smith.

24 CHAIRPERSON HILL: Oh, Lloyd-Smith. All right. Mr.  
25 Smith, if you could just go ahead and give me your testimony,

1 you'll have three minutes as well, and you can begin whenever you  
2 like.

3 MR. L. SMITH: Okay. I'm the owner of the property,  
4 adjacent property, going east of his property, 1725 E Street,  
5 probably for the last decade or so I've been there, trying to  
6 make improvements. The empty lot is just an invitation to dump  
7 nothing but problems, like the previous neighbor stated, with  
8 trash, drugs, it's like the little cut through for all the  
9 undesirables. I've gotten several tickets from people dumping  
10 trash and being at the rear of my property and the rear of both  
11 properties. And it's just -- something is better than nothing.  
12 And right now nothing and the weeds and just the just empty lot  
13 is just an invitation for bad stuff to happen. And I would be  
14 so happy to see a brand new building over there and some new  
15 landscaping. And it would help the neighborhood so much, I  
16 believe.

17 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith.

18 MR. L. SMITH: And that's basically all I have. Yeah.

19 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Smith.

20 Well, it sounds like there's a lot of community  
21 support, which is nice to hear.

22 All right. Mr. Young, thank you for allowing everybody  
23 into the hearing room.

24 Does anybody have any questions for the witnesses?  
25 Okay.

1                   Mr. Young, if you could please excuse the witnesses.  
2 Thank you all for joining us today.

3                   All right. Does the Board have any final questions of  
4 the Applicant?

5                   All right. Ms. Wilson, do you have anything to add at  
6 the end?

7                   MS. WILSON: I do have a brief conclusion.

8                   CHAIRPERSON HILL: Okay. Go ahead.

9                   MS. WILSON: Great. So the developer has owned this  
10 property for ten years. As you've heard from all the witness  
11 testimony, the community is excited for a project here. I'd  
12 venture to say the amount spent on this property over the last  
13 ten years comes close to or exceeds that assessed value. It's  
14 clear that four units are not going to work here or else that  
15 would have happened years ago, as flats are by right uses. We  
16 could spend a lot of time trying to justify what financials could  
17 or could not be included as part of the use variance. All of  
18 these scenarios will lead to the same conclusion, without the six  
19 units, which would otherwise be permitted by right on the site  
20 but for the easement, you know, we're not going to be able to  
21 make this work. And ironically, the next purchaser could come  
22 here using that assessed value price and make the same argument.  
23 And OP has come to its own conclusion without relying on these  
24 financials. And that's because the hardship runs with the land  
25 and whether you count the amount spent in ownership over the last

1 ten years or the assessed value or a combination of both, this  
2 clearly meets the variance test with respect to the undue hardship  
3 given the site constraints related to the easement, and that this  
4 has been vacant quite literally forever and it will continue to  
5 be vacant forever, as noted by the ANC, without this relief.  
6 Thank you for your time and for reviewing our updated application.  
7 Thank you for your time today.

8 CHAIRPERSON HILL: Okay. Great. Thanks, Ms. Wilson.  
9 Ms. Wilson, I have a question. You guys don't have your attorney  
10 fees in the pro forma, do you?

11 MS. WILSON: I don't think that was included.

12 CHAIRPERSON HILL: Okay. Okay. I didn't see them in  
13 there. All right.

14 Okay. Anybody else?

15 All right. I am going to let everybody go. All right.  
16 I'm going to close the hearing and the record.

17 Okay. This has been with us for quite some time. I  
18 mean, I think this is actually a very unique situation with that  
19 sewer line. And I think that the Applicant has done a very good  
20 job of explaining why they need this relief, including why in my  
21 -- I'm comfortable with the six units. And even though there  
22 was some questions about the pro forma and I definitely appreciate  
23 that -- those questions because it really brings, again, the  
24 expertise that certain members of the Board are bringing to the  
25 conversation. I don't necessarily know whether I need to hold

1 this up for further analysis of the pro forma. However, if other  
2 people do feel that way, then I'm happy to keep the record open  
3 and then deliberate on this at a later time. The analysis that  
4 I have seen from the Office of Planning in their exhibit, I would  
5 also agree with. And it is -- I know that the ANC didn't  
6 necessarily speak to the regulations or the standards with which  
7 we are looking at, but from a practical standpoint, them wanting  
8 to see the lot developed as well as the public testimony that we  
9 received is helpful in terms of my feeling good about my decision.  
10 So I'm going to be voting in favor of this application.

11 I don't know, Mr. Smith, if you have anything to add?

12 COMMISSIONER SMITH: I do agree with you that this is  
13 a very unique project, that it's something that I at least haven't  
14 seen in my time on the Board with this large of an easement  
15 running through the majority of the property, which, you know, I  
16 do believe that the Applicant has shown that, you know, this  
17 easement itself is a hardship. I do have some squeamishness  
18 about the numbers that I see in the pro forma. I do -- it seems  
19 with the pro forma and the argument they're trying to really have  
20 it both ways, so what they presented to us was the value now of  
21 the property as opposed to the value of the property at the time  
22 they acquired it, which was \$205,000 for the acquisition of all  
23 three of those lots. So you know, I do think that this can be  
24 cleaned up a little bit more, the financial argument that they're  
25 making. The Applicant spoke to the reason why they went with

1 the \$1.4 million estimate was, you know, to start clean. But,  
2 you know, in essence their argument, they're not necessarily  
3 starting clean. They're talking about costs associated with not  
4 being able to build because of WASA's concerns about building on  
5 the pipe. So they're factoring in those costs in the past as  
6 part of their argument. So I think it needs to be a little bit  
7 more of a cleaner argument. So to me, they shouldn't -- it  
8 shouldn't be based off of the value of the property now, it should  
9 be based on the sunk cost at the time they acquired the property.  
10 And from there they show the taxes they paid on the property  
11 going forward. To me, that's much more of a cleaner argument  
12 and I think it would clean up the record for this particular case  
13 for us to make a decision. But you know, that's just my opinion  
14 and I welcome anyone else's opinions going forward. But you  
15 know, other than that, the fact that they have this large pipe,  
16 they can't build on it, WASA has already stated that they would  
17 recommend or they're essentially conditioning their approval on  
18 putting in a piling system which adds an additional almost  
19 \$400,000 cost. I do believe that they have mostly met the case  
20 for a hardship, but I would welcome them cleaning up the record  
21 a little bit more as far as the finances. And I'll just leave  
22 it at that for now. And I'll welcome hearing from the rest of  
23 my Board members.

24 CHAIRPERSON HILL: Okay.

25 Can you -- I'm sorry, you guys, I'm here alone and

1 there's somebody at the door. I'll be right back.

2 (Whereupon, there was a brief recess.)

3 CHAIRPERSON HILL: Okay. Y'all back there?

4 Every time I have to go down to the front door and  
5 there's nobody here in this office building, I curse COVID once  
6 again.

7 Okay. Mr. Blake, we're continuing on with our  
8 discussions of Application 20821. Would you like to go next, Mr.  
9 Blake?

10 COMMISSIONER BLAKE: Sure. Mr. Chairman, at the  
11 conclusion of the December hearing, I was comfortable that the  
12 Applicant had met the burden of proof for the special exception  
13 and the area variance relief requested. But I wasn't convinced  
14 that the Applicant had met the burden of proof necessary to grant  
15 the use variance. I, by and large, agree with the Office of  
16 Planning's analysis that the height and additional story of four-  
17 unit apartment buildings would be inconsistent with the  
18 anticipated scale and density for the RF-1 zone. Since then, the  
19 Applicant really has taken steps to address the concerns  
20 expressed by the Board, Office of Planning, and neighbors in the  
21 community and has come up with a design and plan that is much  
22 more attractive, a massing that's more consistent with the  
23 neighborhood landscape. And as I look at it, they also provided  
24 us though, and my only area of concern was the financial analysis,  
25 which we talked about earlier. And the -- in their financial

1 analysis, they presented us this -- that the only strategy would  
2 work for four, five, or six units, only the six-unit strategy  
3 penciled out econo- -- only the six-unit strategy penciled out  
4 economically. I looked at that closely and my concern was with,  
5 as Board Member Smith pointed out, was with the value used for  
6 the land assessment. While we sat through the hearing, I sat  
7 down and penciled through some numbers based on all the  
8 information that's provided in the record and through the  
9 testimony, I used the number of the purchase price of 285. I  
10 added the carrying costs which the Applicant stressed several  
11 times was so important, the interest expense, the taxes, and so  
12 forth, and computed that as about 208,000, add that back, and it  
13 came out with a basis of 493. In the third scenario I added  
14 those development costs, which in our last discussion we said  
15 were not appropriate things, like the site planning and, you  
16 know, analysis that went into a missed use of the first scenario.  
17 But even if you add those costs back, you end up with a basis of  
18 around 688,000. Now, applying that to the matrix that they use  
19 in terms of development costs, which by and large I agree with,  
20 I mean you can nitpick there and there, but overall those costs  
21 don't seem unrealistic. Under the purchase price scenario, I  
22 used 18.1 percent return for the matter of right and 8.9 percent  
23 for if you include the carrying cost, and a 1.4 percent if you  
24 include the development cost. Now, I only looked at the four-  
25 unit because the question here is just to say is it feasible to

1 do the matter of right option, not necessarily should it be five  
2 or should it be six, but is the matter of right option not  
3 appropriate? In this case, based on the calculations I made, I  
4 actually do not believe that the matter of right use is  
5 appropriate. Even though I came up with a calculation that had  
6 a positive number, you've got to allow for enough wiggle room in  
7 there so that you can make a mistake and still get through the  
8 project. Also, I question if the bank finance-ability would be  
9 there with the project that's that skinny. So in fact I don't  
10 think that the four-unit building would be -- matter of right  
11 option would be viable in this case for economic reasons. But I  
12 just want to be clear that I do disagree with the use of that  
13 comparable value, and I'd hate to see that come up again in future  
14 discussions. I do think you'd have to come with a reasonable  
15 cost, and I do not think that that particular assumption was  
16 reasonable.

17 So that said, I do think the use provisions have -- the  
18 criteria for use have been met. The WASA restrictions are clearly  
19 the exceptional condition. The undue hardship does translate  
20 into a need for additional apartment -- use variance so they can  
21 make the additional units to cover the cost. And I do not think  
22 it'll be detriment to the public good because in fact the massing  
23 is in character with the neighborhood, it removes an eyesore, and  
24 the area is made up of apartment buildings and things of that  
25 nature anyway. So I don't think that it'll be a detriment. Also,

1 I would point out that the shadow studies show that there are no  
2 impact on the light and air to neighboring properties. So all  
3 that said, I give great weight to the Office of Planning's  
4 recommendation for approval. DDOT has no objections. Note that  
5 the report from DPW is in support. The concept approval from  
6 D.C. Water. I give great weight to the ANC 7D report which is  
7 in support. And I'll also take note of the previous report of  
8 the ANC 6A. So I will be voting in favor of this application.  
9 Thank you.

10 CHAIRPERSON HILL: Thank you, Mr. Blake.

11 Dr. Imamura?

12 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I  
13 really enjoy going after Board Member Blake. His reviews are  
14 very comprehensive. So I align myself with his comments and I  
15 align myself largely with your summary, Mr. Chairman. The site  
16 at the end of the day has some exceptional constraints. And  
17 really, while we try to implement zoning regulations as best we  
18 can, the overall goal is to improve the city where we can, when  
19 we can, as best we can. And in this particular neighborhood for  
20 this particular site I think if -- it would be challenging to  
21 see another project if anybody else would take on a project such  
22 as this with the site constraints that already exist. So I'm  
23 prepared to vote in support of this project and appreciate the  
24 Applicant's work and stick-to-it-iveness as well as, you know,  
25 their collaborative spirit to work with OP and take into

1 consideration the recommendations. So with that I'm prepared to  
2 vote in support. And yield back, Mr. Chair.

3 CHAIRPERSON HILL: Thank you.

4 Vice Chair John?

5 VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm also  
6 in support of the application. I'm thankful to Board Member  
7 Blake for his financial analysis. I sort of looked at it from  
8 the perspective of the cost to build either a four- or a five-  
9 unit without factoring in how they valued the property at this  
10 time, because I kind of thought it was a wash. But I think that  
11 Mr. Blake's analysis and the items he included put a more -- a  
12 finer tune on it. And I think he agreed with the Applicant in  
13 the end that four units would -- might not be financially  
14 feasible. So I'm going to give great weight to the Office of  
15 Planning's analysis and I appreciate that the ANCs all agreed.  
16 And I think that this project is really going to add to the  
17 neighborhood instead of detract from it. And I have to express  
18 my appreciation to the developer for working with the community  
19 and coming up with a very thoughtful design and use for the  
20 property in the face of such extenuating circumstances, because  
21 the easement is really a design challenge. So with that, I will  
22 say again that I'm in support. Thank you, Mr. Chairman.

23 CHAIRPERSON HILL: Thank you, Vice Chair John.

24 Mr. Smith, may I respectfully ask that we move forward  
25 or are you interested in further analysis?

1                   COMMISSIONER SMITH: Well, you know, the benefit of  
2 going early and then I can sit back and listen to the rest of my  
3 Board members and hear them make their testimony. So you know,  
4 I've been persuaded by Board Member Blake's comments on this  
5 particular case. So I do believe that they, by and large, met  
6 the standard for us to grant the variance -- the variances and  
7 the special exceptions. And I will be in support of the  
8 application. Do we have to -- we probably don't -- do we have  
9 to specify the number, no more than six and condition it to that?  
10 Just open it up to that, but I support the application.

11                  CHAIRPERSON HILL: I'm fine with -- I think that  
12 usually, you know, the design that we have is the design they  
13 have to build. So I don't think it's necessary to specify, but  
14 if it makes you feel more comfortable.

15                  COMMISSIONER SMITH: Okay.

16                  CHAIRPERSON HILL: Okay. You seem to be saying okay.

17                  All right. Okay. I'm going to go ahead and make a  
18 motion then to approve Application No. 20821 as captioned and  
19 read by the secretary and ask for a second, Ms. John.

20                  VICE CHAIR JOHN: Second.

21                  CHAIRPERSON HILL: The motion been made and seconded,  
22 Ms. Rose, if you'd take a roll call please?

23                  MS. ROSE: Yes. When I call your name, please respond.

24                  Chairman Hill?

25                  CHAIRPERSON HILL: Yes.

1 MS. ROSE: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MS. ROSE: Board Member Smith?

4 COMMISSIONER SMITH: Yes.

5 MS. ROSE: Board Member Blake?

6 COMMISSIONER BLAKE: Yes.

7 MS. ROSE: Commissioner Imamura?

8 ZC COMMISSIONER IMAMURA: Yes.

9 MS. ROSE: Staff will record the vote as five to zero  
10 to zero to approve the application. This is on a motion by  
11 Chairman Hill, seconded by Vice Chair John, with Mr. Blake, Mr.  
12 Smith, and Commissioner Imamura in support of the motion to  
13 approve.

14 CHAIRPERSON HILL: Okay. You guys, this is like going  
15 to be one of the old days. It's going to take a long time today.  
16 So there's seven, Dr. Imamura, you've missed the bullet until  
17 today.

18 ZC COMMISSIONER IMAMURA: Sure did.

19 CHAIRPERSON HILL: Let's see. So do y'all want to do  
20 one more and then we'll take lunch? Okay. I see a nodding yes  
21 from Vice Chair John and that's all I need to move forward because  
22 I don't care about y'all else. And then let's go ahead and have  
23 our next case. Oh, are you out, Dr. Imamura?

24 ZC COMMISSIONER IMAMURA: I'm out. Yes, I am. Have a  
25 good afternoon.

1 CHAIRPERSON HILL: Oh, then never mind, oh, my god, you  
2 missed it again.

3 ZC COMMISSIONER IMAMURA: I did.

4 CHAIRPERSON HILL: Oh, my god.

5 ZC COMMISSIONER IMAMURA: (Indiscernible) Board Member  
6 Blake can't believe it.

7 CHAIRPERSON HILL: I hope you're not getting paid for  
8 this. Okay?

9 ZC COMMISSIONER IMAMURA: All right. Good luck you  
10 all.

11 CHAIRPERSON HILL: All right. Bye-bye.

12 Then we have Vice Chair Miller I guess is who's going  
13 to rejoin us here. And there we go.

14 ZC VICE CHAIR MILLER: I'm here.

15 CHAIRPERSON HILL: All right. Commissioner Miller,  
16 welcome back.

17 All right. Ms. Rose, you can go ahead and move forward.

18 MS. ROSE: The next application is 20830 of Stephen and  
19 Stephanie Tankel. This is a self-certified application pursuant  
20 to Subtitle X, Section 901.2 for a special exception under  
21 Subtitle D, Section 306.4 to allow a rear addition extending more  
22 than ten feet past the rear wall of an adjacent residential  
23 property to construct a two-story rear addition to an existing  
24 two-story with basement semi-detached principal dwelling in the  
25 R-2 zone at 5211 Chevy Chase Parkway, N.W., Square 1989, Lot 124.

1 We have received a letter of authorization for Henry Brigham to  
2 represent the Applicant and a PowerPoint presentation for the  
3 project. Both items need a waiver.

4 CHAIRPERSON HILL: Okay. Great. Unless the Board has  
5 any issues, I'd like to hear from Mr. Brigham as well as see the  
6 PowerPoint. Hearing none from my Board members, Ms. Rose, if you  
7 could make sure they're both in their. Let's see if I got the  
8 PowerPoint, it's the most helpful thing. They don't have that  
9 yet. Okay. So if you can drop it in the record.

10 Mr. Brigham, if you can hear me, if you could introduce  
11 yourself for the record?

12 MR. BRIGHAM: Yes. Thank you, Mr. Chairman. My name  
13 is Henry Brigham. I am project designer with Landis Architects  
14 and Builders. I am speaking on behalf of Stephanie and Stephen  
15 Tankel at the property of 5211 Chevy Chase Parkway Northwest.

16 CHAIRPERSON HILL: Okay. Great. Thank you. Well, Mr.  
17 Brigham, I'm sure you've been listening to us. We're having a  
18 long day. I'm going to go ahead and put 15 minutes on the clock  
19 so I know where you are and you can begin whenever you like. I  
20 assume you want us to pull up your PowerPoint?

21 MR. BRIGHAM: Yes. That'd be the quickest and most  
22 efficient way, I believe.

23 CHAIRPERSON HILL: Okay.

24 MR. BRIGHAM: Again, thank you, everyone, for being  
25 here today and a special thank you to Robert Reed, who helped us

1 get this together at the last hour here because one of our  
2 coworkers had an unexpected funeral to attend. So thank you all  
3 for all your time and effort with this.

4 As I said before, we're talking about the property at  
5 5211 Chevy Chase Parkway, N.W. The owner, Stephanie, I believe,  
6 is on the line with us. And as before, I'm Henry Brigham, project  
7 designer. Next slide please?

8 We're looking for relief from D 306. Currently we're  
9 looking to go further past the adjacent or adjoining building in  
10 ten feet. We're looking for 13 feet total. The house is a semi-  
11 detached single-family. We're one -- we're the captain of a  
12 three separate built -- or three-building row here. So we have  
13 a dogleg on our left side there, as you can see in the plat. Our  
14 only adjoining property is 5209 Chevy Chase Parkway, N.W. Next  
15 slide please?

16 Just quickly, the existing conditions here are shown.  
17 At the top left as the neighbor across from us, across the dogleg  
18 there of 5213, it's not adjoining, but showing you in the middle  
19 here is the front of both properties as they're adjoining, as  
20 well as the rear you can see that at the bottom of our slide here  
21 that our building is currently about 2'10", 2'11" past our  
22 neighbor. So we're asking relief for ten feet on top of that.  
23 Next slide please?

24 Just kind of going through the regulations more for me,  
25 for my narrative, so we can go forward with the next slide.

1                   Just showing what we have for our R-2 zone and what we  
2 are currently proposing, all within the limits of stories,  
3 height, we have a very small lot occupancy, at only 24 percent,  
4 when our zoning usually gives us 40 percent. And we have a rear  
5 setback that will come up later in our conversation of almost 70  
6 feet. Next slide please? Next slide?

7                   Here, we're showing our proposed addition on the plat.  
8 I -- the red dimensions, I want to note, I added because they  
9 were missing from the original submissions, so if this is added  
10 to the record, it should be a little bit more clear of what the  
11 full setback we're looking for past our neighbor at 5209. And  
12 also we are coming closer on the dogleg side of this to almost  
13 the full -- or the minimal setback of eight feet in the side  
14 yard. Next slide?

15                  These plans, we'll go through quickly, but the general  
16 use for what we're -- or what we're trying to accomplish here is  
17 that they're starting a family, and as they're adding new members,  
18 they need to add a little bit more space for office, playroom,  
19 and we'll see in the next slide --

20                  -- bedroom, expanded kitchen -- and next slide --

21                  -- another bedroom. So again, just showing you that  
22 we are still in this -- maintain that -- or we're still asking  
23 for that 13 feet. So next slide please?

24                  Again for my narrative, I want to run through the three  
25 things that we think we are not imposing too much on the

1 neighborhood or the community or the style of the neighborhood  
2 as well. So next slide please?

3 Just quickly going through a solar study. Next slide?

4 With our orientation, we'll see as we go through these  
5 slides each that we have a little bit of impact, but we don't  
6 think it's enough to -- for sunlight, while we're not really  
7 impacting open air with how big these lots are and how much  
8 setback we still maintain in the front, rear and rear -- next  
9 slide?

10 -- we do see, as expected, early in the morning that  
11 we are heavily shadowing our neighbor at 5209, but by 9 a.m. it  
12 becomes fairly minimal. Next slide?

13 And then by about noon there's little to no impact, as  
14 also expected with our orientation to north. After that, we only  
15 draw a shadow on ourselves at our property. Next slide? And  
16 next slide? Next slide?

17 So we do have -- we don't -- we won't have any windows  
18 for the adjoining property as it's on the property line. We do  
19 have a few double hungs on the side of the dogleg side here that  
20 overlook our neighbor's porch that we are not adjoined to. And  
21 then our primary number of windows is at the rear elevation. And  
22 we believe that with 70 feet between us and the next lot in the  
23 rear, that this constitutes as this will still maintain privacy  
24 for them as well. Next slide please? Next slide?

25 Currently we're showing just a stick frame build -- or

1 a wood frame build out the rear here. It is an interesting site  
2 as there is a large retaining wall at the front property that  
3 goes across for multiple houses on the street that then drops  
4 down. So it's kind of a two-story with a basement in the front,  
5 and then it's a full three stories at the rear. One of the things  
6 that we want to note is that the material of the lap siding is  
7 right now a placeholder, but it could go to a larger format or  
8 to paneling. But we do find these type of bump outs typical,  
9 especially with young families, as it tends to be some of the  
10 more economical ways of building. And we believe it follows suit  
11 to the rest neighborhood. Next slide please?

12 We did receive a letter, it's also in the record, I  
13 just put it here for convenience, from our neighbor that we are  
14 adjoined to. Because our ANC had been, you know, reconfigured,  
15 this letter has been in the record for about six months. They  
16 are also talking about doing this. So they're excited that we  
17 are doing this in order so they can do a larger addition in the  
18 future. And also, we do appreciate the Office of Planning's  
19 recommendation for approval. Next slide?

20 And just in conclusion, I just want to thank everyone  
21 here. I want to thank the neighbors and then the ANC who was  
22 able to meet with us last night and give their support, and for  
23 everyone's time. Thank you.

24 CHAIRPERSON HILL: Okay, thanks. Mr. Brigham, the  
25 siding changes that you're speaking about, I'm trying to figure

1 out whether you'll need -- whether we'll need to give you some  
2 flexibility for that. What are you thinking about in terms of  
3 the siding changes?

4 MR. BRIGHAM: Ninety-five percent sure it will be lap.  
5 It just might not be a five-inch exposure. It could be up to a  
6 eight -- or to a nine-inch exposure. So I don't -- I didn't know  
7 if that qualified as something to even bring up, but I felt being  
8 honest was the best course.

9 CHAIRPERSON HILL: No, that's great. Can you explain  
10 to me what you just said?

11 MR. BRIGHAM: Yeah, so the exposure of the lap shown  
12 in the rendering, which can be misleading, is a very narrow lap  
13 siding. What we might be doing is making it a wider lap siding.  
14 So you can just think of those lines getting more spaced out.

15 CHAIRPERSON HILL: Okay. Gotcha. I understand, but  
16 it will still be lap siding?

17 MR. BRIGHAM: Yeah, at this point, we believe so.

18 CHAIRPERSON HILL: Okay. Well, the reason why I say  
19 at this point is if you wanted to change it, we'd have to mention  
20 it, otherwise it might get held up in permitting. Or you'd have  
21 to mention it.

22 MR. BRIGHAM: Okay.

23 CHAIRPERSON HILL: Let's see. Ms. Tankel, you look  
24 like you want to introduce yourself, why don't you go ahead and  
25 do so for the record.

1 MS. TANKEL: Hi, I'm Stephanie Tankel. I'm really  
2 excited and grateful for your time and attention to this. And  
3 yeah, we did have an expanding family. I had my third child, so  
4 we've got a full house.

5 CHAIRPERSON HILL: All right. Well, congratulations.

6 MS. TANKEL: Thank you.

7 CHAIRPERSON HILL: All right. Does anybody have any  
8 questions for the Applicant? Okay.

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

10 Mr. Mordfin, I can't hear you, you're on mute. That's  
11 all right, Mr. Mordfin, just give me one second. I guess you're  
12 trying to figure that out. I've read the Office of Planning's  
13 report.

14 Does anybody have any questions for the Office of  
15 Planning? Okay.

16 Mr. Mordfin, just hang out there. You can see if you  
17 can fix it, but it doesn't look like the Board has any questions  
18 of you. And I guess we'll rest on the record there for the Office  
19 of Planning's report at this point in time, due to the technical  
20 issues with the Office of Planning. And we can fix that at  
21 lunchtime, Mr. Mordfin, if you're back with us afterwards.

22 All right. Anything else from the -- oh, I'm sorry,  
23 Mr. Young, do you have anything -- anyone wishing to testify?

24 MR. YOUNG: We do not.

25 CHAIRPERSON HILL: Okay.

1                   All right. Mr. Brigham, do you have anything at the  
2 end?

3                   MR. BRIGHAM: No, sir.

4                   CHAIRPERSON HILL: Okay. Just a quick question, again  
5 there's no windows on the side that faces the neighbor at 5209,  
6 right?

7                   MR. BRIGHAM: No, that would -- yeah, no, we can't even  
8 do that by building code. Thanks.

9                   CHAIRPERSON HILL: Right. They'd be at risk anyway.  
10 Okay. And they're going to build out maybe. So okay, all right.

11                  I'm going to go ahead and close the hearing and the  
12 record. Mr. Young, if you could please excuse everyone.

13                  Okay. In the past, you know, we've all taken a look  
14 pretty much at this ten-foot rule and whether or not we think  
15 there is an ability for the Applicant to move forward. In this  
16 case, it's just three feet more that's going out. It's at the  
17 end. Those windows aren't being on the side that the neighbor  
18 at 5209 is at, so therefore I don't think there'd be any visual  
19 intrusion. I think that the shadow study did show that the  
20 shadowing, although more severe in the morning, are also nominal  
21 after 9 a.m., and regardless I think that even the ten feet would  
22 have similar shadowing in the morning in that area. I would  
23 agree with the Office of Planning's analysis as well as that that  
24 we have gotten from the ANC and their support and be voting in  
25 favor of this application.

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

2                   COMMISSIONER SMITH: I by and large agree with your  
3 assessment of this particular case, Chairman Hill. I do believe  
4 that the full addition would have not an adverse effect on the  
5 neighboring properties, and I would note that the neighboring  
6 property, one of the neighboring properties that would be most  
7 directly affected is in support of their neighbor's application.  
8 So I do believe they've met the burden of proof for us to grant  
9 the special exception. And I do believe they've met all the  
10 criteria under the general special exception standards of  
11 Subtitle X 901, and will also support the application.

12                  CHAIRPERSON HILL: Great. Thank you, Mr. Smith.

13                  Mr. Blake?

14                  COMMISSIONER BLAKE: Mr. Chair, I agree with the  
15 comments that you and Board Member Smith have made. I have  
16 nothing to add. I'll be voting in favor of the application.

17                  CHAIRPERSON HILL: Thank you.

18                  Commissioner Miller?

19                  ZC VICE CHAIR MILLER: I concur and support the  
20 application.

21                  CHAIRPERSON HILL: Thank you.

22                  Vice Chair John?

23                  VICE CHAIR JOHN: Thank you, Mr. Chairman. I believe  
24 this is fairly straightforward. I'm going to give great weight  
25 to the Office of Planning's analysis and note that, as you noted,

1 Mr. Chairman, this application is for three feet more than would  
2 have been allowed as a matter of right. And I want to express  
3 my appreciation to Mr. Brigham for his annotations on the plans  
4 showing the relief that's requested. So I'm in support.

5 CHAIRPERSON HILL: Okay, thanks, Vice Chair John.

6 All right. I'm going to go ahead and make a motion to  
7 approve Application No. 20830 as captioned and read by the  
8 secretary and ask for a second, Ms. John.

9 VICE CHAIR JOHN: Second.

10 CHAIRPERSON HILL: Motion been made and seconded, Ms.  
11 Rose, if you'd take a roll call please.

12 MS. ROSE: Yes. When I call your name, please respond.

13 Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MS. ROSE: Vice Chair John?

16 VICE CHAIR JOHN: Yes.

17 MR. ROSE: Board Member Blake?

18 COMMISSIONER BLAKE: Yes.

19 MS. ROSE: Board Member Smith?

20 COMMISSIONER SMITH: Yes.

21 MS. ROSE: Commissioner Miller?

22 ZC VICE CHAIR MILLER: Yes.

23 MS. ROSE: Then staff will record the vote as five to  
24 zero to zero to approve the application. This is on a motion by  
25 Chairman Hill, seconded by Vice Chair John, with Board Member

1 Smith and Blake, and Commissioner Miller in support of the motion  
2 to approve.

3 CHAIRPERSON HILL: Thank you.

4 All right, everybody, do you want to take lunch now?  
5 Okay. Let's go ahead and take lunch. I guess let's try to get  
6 back by 1:00, if that's possible. And then let's just see what  
7 happens. Okay? Thank you. Bye-bye.

8 (Whereupon, there was a brief recess.)

9 CHAIRPERSON HILL: Okay, Ms. Rose, you can call us back  
10 and also then call our first case -- or case back.

11 MS. ROSE: Thank you. After a lunch break, we're  
12 returning at 1:09 p.m. The next case is Application No. 20831  
13 of Joseph Britton and Katherine Ehly. This is a self-certified  
14 application pursuant to Subtitle X, Section 901.2 for a special  
15 exception under Subtitle E, Section 5201 from the lot occupancy  
16 requirements of Subtitle E, Section 304.1 to construct a two-  
17 story rear porch addition to an existing three-story attached  
18 principal dwelling with cellar in the RF-1 zone at 718 North  
19 Carolina Avenue, S.E., Square 899, Lot 49. And the ANC 6B report  
20 is in the record at Exhibit 27.

21 CHAIRPERSON HILL: Great. Thank you.

22 Mr. Fowler, if you could hear me, if you could introduce  
23 yourself for the record?

24 MR. FOWLER: My name's Mike Fowler from Fowler  
25 Architects.

1 CHAIPERSON HILL: Mr. Fowler, is this the first time  
2 you're with us since the pandemic?

3 MR. FOWLER: No, I th- -- I've been here a few times.  
4 Not as much as my wife, but I've been here a few times.

5 CHAIRPERSON HILL: On video?

6 MR. FOWLER: Yeah.

7 CHAIRPERSON HILL: Oh, wow, okay. All right.

8 Okay. All right. All right. Mr. Fowler, if you want  
9 to go ahead and walk us through your client's application and why  
10 you believe you are meeting the criteria for us to grant the  
11 relief requested, I'm going to put 15 minutes on the clock and  
12 you can begin whenever you like.

13 MR. FOWLER: All right. Thank you. I'll try and keep  
14 this brief. I think it's a pretty straightforward case. We're  
15 asking for relief to build a two-story screen porch in the place  
16 of a smaller two-story porch that's existing. The relief that  
17 we are asking for is a special exception for lot coverage. We  
18 will be increasing the lot coverage from 59.4 percent to 67.6  
19 percent. We feel like we meet the standards because we are  
20 keeping the existing open court, we're keeping the existing  
21 height, we are introducing some privacy panels along the property  
22 line to address some concerns from one of the neighbors. And  
23 just the nature of the screen porch itself, it's not enclosed  
24 completely, so it will let some light and air through it. So  
25 we're basically asking for -- to increase the size of an existing

1 porch and enclose it with screens.

2 We -- our clients have discussed the project with the  
3 adjacent neighbors directly and through the ANC process. We have  
4 ANC support as well as a report from the CHRS Historic Committee  
5 saying that the project was appropriate and we are on the consent  
6 calendar for tomorrow's HPRB meeting for the same project.

7 So with that, I would like to just ask your support for  
8 this project and just let me know if you have any questions.

9 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Fowler.

10 Let me hear from the Office of Planning first, then  
11 I'll turn to the Board for questions.

12 MR. MORDFIN: Good afternoon, Chair and members of the  
13 Board. I'm Stephn Mordfin with the Office of Planning. And the  
14 Office of Planning finds that this application is in conformance  
15 with the criteria of 5201.1 and -- or rather 5201, and therefore  
16 recommends approval of the application and stands on the record.  
17 But I'm also available for any questions. Thank you.

18 CHAIRPERSON HILL: Thank you.

19 Does the Board have any questions for the Office of  
20 Planning and/or the Aplicant?

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

22 MR. YOUNG: We do not.

23 CHAIRPERSON HILL: Mr. Flower, is there anything at the  
24 end you'd like to add?

25 MR. FOWLER: No. Thank you.

1 CHAIRPERSON HILL: Okay. I'll now close the hearing  
2 and the record. Thank you, Mr. Fowler.

3 MR. FOWLER: Thank you.

4 CHAIRPERSON HILL: Mr. Young, if you can excuse Mr.  
5 Fowler and Mr. Mordfin and anyone else? Thank you.

6 I didn't have any concerns about this application, I  
7 thought it was pretty straightforward. I -- was nice to see the  
8 privacy screening and the things that they had done to eliminate  
9 any concerns from the neighbors. I also would agree with the  
10 analysis of the Office of Planning and that of the ANC and be  
11 voting in favor of this application.

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

13 COMMISSIONER SMITH: I don't have anything I would like  
14 to add. I by and large agree with all of the statement that you  
15 just made. I do believe they've met the burden of proof for us  
16 to grant the special exception and I give OP's staff report great  
17 weight and will support the application.

18 CHAIRPERSON HILL: Thank you.

19 Mr. Blake?

20 COMMISSIONER BLAKE: Yes, I too will be voting in favor  
21 of the application. I believe the Applicant has met the burden  
22 of proof to be granted the relief. I give great weight to the  
23 Office of Planning's recommendation for approval. And I give  
24 great weight to the report from ANC 6B which is in support of  
25 the application, which stated no issues or concern.

1 CHAIRPERSON HILL: Thank you.

2 Commissioner Miller?

3 ZC VICE CHAIR MILLER: I concur and support the  
4 application, Mr. Chairman.

5 CHAIRPERSON HILL: Thank you.

6 Vice Chair John?

7 VICE CHAIR JOHN: I'm also in support of the  
8 application, and I agree with everything that's been said so far.

9 CHAIRPERSON HILL: Okay.

10 I'm going to make a motion to approve Application No.  
11 20831 and ask for a second, Ms. John.

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: The motion's been made and seconded,  
14 Ms. Rose, if you could take a roll call please?

15 MS. ROSE: Yes. When I call your name, would you please  
16 respond?

17 Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. ROSE: Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MS. ROSE: Board Member Smith?

22 COMMISSIONER SMITH: Yes.

23 MS. ROSE: Board Member Blake?

24 COMMISSIONER BLAKE: Yes.

25 MS. ROSE: Commissioner Miller?

1                   ZC VICE CHAIR MILLER: Yes.

2                   MS. ROSE: Staff will record the vote as five to zero  
3 to zero to approve the application. This is on a motion by  
4 Chairman Hill, seconded by Vice Chair John, with Board Member  
5 Smith and Board Member Blake in support of the motion, as well  
6 as Commissioner Miller to approve.

7                   CHAIRPERSON HILL: Okay. Thank you. If you could call  
8 our next case please?

9                   MS. ROSE: Next is Application No. 20836 of Samuel  
10 Lynch. This is a self-certified application pursuant to Subtitle  
11 X, Section 901.2 for a special exception under Subtitle U, Section  
12 421 to allow a new residential development three-unit apartment  
13 house to create an additional dwelling unit in an existing semi-  
14 detached flat two-story with basement in the RA-1 zone at 5703  
15 Colorado Avenue, N.W., Square 2797, Lot 59. And updated  
16 architectural plans are at Exhibit 25.

17                   CHAIRPERSON HILL: Great. Thank you, Ms. Rose.

18                   I have a hard time with your name (indiscernible). Can  
19 you say your last name please, sir?

20                   MR. DZIERZANOWSKI: Not a problem. Dzierzanowski,  
21 Mateusz Dzierzanowski.

22                   CHAIRPERSON HILL: Okay, Mr. Dzierzanowski. If you can  
23 go ahead and walk us through your client's application -- actually  
24 is it your application or you're representing -- yeah, you're  
25 representing --

1                   MR. DZIERZANOWSKI: I'm representing the clients.

2                   CHAIRPERSON HILL: Yep. If you could walk us through  
3 your client's application as to why you believe that you are  
4 meeting the criteria for us to grant the relief requested? And  
5 I will put 15 minutes on the clock so I know where we are. And  
6 you can begin whenever you like.

7                   MR. DZIERZANOWSKI: Sounds great. Thank you very much.  
8 Thank you to the Board. Good afternoon. As mentioned, my name's  
9 Mateusz Dzierzanowski. I'm here on behalf of the client, Samuel  
10 Lynch, as well as Valerie Nixon, looking for relief on this  
11 project. Property is located at 5703 Colorado Avenue, N.W. The  
12 existing condition of the property is such that it's an existing  
13 corner lot residential structure. It currently is a -- has a C  
14 of O for two units within the building itself, and there is an  
15 existing kind of a basement level as well as a first and a second  
16 story level. The overall goal and scope is to do a full gut  
17 renovation, but everything more or less in kind. So there will  
18 be no addition to the project with regards to growing the project  
19 out or upwards. And the overall goal is to convert the project  
20 from two-story -- or sorry, existing two units to three units  
21 where one unit would exist on every floor level. So again, a  
22 cellar-level unit, a first-floor level unit, and a second-floor  
23 level unit. So a level unit would be accessed from the existing  
24 side of the building against the corner lot condition and the  
25 other units would be accessed from a central stair, again stemming

1 from the vestibule on the first-floor level and then also going  
2 up for the second floor unit.

3 The project itself, we've actually for some time now  
4 gone through most of the building permit review process. We've  
5 had conversations with zoning because while we understand the  
6 form of relief which we are seeking and given that it's occurring  
7 because our jump from two to three units technically classifies  
8 it as the multi-family development, I believe that our clients  
9 obviously are maintaining the existing kind of shell of the  
10 building, so I don't think it necessarily qualifies as a true new  
11 residential development.

12 At the end of the project, again the goal would be that  
13 the building itself gets kind of repainted, retouched. There  
14 will be new windows and doors throughout the project, paint, new  
15 paint, just an overall improvement of the existing structure as  
16 opposed to what currently is there now. And we hope that the  
17 Board will consider this form of relief. And again, I'm here to  
18 answer any questions. Thank you.

19 CHAIRPERSON HILL: Thank you.

20 Does the Board have any questions for the Applicant?

21 All right. I'm going to turn to the Office of Planning.  
22 Or Mr. Blake, did you have a question?

23 COMMISSIONER BLAKE: I do. I was just going to ask  
24 about community outreach, but we can follow up with that.

25 CHAIRPERSON HILL: Okay. Mr. Jesick, could I hear from

1 the Office of Planning please?

2 MR. JESICK: Thank you, Mr. Chairman and members of the  
3 Board. Can you hear me okay?

4 CHAIRPERSON HILL: Yes.

5 MR. JESICK: Great. Thanks. Yes. The Office of  
6 Planning recommends approval of the application. We felt that  
7 the application met the criteria of U 421. And for the rest of  
8 my testimony, I can rest on the record, but I'm happy to take  
9 any questions. Thank you.

10 CHAIRPERSON HILL: Thank you.

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

13 Mr. Blake, you had a question about public outreach to  
14 the Applicant. You're on mute, Mr. Blake.

15 COMMISSIONER BLAKE: Yeah. I just wanted to follow up  
16 and just get some color on that.

17 MR. DZIERZANOWSKI: Sure. So we did meet with the  
18 local ANC. I triple checked the record also earlier this morning  
19 and didn't see a follow up. We met twice initially with our  
20 commissioner, Commissioner Rubio, and she kind of had us reach  
21 out to some of the local neighbors of the project. There were a  
22 series of concerns obviously expressed because there is a certain  
23 residential typology along the street. But again, nothing about  
24 our project, as we reiterate, is really taking the existing  
25 structure or our proposal out of character from the neighborhood.

1 And I believe, again, I think Ms. Rubio's here, so she can speak  
2 more to that. But we did then follow up and have a full ANC  
3 meeting. I think there was a notion initially for the project  
4 to be opposed and the ANC voted that down four to two. So again,  
5 I didn't see any of that otherwise for the record, but I believe  
6 Ms. Rubio could speak more to that, so.

7 COMMISSIONER BLAKE: Thank you.

8 CHAIRPERSON HILL: Ms. Rubio? Can you hear me, Ms.  
9 Rubio? Ms. Rubio? Well, let me wait and see if Ms. Rubio shows  
10 up.

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

12 MR. YOUNG: Yes, we have two witnesses.

13 CHAIRPERSON HILL: Okay. Could you give me their names  
14 as you bring them in?

15 MR. YOUNG: Yes. Deborah Owens and Wanda Harris is  
16 calling in by phone.

17 CHAIRPERSON HILL: Okay. Ms. Harris, can you hear me?  
18 Hello, Ms. Harris? Ms. Harris?

19 MS. HARRIS: Yes.

20 CHAIRPERSON HILL: Can you hear me?

21 MS. HARRIS: Yes.

22 CHAIRPERSON HILL: Could you go ahead and introduce  
23 yourself for the record?

24 MS. HARRIS: Wanda Means (phonetic) Harris.

25 CHAIRPERSON HILL: Hi, Ms. Harris, you'll have three

1 minutes to give your testimony, and you can begin whenever you  
2 like.

3 MS. HARRIS: Thank you. Good afternoon, Chairperson  
4 Hill and members of the Board of Zoning Adjustment. Again, my  
5 name is Wanda Means Harris. I'm a native Washingtonian and a  
6 neighboring Ward 4 homeowners since 1987. I'm submitting this  
7 testimony today to express my concerns about the application in  
8 opposition to the application for a special exception for the  
9 property of 5703 Colorado Avenue, which is Case No. 20836. Thank  
10 you in advance for considering these concerns as you assess the  
11 adverse impact of the requested changes on the surrounding  
12 neighborhood and for your patience for this newbie. I'm a behind-  
13 the-scenes worker bee, and I've never done this before, so I  
14 thank you for your patience.

15 I'm here because I feel it's important that I take the  
16 opportunity that you've provided to lend my voice to this  
17 decision-making process. My initial concerns center with some  
18 lingering questions about the intended use of the property, the  
19 submitted statement of intended use, which I believe is Exhibit  
20 4 that was dated 05/18/21 states that if the exception is  
21 approved, the owner intends to convert this house into a three-  
22 unit condo. Based on me as a layperson's understanding of the  
23 term and as the condominiums are defined in the D.C. Code, the  
24 conversion would result in owner-occupied units; however, when  
25 questioned during a previous community meeting, the owner said

1 he would be renting out the units once renovated and could not  
2 offer any more details about intending to rent it.

3 The distinction between the owner- and renter-occupied  
4 units is not one of semantics for me. It's important in terms  
5 of consideration as our community seeks to understand how the  
6 neighborhood would change moving forward. Another unaddressed  
7 issue from this proposed renovation is the impact of parking on  
8 the surrounding neighborhood. The exception application seeks  
9 to add a third unit to the structure, as said before, making room  
10 for an additional occupant or family without provisions for  
11 additional parking. Inadequate resident parking is already an  
12 issue that plagues our community and has grown since the buildings  
13 on neighboring Nicholson Street were renovated from two to much  
14 higher stories with little or no provision for parking. It is a  
15 problem that affects all the neighboring single-family blocks and  
16 will be exacerbated by the 1,400 units that are going up on  
17 Georgia Avenue from Madison Street to Missouri Avenue.

18 The application before you suffers from the same  
19 problems that we've seen in other conversions. Owners and  
20 developers, one, state the property is transit accessible when  
21 it actually is not based on the zoning guidelines; and two,  
22 operating under the incorrect assumption that future tenants and  
23 occupants will not have cars, therefore making no more provisions  
24 for additional off-street parking. This results in more families  
25 trying to make use of increasingly scarce on-street parking and

1 crowding out existing homeowners, which in our case are many  
2 seniors, and that includes me. I'm a senior.

3 In addition to these specific concerns, I actually  
4 worry about the impact that this approval will have on the  
5 neighboring -- neighborhood moving forward. During the community  
6 meeting, questions were asked regarding specific construction  
7 timelines and high quality projects, the responses were vague and  
8 noncommittal. During the ANC meeting, a few neighbors, including  
9 myself, asked about the ANC being able to request that this  
10 project be completed to a high standard and with very specific  
11 timelines in order for the ANC to approve it. And again, this  
12 was not really addressed. All across our neighborhood and this  
13 Ward, 90- and 100-year-old houses are being brought down and  
14 families who are seeking single-family homes to call home are not  
15 able to access that. These homes, with all their history, are  
16 being gutted or even leveled for more modern looking houses that  
17 are completely out of character with the surrounding structures.

18 While this project renovation maintains the exterior  
19 facade, it continues the unfortunate trend of overgrown density  
20 at the expense of and haphazardly in the middle of neighboring  
21 single-family homes. I can just already see from the zoning  
22 self-certification, which is Exhibit 13, dated 08/30/22, that the  
23 building today exceeds its allowable lot occupancy and encroaches  
24 on DDOT's right-of-way, which is Exhibit 22, dated 03/10/2023  
25 --

1 CHAIRPERSON HILL: Ms. Harris?

2 MS. HARRIS: -- even before renovations begin.

3 CHAIRPERSON HILL: Ms. Harris, I'm sorry to interrupt  
4 you. You're just -- you've run out of time if you want to wrap  
5 up your statement.

6 MS. HARRIS: I can wrap up in a few sentences. Yes,  
7 sir.

8 CHAIRPERSON HILL: Okay. Sure.

9 MS. HARRIS: I'm just asking that this committee  
10 consider whether we should continue to allow such overgrowth when  
11 we can pause and encourage a more thoughtful development that  
12 maintains the character of our community, which is what attracted  
13 us to this neighborhood in the first place.

14 In conclusion, I just would like to thank you again for  
15 the opportunity to share my concerns about the impact of the  
16 changes proposed and that these concerns are shared by others in  
17 my neighborhood who could not be here to testify today. So I  
18 thank you again. We are a group of dedicated and deeply caring  
19 neighbors who care about the place we call home. Thank you.

20 CHAIRPERSON HILL: Thanks, Ms. Harris. Thank you for  
21 your testimony.

22 Ms. Owens, can you hear me?

23 MS. OWENS: Can you hear me?

24 CHAIRPERSON HILL: Yes. Yes. Could you introduce  
25 yourself for the record?

1 MS. OWENS: Yes, hello, my name is Deborah Owens, I  
2 live at 5708 Colorado Avenue, N.W. I am directly across the  
3 house that we are discussing at this point. I, along with other  
4 members of my neighborhood, do share --

5 CHAIRPERSON HILL: Ms. Owens? Ms. Owens? Can I just  
6 -- I just want to point out, you have three minutes to give your  
7 testimony and there's a clock on the screen, I think you -- if  
8 you can see it, and you can begin whenever you like.

9 MS. OWENS: Great. Thank you so much for the  
10 opportunity. As I stated, I live across the street from the  
11 property and I, like other members of the neighborhood, have  
12 concerns about the construction. And I think it's really  
13 important that just because the physical imprint of the property  
14 does not change, that does not mean there aren't changes to the  
15 neighborhood that are not necessarily positive. So I'll start  
16 with the first concern, which is the occupancy. We're looking  
17 at two-bedroom -- two two-bedroom units along with one-bedroom  
18 unit, so the potential of an additional ten occupants, according  
19 to the D.C. occupancy laws, which could mean anywhere from three  
20 to additional ten cars, which could mean increased parking issues  
21 and overpopulation in the neighborhood. The other thing is I  
22 believe it is a slippery slope in that the location of this home  
23 or this neighborhood is in a prime area. And what's to prevent  
24 other developers from coming in and wanting to turn single-family  
25 units into multi-unit housing? We already have another house on

1 the block that I believe if this exception is granted, they will  
2 be inclined to do the same thing. These are people who don't  
3 live in the neighborhood but can stand to profit by taking these  
4 single-home families or two-unit homes and turning them to  
5 multiple unit housing. As I believe the architect stated earlier,  
6 this basically isn't a new residential unit. Yes, it is. You're  
7 taking what was a single-family home and increasing the  
8 occupancy, not to mention the construction.

9                   And I think the last thing is I have questions about  
10 how that property, because it will not be a condo unit, as the  
11 community was told, but a rental unit about how it would be  
12 managed. This property has had numerous calls to 311 about the  
13 owner and the upkeep in terms of grass that's more than waist  
14 high and other issues. And my concern is I believe that we  
15 received misinformation on the call from the owner. The architect  
16 got on and said that it was going to be a condo. The owner said  
17 it's going to be a rental. The owner said it was going to -- he  
18 wanted it for family. And then later he said he absolutely would  
19 not want any of his family members living there. He also  
20 indicated that he would be in a unit. And I don't necessarily  
21 believe that to be true. So we may have a property where he is  
22 not on site, as is the current state, and I believe that his  
23 future management of that home is indicative of what we can expect  
24 in the future. And I don't believe that there's been full  
25 transparency in terms of the intended use of that property. Thank

1 you.

2 CHAIRPERSON HILL: Thank you, Ms. Owens.

3 All right. Does the Board have any questions of the  
4 witnesses?

5 COMMISSIONER BLAKE: A quick question for Ms. Owens.

6 CHAIRPERSON HILL: Sure. Mr. Blake.

7 COMMISSIONER BLAKE: Did you -- you did attend the ANC  
8 meetings, correct?

9 MS. OWENS: I did not attend the ANC meeting. I  
10 attended the community meeting that we had with Mr. Lynch and his  
11 architect.

12 COMMISSIONER BLAKE: Okay. And you expressed your  
13 concerns to them at that time?

14 MS. OWENS: Yes, I did.

15 COMMISSIONER BLAKE: Thank you.

16 CHAIRPERSON HILL: Commissioner Miller, are you trying  
17 to say something?

18 ZC VICE CHAIR MILLER: Yes, thank you, Mr. Chairman.  
19 The first public witness, was that Ms. Harris?

20 CHAIRPERSON HILL: Harris, yes.

21 ZC VICE CHAIR MILLER: What was her address? If she  
22 could just -- she might have given that for the record, I just  
23 missed it.

24 CHAIRPERSON HILL: Ms. Harris, can you hear us?

25 ZC VICE CHAIR MILLER: She said she was a neighbor. I

1 just didn't hear the exact address. But it's okay if she's not  
2 here.

3 MS. HARRIS: Hi. I'm here. Can you hear me?

4 CHAIRPERSON HILL: Yes. What's your address, Ms.  
5 Harris?

6 MS. HARRIS: I am at 1320 Montague Street, N.W.

7 ZC VICE CHAIR MILLER: And how close -- and that -- I  
8 realize that's in the neighborhood, is that like a block away?

9 MS. HARRIS: I'm just around the corner. I'm at the  
10 end of Montague Street. I'm right at Montague and Colorado.

11 ZC VICE CHAIR MILLER: Okay. Thank you very much for  
12 your testimony.

13 MS. HARRIS: Thank you, sir.

14 CHAIRPERSON HILL: Okay. Thank you.

15 All right. I'm going to go ahead and excuse the  
16 witnesses. Thank you very much for your testimony.

17 SMD COMMISSIONER RUBIO: And Chair Hill, Commissioner  
18 Rubio here.

19 CHAIRPERSON HILL: Oh, great. Is it Commissioner  
20 Rubio?

21 SMD COMMISSIONER RUBIO: Yes.

22 CHAIRPERSON HILL: Okay. Commissioner, could you go  
23 ahead and give us your testimony?

24 SMD COMMISSIONER RUBIO: Good afternoon, Board members  
25 of Zoning, my name is Vanessa Rubio, I am the ANC commissioner

1 for SMD 4E01 of which the property of Mr. Samuel Lynch is located.  
2 Our ANC commission met on February 28th and a decision was not  
3 made referring this case as I presented a letter of opposition  
4 given the voice of the constituents I represent for who Mr. Lynch  
5 and architects discussed the project in prior meetings requesting  
6 the special exemption (sic). During this meeting, Mr. Lynch was  
7 asked by residents the propose of increasing its units and its  
8 use. Mr. Lynch addressed that these units would not be condos  
9 as listed on the application, but instead apartment units. Given  
10 this full statement on his application and previous experience  
11 residents have had over the past ten years of this property  
12 vacancy in its previous illegal construction phase, its failure  
13 to maintain and secure its property, residents have lost all  
14 trust and faith on the property owner that he will be able to  
15 manage and maintain a multi-family dwelling if exception was  
16 granted.

17 We also believe that the proposed use would adversely  
18 affect the neighborhood's properties that then would not be in  
19 harmony with the general purpose or intent of zoning regulations  
20 and zoning maps as it inspires a nonconforming use in a  
21 residential neighborhood and will affect adversely the  
22 neighboring property by accelerating parking conditions and  
23 establishing a multi-family use on a stabilized single-family  
24 block of Colorado. Given the 5700 block of Colorado in an RA-1  
25 zone, which allows for single family and multi-family dwellings

1 of which the block is currently holding three large apartment  
2 buildings, which totals up to 140 apartment units to the north.  
3 To the south, we have 25 semi-detached single-family homes, of  
4 which 16 of these are owned and currently reside by long time  
5 senior residents. In addition to the community views and adding  
6 the additional unit with no off-street parking will expand the  
7 use of nonconforming property and will not meet parking  
8 requirements set forth in Section 701.5 on one space per three  
9 dwelling units. The block does not currently qualify for its own  
10 (indiscernible) parking and therefore suffers from a shortage of  
11 street parking capacities for its existing residents. As you've  
12 heard from constituents, their main concern here is the increase  
13 of units, along with the property owner being able to maintain  
14 its property once this is converted. Thank you all for hearing  
15 it.

16 CHAIRPERSON HILL: Thanks, Commissioner Rubio.

17 SMD COMMISSIONER RUBIO: You're welcome.

18 CHAIRPERSON HILL: Does the Board have any questions  
19 for the commissioner?

20 Go ahead, Mr. Blake.

21 COMMISSIONER BLAKE: Are you -- did you -- you did not  
22 submit a report to the record, is that forthcoming or is it in  
23 draft form or something.

24 SMD COMMISSIONER RUBIO: That is forthcoming. This  
25 would be the Form 129 advising you of our ANC decision to not

1 weigh in until this proper- -- on this project.

2 COMMISSIONER BLAKE: And I just (indiscernible) when  
3 you say you did not want to weigh in, does that mean you -- I  
4 mean, you've expressed the issues and concerns, we've received  
5 that information from you verbally today. When you say you don't  
6 want to weigh in, is it that the -- have you voted to not vote  
7 or you voted to not make an opinion?

8 SMD COMMISSIONER RUBIO: The ANC commission as a whole  
9 decided not to make an opinion. Therefore, I stand here before  
10 you as the SMD commissioner.

11 CHAIRPERSON HILL: Okay. But you guys -- Commissioner  
12 Rubio, just a follow up on Mr. Blake's questions -- you all did  
13 take a vote not to make a decision, correct?

14 SMD COMMISSIONER RUBIO: Correct.

15 CHAIRPERSON HILL: Well, Mr. -- I'm going to butcher  
16 his name.

17 MR. DZIERZANOWSKI: Dzierzanowski.

18 CHAIRPERSON HILL: Mr. Dzierzanowski, and Commissioner  
19 Rubio, I'm just trying to understand what happened at the meeting.  
20 Mr. -- Ms. -- Commissioner Rubio, you're stating that you took a  
21 vote, meaning somebody put up a motion and it was seconded. The  
22 vote was not to take a stand, is that what you're saying,  
23 Commissioner Rubio?

24 SMD COMMISSIONER RUBIO: The vote was to not to approve  
25 the opposing letter that I had presented to the commission.

1 CHAIRPERSON HILL: The vote was not to approve the  
2 opposing letter that you were putting forward.

3 SMD COMMISSIONER RUBIO: Correct. Therefore, no second  
4 motion was placed in order to approve anything further.

5 CHAIRPERSON HILL: Got it. So there was never -- there  
6 was never anything that you all voted on about the project other  
7 than to not approve your letter of objection?

8 SMD COMMISSIONER RUBIO: Correct.

9 CHAIRPERSON HILL: Okay. All right. Okay. And you're  
10 the SMD?

11 SMD COMMISSIONER RUBIO: Yes, I am the SMD  
12 commissioner.

13 CHAIRPERSON HILL: Okay. So -- and you're not here  
14 -- and maybe this one -- you're not here representing your ANC,  
15 you're here as the SMD, correct?

16 SMD COMMISSIONER RUBIO: Correct.

17 CHAIRPERSON HILL: Okay.

18 Commissioner Miller, you had your hand up?

19 ZC VICE CHAIR MILLER: Yeah. Not to drag this on, but  
20 just what was the vote count to not approve the resolution of  
21 support?

22 SMD COMMISSIONER RUBIO: It was two to four.

23 MR. MORDFIN: Two to four. Thank you very much.

24 SMD COMMISSIONER RUBIO: You're welcome.

25 CHAIRPERSON HILL: Right. And Commissioner Rubio, now

1 I want to be clear. Not to approve the letter of opposition,  
2 that was what had happened, correct, Commissioner Rubio?

3 SMD COMMISSIONER RUBIO: Correct. Correct.

4 CHAIRPERSON HILL: Okay. All right. Thanks.

5 Okay. All right. Does anybody -- did we let go of  
6 the witnesses? I think we did. Okay. Mr. Dzierzanowski, is it  
7 -- are you guys -- so your client is -- not that I don't think  
8 it matters in terms of zoning, but are they going to be condos  
9 or rental apartments?

10 MR. DZIERZANOWSKI: So the design of the project was  
11 such that there would be three individual units as condos, knowing  
12 that at the time of our design discussions, that seemed again to  
13 be the most beneficial. Apartments come up obviously just because  
14 of the client's understanding, but the client has also stated and  
15 multiple times that they do have intentions to live within one  
16 of those units. Obviously beyond the point of the building  
17 permit, if there is a preference there for that to be managed as  
18 apartments versus condos, it's not going to change the way that  
19 we've designed the building from an infrastructure standpoint at  
20 this point. And furthermore, to your point, it doesn't  
21 necessarily change our efforts in trying to get this form of  
22 relief.

23 CHAIRPERSON HILL: Okay. Great.

24 Mr. Jesick, can you hear me?

25 MR. JESICK: Yes, Mr. Chairman.

1 CHAIRPERSON HILL: Just clarification -- it doesn't  
2 matter whether they're condos or apartments as far as the relief  
3 requested, correct?

4 MR. JESICK: That's correct. This is just for a new  
5 multi-family development.

6 CHAIRPERSON HILL: Okay. And they're not asking for  
7 parking relief, correct?

8 MR. JESICK: That's correct. For three units --

9 CHAIRPERSON HILL: There's no parking tied to this.

10 MR. JESICK: Correct. Yeah, there's no required  
11 parking.

12 CHAIRPERSON HILL: Okay. All right. Okay.

13 Does anybody have any questions for anyone else?

14 All right. Mr. Dzierzanowski, do you have anything  
15 you'd like to add at the end?

16 MR. DZIERZANOWSKI: No. I'd just like to thank the  
17 Board's time for all this and thank you again.

18 CHAIRPERSON HILL: Okay. Mr. Young, I'm going to close  
19 the hearing and the record. If you can please excuse everyone.

20 Well, I am sorry that this was controversial for the  
21 ANC and in particular that the -- for the record, again, the SMD  
22 was here as a citizen, not representing their ANC. However,  
23 since they were the SMD, it was nice to hear from them. Some of  
24 the witnesses were speaking about parking and whether it was or  
25 wasn't a rental unit. Again, as I clarified with the Office of

1 Planning, as far as the standard is concerned, it doesn't matter  
2 whether it's a rental unit or whether it's condominiums and there  
3 is no required parking. So they aren't asking for parking relief.  
4 So it's not something that we would be able to put forward on  
5 the application. And I do feel the community's constriction  
6 concerning all of the parking issues that they're going with.  
7 However, as far as the standard with which we're supposed to  
8 review this, I do believe they're meeting criteria for us to  
9 grant the relief requested. I would agree with the analysis that  
10 the Office of Planning has put forth, as well as the arguments  
11 of the Applicant. And also I'm taking into account that they're  
12 not changing the envelope of the building, not that that -- it's  
13 just an easier thing to understand for me in terms of how it  
14 might impact the neighborhood. I'm going to be voting in favor.

15 Mr. Smith?

16 COMMISSIONER SMITH: I do, you know, share with --  
17 share the same unfortunate feeling as you that -- sharing that  
18 the ANC wasn't in favor of this particular request. Based on  
19 what the Applicant is presenting, it will read as a two-story  
20 building. I will say that -- well, it is a two-story building.  
21 So other than that, the building already now is a two-unit  
22 building. They're proposing to add a third unit and expanding  
23 off the rear. The building will read, as you know, a semi-  
24 detached building. It will not look any different other than the  
25 fact that it has three units. Based on the information within

1 the record, I do believe that the Applicant has met the burden  
2 of proof per -- to meet the standards per Subtitle U 421 for new  
3 residential developments as well as Subtitle X 901.4 the special  
4 exception for the new -- what would be classified as a new  
5 residential development. I do believe that based on the design  
6 that it would not tend to affect adversely the use of neighboring  
7 properties. It does meet its parking standards. I think that  
8 will probably be to the highest adverse impact, but it meets its  
9 parking requirements. This particular use is contemplated within  
10 the zone, so I do believe that it's in harmony with the general  
11 purpose and intent of the zoning regulations, and I do not believe  
12 that there are any special conditions that we would need to impose  
13 on this particular apartment. With that, I give OP's staff report  
14 great weight and will support the application.

15 CHAIRPERSON HILL: Thank you.

16 Mr. Blake?

17 COMMISSIONER BLAKE: Yes, I agree with the analysis  
18 that you and Board Member Smith have put forth. I agree that  
19 the application appears to have met the burden of proof to be  
20 granted the relief. The parking is not required and the density  
21 is within the RA-1 zone, you know, development standards. There  
22 are a couple of things that I did notice though. So the Office  
23 of Planning's in support and recommends approval. DDOT is not  
24 in objection, but has a couple of recommendations for conditions  
25 in the order. One is to remove the curb cut, I believe, and to

1 remove an existing building extension that's in public space. I  
2 do not believe that either of those are within our purview, so I  
3 would not recommend including those recommendations, those  
4 conditions, in the order. And I do note that the ANC 4E, it's  
5 unclear exactly if they're not in support or in support. They're  
6 not -- I know they're not in support of not being in -- or -- so  
7 a little bit convoluted conversation there, but it does appear  
8 that they are not weighing in on this. We do -- we are aware of  
9 the issues and concerns, parking and density or rental and the  
10 manageability to operate the property. And of course, the parking  
11 is within the required and not looking for parking relief. And  
12 as far as the ability to manage the property, well, whether it's  
13 a condo or you know, residential, you know, it's the same, so,  
14 from our perspective as zoning. So I have -- I will be voting  
15 in favor of the application.

16 CHAIRPERSON HILL: Thank you. And thank you, Mr. Blake,  
17 for pointing out those issues with DDOT. I neglected to bring  
18 them up, but I will agree with what you have said about them,  
19 unless another fellow Board member brings them up differently, I  
20 will assume that is the case with I guess Mr. Smith.

21 Commissioner Miller?

22 ZC VICE CHAIR MILLER: I have no further comment, Mr.  
23 Chairman. I concur with the comments of my fellow Board members  
24 that the criteria for relief has been met in this case.

25 CHAIRPERSON HILL: Vice Chair John?

1                   VICE CHAIR JOHN: Thank you, Mr. Chairman. I am in  
2 support of the application. I believe the Applicant has met the  
3 criteria for granting the Applicant relief under the regulations.  
4 And as noted by others, there is no need for parking relief. And  
5 so I appreciate the neighbors' comments about the parking. And  
6 in terms of the density by adding one more unit, I think, as  
7 other Board members have noted, this is the RA-1 zone which allows  
8 for this type of development. And with that, I would just say  
9 again that I support the application.

10                  CHAIRPERSON HILL: Thank you.

11                  Mr. Smith, are you comfortable with what Mr. Blake  
12 brought up in terms of not agreeing with DDOT's conditions as  
13 being in our purview?

14                  COMMISSIONER SMITH: No, I completely agree with his  
15 -- with that analysis.

16                  CHAIRPERSON HILL: Okay. I'm going to go ahead and  
17 make a motion to Application No. 20836 as captioned and read by  
18 the secretary, and ask for a second, Ms. John.

19                  VICE CHAIR JOHN: Second.

20                  CHAIRPERSON HILL: The motion been made and seconded,  
21 Ms. Rose, if you could take a roll call.

22                  MS. ROSE: Yes. When I call your name, please respond.

23                  Chairman Hill?

24                  CHAIRPERSON HILL: Yes.

25                  MS. ROSE: Vice Chair John?

1 VICE CHAIR JOHN: Yes.

2 MS. ROSE: Board Member Smit?

3 COMMISSIONER SMITH: Yes.

4 MS. ROSE: Board Member Blake?

5 COMMISSIONER BLAKE: Yes.

6 MS. ROSE: Commissioner Miller?

7 ZC VICE CHAIR MILLER: Yes.

8 MS. ROSE: Then staff would record the vote as five to  
9 zero to zero to approve the application. This is on a motion by  
10 Chairman Hill, seconded by Vice Chair John, with Mr. Smith, Mr.  
11 Blake, and Commissioner Miller in support of the motion to  
12 approve.

13 CHAIRPERSON HILL: Thank you, Ms. Rose. And when you  
14 get a chance, you may call our next case.

15 MS. ROSE: Next is Application No. 20839 of Jennifer  
16 Bonnette and Randeep Rathindran as amended. This is a self-  
17 certified application pursuant to Subtitle X, Section 901.2 for  
18 special exceptions under Subtitle D, Section 5201 from the side  
19 yard requirements of Subtitle D, Section 206.7, the lot occupancy  
20 requirements of Subtitle D, Section 304.1, and under Subtitle D,  
21 Section 306.4 to allow a rear addition extending more than ten  
22 feet beyond the rear wall of an adjacent residential building to  
23 construct a two-story rear addition to an existing two-story  
24 attached principal dwelling with cellar in the R-2 zone at 5042  
25 Nebraska Avenue, N.W. Square 1879, Lot 27. The Applicant's

1 PowerPoint is at Exhibit 34 and the ANC 3F report is at Exhibit  
2 35.

3 CHAIRPERSON HILL: Thank you.

4 Mr. Sullivan, if you could hear me, if you could  
5 introduce yourself for the record?

6 MR. SULLIVAN: Thank you, Mr. Chairman, members of the  
7 Board, Marty Sullivan with Sullivan & Barros on behalf of the  
8 Applicant.

9 CHAIRPERSON HILL: All right, Mr. Sullivan, if you  
10 would walk us through your client's application and why you  
11 believe you're meeting the criteria for us to grant the relief  
12 requested, I'm going to put 15 minutes on the clock so I know  
13 where we are, and you can begin whenever you like.

14 MR. SULLIVAN: Thank you, Mr. Chairman. With us here  
15 also is Mr. Eric Carle, the architect, project architect, and the  
16 property owner and resident, Ms. Jennifer Bonnette. And Eric's  
17 going to help me with the presentation and the property owner's  
18 available if you have any questions.

19 CHAIRPERSON HILL: All right. Great. If your architect  
20 could just introduce himself as he starts his portion of the  
21 testimony, that'll be helpful. And please continue.

22 MR. SULLIVAN: Mr. Eric, if you could introduce  
23 yourself please for the record?

24 MR. CARLE: Hi, I'm Eric Carle, Running Dog Architects.

25 CHAIRPERSON HILL: Okay. You're echoing a little bit,

1 Mr. -- I don't know how you say your last name. How do you say  
2 your last name?

3 MR. CARLE: Carle.

4 CHAIRPERSON HILL: Oh, Carle, yeah, Mr. Carle, so you  
5 might want to speak a little closer into the microphone when you  
6 get to what you're talking about. But we can't hear you 'cause  
7 it sounds like you're in an echo chamber.

8 MR. CARLE: I'm sorry.

9 CHAIRPERSON HILL: No problem. Okay. Thank you.

10 Go ahead, Mr. Sullivan.

11 MR. SULLIVAN: Thank you, Mr. Chair. Next slide please?

12 So the property is 5042 Nebraska Avenue. It's located  
13 in the R-2 zone, and it's improved with a two-story with cellar,  
14 a single-family row dwelling. It's a very narrow property in  
15 between two semi-detached. Applicant's proposing to construct a  
16 two-story addition at the rear. It'll extend about 3 and a half  
17 feet beyond the rear wall of one of the adjoining buildings, and  
18 18.8 feet beyond the rear wall of the other adjoining building  
19 to the northeast. The lot occupancy will be increased to 44  
20 percent, the maximum's 40. And the addition will extend a  
21 nonconforming side yard of an existing row dwelling as well. The  
22 Applicant's requesting special exception relief from the ten foot  
23 rule, from the lot occupancy maximum, and from side yard  
24 requirements for extending the existing nonconforming side yard.  
25 Next slide please?

1                   The Office of Planning is recommending approval. ANC  
2 3F has voted unanimously in support. I see that their report  
3 just came in in the last 24 hours, it seems. We also have seven  
4 letters of support from surrounding neighbors, including both of  
5 the adjacent neighbors. And I'll turn it over to Mr. Carle for  
6 the next slide and the presentation of the photos and the plans.  
7 Thank you. Go ahead, Eric.

8                   MR. CARLE: Thank you.

9                   So here is the adjacent property to the east showing  
10 our subject property, 5042 and then 5044. So we're tucked in  
11 behind that. That building has received no additions in the  
12 rear. So next slide please?

13                   Here you can see the neighboring property and our  
14 subject property, a few trees that will -- do not meet any  
15 historic value, which will be removed. The existing addition  
16 that is on that house and white will be demolished and then  
17 extended. You can see how far the adjacent property to the east  
18 -- rather the west is relative to our subject property. Next  
19 slide please?

20                   So that's another view from the alley looking back  
21 towards the neighboring property to the east, our property in the  
22 middle, and then beyond with some of the trees. Next slide  
23 please?

24                   So there is a site plan which shows our breakdown of  
25 the adjacent properties and the distances that we would be

1 extending beyond the neighboring properties. As you can see,  
2 it's an extremely deep lot. It is -- and again, 3 and a half  
3 feet beyond the adjacent property to the west and 18.8 feet  
4 extension beyond the property to the east. Next slide please?

5 Here are just the plans. So the goal is really to  
6 maintain this as a as a two-story home and really not do anything  
7 with the cellar floor itself. Next slide please?

8 The roof plan there. Next slide please?

9 Here, elevations, front, rear, and side so you get a  
10 sense of what that extension is beyond the adjacent property, and  
11 its worst case scenario, the east elevation. Next slide please?

12 Here's a section cut through it so you can see the  
13 changes in the addition to the house both longitudinally and the  
14 short section. Next slide please?

15 We did a solar study which will show you that I think  
16 it's quite beneficial, the fact that we're on Nebraska Avenue and  
17 it's angled, but you can also see how the different properties  
18 from an aerial perspective are situated here as some row homes  
19 are much further back within their lots and some are, you know,  
20 more forward, as is the grouping of these three plus to the  
21 adjacent large apartment building just off of Connecticut Avenue.  
22 Next slide please?

23 So tried to show them at different times. And you can  
24 see the solar studies relative to March 21st, one being matter  
25 of right proposed massing and the special exemption (sic)

1 proposal. Next slide please?

2                   Here you can see the perspective view and in -- you can  
3 see that it has no impact at 9 a.m., marginal impact at 12 p.m.  
4 noon, by -- highlighted by the red on the middle bottom diagram,  
5 similarly at 3 p.m. highlighted by the red. So those are the  
6 different shadow effects by asking for the special exemption  
7 (sic). Next slide?

8                   Similarly, here we show the plan -- the plans of June  
9 21st, summer solstice, special exemption (sic) and matter of  
10 right. If we go to the next slide, please?

11                  You'll see it again in perspective for (indiscernible)  
12 metric. So again, you can see the marginal impact that this  
13 extension has at 9 a.m., 12 p.m. and 3 p.m. on the adjacent  
14 property. Next slide?

15                  Similarly, September 21st, your proposal for the start  
16 of Fall, again minimal impact. If you see the next slide?

17                  So again, minimal impact on the impact that we are  
18 showing on the neighboring property. Next slide?

19                  And December 21st, back to Winter. So next slide?

20                  You'll see the impact as well. So again, marginal  
21 impact here as well. Purely showing at noon that the largest  
22 throw of shadow that we would see. But beyond that, I think the  
23 impact is minimal on the adjacent properties. So next slide?

24                  So Marty?

25                  MR. SULLIVAN: Thank you, Eric. So the application

1 meets the general requirements of 901.2. It is in harmony with  
2 the general purpose and intent of the zoning regulations. The  
3 R-2 zone's intended to provide for areas predominantly developed  
4 with semi-detached houses on moderately sized lots, but also  
5 contain some detached dwelling. The property is road dwelling  
6 and will remain so and will remain as a single-family as well.  
7 The shadow study demonstrates minimal effects of the proposal.  
8 And again, both adjacent neighbors filed support letters and  
9 their relief as to lot occupancy is just 4 percent over the  
10 maximum permitted lot occupancy. Next slide please?

11 On the specific requirements, light and air, you saw  
12 on the shadow study the impact was minimal, so it's not unduly  
13 affecting neighboring light and air. And privacy of use and  
14 enjoyment is not impacted at all. It's just a two-story addition  
15 with no windows on either of the sides. And regarding the third  
16 aspect of that, the houses with similar additions as well and a  
17 number of accessory structures along the alley. So the Applicant  
18 has significant rear yard and lot occupancy relief, it's minimal.  
19 So there's no -- it doesn't substantially visually intrude upon  
20 character, scale, and pattern of the houses along the street or  
21 alley. Next slide please?

22 And I think that's it. So if the Board has any  
23 questions for any of us. Thank you.

24 COMMISSIONER BLAKE: Chair, you're on mute.

25 CHAIRPERSON HILL: So I'm like is the Office of Planning

1 on mute? I said I'm going to hear from the Office of Planning  
2 if we could. And then I'll turn to all my fellow Board members.

3 Could we please hear from the Office of Planning?

4 MS. MYERS: Hi, Crystal Myers with the Office of  
5 Planning. The Office of Planning is recommending approval of  
6 this case, and we can stand on the record of the staff report.  
7 But of course, here for questions. Thank you.

8 CHAIRPERSON HILL: Okay. Great.

9 Does the Board have any questions of the Office of  
10 Planning or the Applicant? Okay.

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

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Mr. Sullivan, anything you wish to  
14 say at the end?

15 MR. SULLIVAN: No, thank you, Mr. Chair.

16 CHAIRPERSON HILL: Okay. All right. I'm going to go  
17 head and close the hearing and the record. Please excuse  
18 everyone, Mr. Young.

19 Would someone else be willing to start?

20 Mr. Blake, would you like to start the --

21 COMMISSIONER BLAKE: I knew that was coming. Yeah, no  
22 problem.

23 CHAIRPERSON HILL: Your face just lit up a little bit.

24 COMMISSIONER BLAKE: Yeah. The Applicant proposed to  
25 construct a two-story addition to the rear of an existing two-

1 story attached principal dwelling in the R-2 zone. Because the  
2 addition will extend 18.6 feet beyond the rear while of the  
3 adjoining property to the northeast, the Applicant is seeking  
4 relief from the 10-foot rule. And because the lot occupancy will  
5 increase from 33 percent to 44 percent, where 40 percent is  
6 permitted, the Applicant is seeking relief from the requirements  
7 of D 304.1. And because the building has no side yard, the rear  
8 addition would extend the nonconforming aspect by increasing the  
9 size of the dwelling without a compliant side yard requiring  
10 relief from the side yard requirements of D 206.7. So -- and  
11 the development standards can be -- we can grant relief based on  
12 -- pursuant to D 5201 as well as the general standards of X 901.2.

13 So based on the information presented in the record,  
14 including the Applicant's statement, the photos, plans,  
15 elevations, sun study, the Office of Planning's report, along  
16 with the testimony received today at the hearing, I believe the  
17 Applicant has met the burden of proof to be granted the requested  
18 relief. The proposed addition to the attached house would not  
19 result in a building form, massing, or use that would be  
20 inconsistent with the intent of the zone and should not have an  
21 undue impact on the use, light, airflow, or privacy of neighboring  
22 properties. The Applicant's sun study demonstrates that the  
23 proposed addition should not have an undue impact on the light  
24 and air of any of the neighboring properties. The addition would  
25 not include windows facing either neighbors, and there is also a

1 privacy fence around the subject areas, probably is rear yard,  
2 so the privacy and use of enjoyment of neighboring properties  
3 should not be unduly compromised. Large rear yard privacy fence  
4 and one-story accessory garage along the alley would limit  
5 visibility, the addition, and which is visible and will have  
6 similar appearance as other additions in the property -- in the  
7 neighborhood. I give great weight to the Office of Planning's  
8 recommendation for approval. Note that DDOT has no objection to  
9 the lot occupancy and rear addition requirements. And I give  
10 great weight to ANC 3F's report which is in support of the project  
11 and states no issues and concern. I'll also acknowledge the  
12 letters of support from neighbors, including the two adjacent  
13 neighbors on Nebraska. I'll be voting in favor of the  
14 application.

15 CHAIRPERSON HILL: Thank you.

16 Mr. Smith?

17 COMMISSIONER SMITH: Mr. Blake said it all, honestly.  
18 I do believe -- I completely agree with everything that Mr. Blake  
19 stated. I do believe that the Applicant has met the burden of  
20 proof for us grant the special exception under Subtitle D 5201  
21 and from the lot occupancy requirements. I, you know, rest on  
22 his statements, as well as OP's staff report and will support the  
23 application.

24 CHAIRPERSON HILL: Thank you.

25 Commissioner Miller?

1                   ZC VICE CHAIR MILLER: Yes, I also concur with Board  
2 Member Blake's comprehensive analysis and will support the  
3 application. And thank the Applicant for its community  
4 engagement, both with its neighbors and with ANC 3F which supports  
5 the project.

6                   CHAIRPERSON HILL: Thank you.

7                   Vice Chair John?

8                   VICE CHAIR JOHN: Thank you, Mr. Chairman. I thank Mr.  
9 Blake for his excellent analysis, and I agree with everything  
10 that's been said, including appreciation for the ANC.

11                  CHAIRPERSON HILL: Thank you.

12                  I have nothing further to add. I will make a motion  
13 to approve Application No. 20839 as captioned and read by the  
14 secretary and ask for a second, Ms. John.

15                  VICE CHAIR JOHN: Second.

16                  CHAIRPERSON HILL: Motion's been made and seconded, Ms.  
17 Rose, if you could take a roll call?

18                  MS. ROSE: Yes. When I call your name, please respond.

19                  Chairman Hill?

20                  CHAIRPERSON HILL: Yes.

21                  MS. ROSE: Vice Chair John?

22                  VICE CHAIR JOHN: Yes.

23                  MS. ROSE: Board Member Blake?

24                  COMMISSIONER BLAKE: Yes.

25                  MS. ROSE: Board Member Smith?

1                   COMMISSIONER SMITH: Yes.

2                   MS. ROSE: Commissioner Miller?

3                   ZC VICE CHAIR MILLER: Yes.

4                   MS. ROSE: Then staff will record the vote as five to  
5 zero to zero to approve the application. This is on a motion by  
6 Chairman Hill, seconded by Vice Chair John, with Board Members  
7 Smith and Blake and Commissioner Miller in support of the motion  
8 to approve the application.

9                   CHAIRPERSON HILL: Thank you, Ms. Rose. Ms. Rose, if  
10 you can call our next case?

11                  MS. ROSE: Next is Application No. 20844 of Theological  
12 College, Inc. as amended. This is a self-certified application  
13 pursuant to Subtitle X, 100- -- Section 1002 for a use variance  
14 from Subtitle U, Section 401 to permit an office use in a portion  
15 of an existing detached building in the RA-1 zone at 401 through  
16 415 Michigan Avenue, N.E., Parcel 133/130. The updated floor  
17 plans are in the record at Exhibit 31, and the Board has received  
18 a filing from the Applicant showing the area that would be  
19 impacted by the variance relief. It was filed within the 24-  
20 hour period and needs a waiver.

21                  CHAIRPERSON HILL: All right. Thank you, Mr. Rose.  
22 Yeah, Ms. Rose, if you could please ask staff to put in that item  
23 unless my fellow Board members have any issues. Hearing none,  
24 if you could please add it to the record so we can take a look.

25                  MS. ROSE: Yes. Thank you.

1 CHAIRPERSON HILL: Thank you.

2 Let's see, Ms. Dotson, if you can hear me, could you  
3 introduce yourself for the record? Sorry, Ms. Dotson, you're on  
4 mute I believe.

5 MS. DOTSON: Can you hear me?

6 CHAIRPERSON HILL: Yes.

7 MS. DOTSON: Okay, great.

8 CHAIRPERSON HILL: If you could introduce yourself for  
9 the record?

10 MS. DOTSON: I'm Tierra Dotson, I'm here with Gordon  
11 Feinblatt, LLC on behalf of the Applicant in this case.

12 CHAIRPERSON HILL: Okay. Ms. Dotson, I assume you're  
13 going to be presenting to us? Yes?

14 MS. DOTSON: I'm sorry. I'm having trouble hearing you  
15 now, now that you can hear me.

16 CHAIRPERSON HILL: Sure. Can you hear me now?

17 MS. DOTSON: Just -- a little bit. Let me see if  
18 there's something going on with my system. One moment.

19 CHAIRPERSON HILL: Take your time.

20 (Pause.)

21 CHAIRPERSON HILL: Ms. Dotson, can you hear me? Well,  
22 now I can't hear you. We could hear you fine if you want to go  
23 ahead and give your presentation, and then we'll speak slowly  
24 when we ask questions. You need to take yourself off mute.

25 MS. DOTSON: All right. Are you able to hear me now?

1 CHAIRPERSON HILL: Yes. Why don't you give us your  
2 presentation?

3 MS. DOTSON: Sorry about that. Yes. As I said before,  
4 I'm here on behalf of Theological College. The property in  
5 question is located at 401 and 415 Michigan Avenue, N.E. The  
6 property was built in 1917 and it's improved with a large building  
7 that is approximately 139,000 square feet. Although the property  
8 consists of one building, the building has two separate  
9 addresses, 401 Michigan Avenue and 415 Michigan Avenue. 415  
10 Michigan Avenue is the subject of the variance request.

11 The property is primarily used as a seminary, which is  
12 a religious and educational institution that trains and educates  
13 priests. There's dormitory use at the building, which is used  
14 to house the seminarians, and the building also has some office  
15 uses that are associated with the seminary, as well as additional  
16 office spaces that are leased out to other nonprofit and religious  
17 organizations. Those office spaces are located in the 415  
18 Michigan Avenue portion of the building. The rentable office  
19 space in the building is approximately 28,000 square feet, but  
20 not all of the office space is currently leased out, and there  
21 are some empty spaces in the building. The variance relief is  
22 requested so that the Applicant can lease the additional office  
23 space in the 415 portion of the building to other nonprofit and  
24 religious organizations. The Applicant currently has a valid  
25 certificate of occupancy which permits the use of the building

1 located at 401 Michigan Avenue as a seminary and for office use.  
2 However, that certificate of occupancy is not applicable to the  
3 415 Michigan Avenue portion of the building. The Applicant was  
4 not originally aware of this discrepancy and was under the  
5 impression that the C of O was -- covered the entire property,  
6 including the 415 side of the building. It was brought to the  
7 Applicant's attention that the certificate of occupancy was only  
8 for the 401 portion of the building when a tenant who leases  
9 space in the other side at 415 Michigan Avenue applied for grant  
10 funding for his nonprofit organization, but was rejected because  
11 the certificate of occupancy only showed the 401 Michigan Avenue  
12 address and not the 415 Michigan Avenue address. So to obtain  
13 the grant funding, the tenant needs to submit a valid certificate  
14 of occupancy for the 415 portion of the building. But since  
15 office use is not a permitted use in the RA-1 zone, the Applicant  
16 cannot obtain that certificate of occupancy without the variance  
17 relief being granted. So we believe that variance relief should  
18 be granted because it meets the burden of proof standards. We  
19 believe the physical characteristics of a property creates  
20 exceptional circumstances and that the property is a single lot  
21 that's improved with one large building that has two separate  
22 addresses. The property has existed for decades as an  
23 institutional building and has been used as a seminary with  
24 related office uses. And although the property is located in a  
25 residential zone, there are no residential properties within the

1 200 radius of the property, and office use is also consistent  
2 with other uses by the neighboring properties, which are  
3 primarily used as religious institutions, educational  
4 institutions, and for retail and office uses.

5 Also, the current layout of the building is already  
6 configured with existing office spaces, so there will be no  
7 changes to the interior or exterior of the building if the  
8 variance relief is granted. Also, strict application of the  
9 zoning regulations will result in undue hardship to the  
10 Applicant, because although the property is primarily used as a  
11 seminary, there's not enough demand for the Applicant to use the  
12 entire building for seminary purposes. Since the building's  
13 already configured with office space, the Applicant leases that  
14 office space to other religious and nonprofit organizations in  
15 order to generate additional income to sustain the seminary. It  
16 would be impractical and financially burdensome for the Applicant  
17 to bear the expense of reconfiguring and reconstructing the  
18 building to be suitable for some other conforming use and some  
19 of the other conforming uses of the RA-1 zone are not consistent  
20 with the seminary use in the 401 Michigan Avenue portion of the  
21 building. So it's not only practical, but it's also cost  
22 effective for the Applicant to use the office spaces that are  
23 already present and a part of the layout of the building as  
24 leasable office space. This allows the Applicant to maximize the  
25 use of his property in an efficient and financially prudent way

1 that's not disruptive to the neighbors and does not require any  
2 construction or additional financial expenditures from the  
3 Applicant. And this will also allow the Applicant to continue  
4 to carry out his mission while generating additional revenue and  
5 also helping other nonprofit and religious organizations as well.

6 Additionally, there won't be any harm or detriment to  
7 the public good. The proposed office use will be for other  
8 nonprofits and religious organizations whose missions are to  
9 promote public good and not to harm public good. Also, there  
10 are no residential neighboring properties, so there won't be any  
11 adverse effects to any residential properties. And as stated  
12 before, there's no construction or redevelopment of the building.  
13 So there will be no disruption with, you know, construction and  
14 things of that sort. Additionally, we've received several  
15 letters of supports from neighboring properties as well as from  
16 the affected ANC 5F and a letter of approval from the Office of  
17 Planning. And the Department of Transportation also reviewed our  
18 application and did not object to the approval of our request.  
19 So for those reasons, we are hopeful and we believe that the  
20 variance relief should be granted.

21 CHAIRPERSON HILL: Thank you, Ms. Dotson.

22 Let me turn to the Office of Planning first and then  
23 I'll turn to questions from the Board.

24 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman, and  
25 members of the BZA. This is Maxine Brown-Roberts representing

1 the Office of Planning on BZA Case 20844 for a variance to permit  
2 the office use in the RA-1 zone at 401 to 415 Michigan Avenue,  
3 N.W. in the RA-1 zone.

4                   The Applicant is presented with an extraordinary or  
5 exceptional situation in that the building was constructed in  
6 1917 and so has a history of being used for the seminary,  
7 accessory office uses, and offices leased to nonprofit  
8 organizations. The Applicant is also unable to expand the matter  
9 of right seminary use into the remaining portions of the building,  
10 as the seminary population is not increasing sufficiently to  
11 occupy the entire building. The area not being used by the  
12 seminary is built and configured for office use. The Applicant  
13 is faced with an undue hardship in that the seminary cannot expand  
14 again into the entire building as there is not the need. And  
15 without feasibly being able to use a space for office or  
16 converting to residential use or some other permitted use, the  
17 space would remain vacant. If the space is to remain vacant, it  
18 will be a burden and hardship to the Applicant as the religious  
19 school and the nonprofit organizations as they would have to  
20 maintain the space with no revenue.

21                   Regarding having no detriment to the zoning  
22 regulations, the owner of the property is a religious and  
23 nonprofit organization who is generally given special  
24 consideration to allow them to fulfill their missions.  
25 Furthermore, the integrity of the zoning regulations would not

1 be eroded if the proposed nonconforming use was allowed on the  
2 property. As granted, the requested use variance to allow the  
3 continued use of the office space. Allowing office use in the  
4 building would not be a substantial detriment to the public good,  
5 as there are no residential uses directly adjacent to the property  
6 and the adjacent property owners have written letters of support  
7 for the proposal.

8                   The building is set back from both Michigan Avenue and  
9 4th Street and there is adequate parking on-site, and so the  
10 proposal would not result in any on-street parking impacts. The  
11 seminary use would continue to be the predominant use in the  
12 building. As the Applicant said, the space is 139 plus square  
13 feet, with only about 28,000 square feet or 20 percent would be  
14 dedicated to the requested office use and would not generate any  
15 noise or other negative impacts on the adjacent uses.

16                   The office use would be similar and compatible to  
17 adjacent uses and it is not envisioned that the office uses would  
18 have a negative impact on the surrounding area or be a detriment  
19 to the public good. Therefore, in summary, the Office of Planning  
20 recommends approval of the requested variance. Thank you, Mr.  
21 Chairman, and I'm available for questions.

22                   CHAIRPERSON HILL: Thank you, Ms. Brown-Roberts.

23                   Does the Board have any questions for the Office of  
24 Planning and/or the applicant?

25                   Ms. Brown-Roberts, when was the -- when did you guys

1 say the building was built?

2 MS. BROWN-ROBERTS: The information given to us that  
3 it was built in 1917.

4 CHAIRPERSON HILL: Okay. And it took until now to --  
5 for this to kind of pop up before us?

6 Ms. BROWN-ROBERTS: I don't know what happened.

7 CHAIRPERSON HILL: Okay.

8 Mr. Blake?

9 COMMISSIONER BLAKE: What is the current C of O for  
10 415, is there any C of O at all or has there ever been a C of O  
11 for any portion of 415?

12 MS. DOTSON: To my knowledge, no. There has not been  
13 a separate C of O for 415. It's just pertained to 401 Michigan  
14 Avenue.

15 COMMISSIONER BLAKE: Is 415 on a separate lot?

16 MS. DOTSON: No.

17 COMMISSIONER BLAKE: Okay. Thank you.

18 CHAIRPERSON HILL: Okay.

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

20 MR. YOUNG: We do not.

21 CHAIRPERSON HILL: Okay.

22 Anything else from the Board?

23 Sure, Mr. Blake?

24 COMMISSIONER BLAKE: Question. Is the total portion  
25 of this 415 is that 28,000 square feet, how large is that portion

1 of the building?

2 MS. DOTSON: I'm not entirely sure of the exact square  
3 footage of that building, of that portion of the building. I  
4 don't know the exact number, but I know that that building is  
5 primarily used for office space. It's only office spaces in that  
6 building. So -- I mean, in that portion of the building, but  
7 I'm not sure of the exact square footage of that entire portion  
8 of the building.

9 COMMISSIONER BLAKE: Okay. And now can you walk through  
10 from 401 to 415 without interruption, is there a separate door,  
11 a wall, what connects what, how do you go from building to  
12 building?

13 MS. DOTSON: Yeah, there is a single doorway hallway  
14 that connects the building, so you can walk through. It's a  
15 doorway that you would go through to enter into the other side,  
16 from one side to the other.

17 COMMISSIONER BLAKE: Okay. And how much of, would you  
18 say, of 401 is used for office space currently?

19 MS. DOTSON: Not a lot of it. Most of the office space  
20 that is leased out, all of that office space is in 415. The  
21 office spaces in 401 are related to the seminary uses. So you  
22 know, office space for seminary purposes, but none of it is leased  
23 out to, you know, tenants or other nonprofits.

24 COMMISSIONER BLAKE: Thank you.

25 COMMISSIONER SMITH: So I have one question as a follow-

1 up. Is it -- this is a multi-floor building, is it just one of  
2 the floors or all of the floors on that wing of the building?

3 MS. DOTSON: It's a multi-floor building and several  
4 of the floors have office space that is leased out. The basement  
5 is -- the current tenant that that -- how this issue came up,  
6 the basement of 415 is leased out to that tenant, the ground  
7 level. But there are other office spaces within that side on  
8 different floors that are also leased out to other tenants, but  
9 it's not completely leased out, no, not all of the spaces are,  
10 it's just a few spaces.

11 COMMISSIONER SMITH: So I'll be honest with you, I need  
12 additional -- because you're asking for a use variance and that's,  
13 you know, the highest -- and you've heard it probably earlier  
14 today, that's the highest, you know, relief that we can give. So  
15 being that this is located -- it sounds like it's portions of  
16 this building that -- it looks like it's a wing of the rest of  
17 the building. I think for me, I need some floor plans that show  
18 where these office uses are located and where we are specifically  
19 granting the relief.

20 MS. DOTSON: Understood. I was unable to get more  
21 recent floorplans of the space prior to our meeting today. I  
22 was hoping to have that, but it's been difficult to obtain, so I  
23 don't have current floor plans of the space. But the request is  
24 for the 415 side of the building, so. And from our view, we  
25 would like it to pertain to that, you know, that entire side of

1 the building, that entire portion, not just selective spaces in  
2 that portion, because all of that space is used as -- it's  
3 configured as office space.

4 CHAIRPERSON HILL: Mr. Smith, I -- it's Exhibit 32, is  
5 that one helpful at all?

6 COMMISSIONER SMITH: I mean, that's just a diagram  
7 showing the footprint, that's not telling me the floor of where  
8 everything is going. That is extremely vague. So is the request  
9 to grant that entire wing of this building that is addressed as  
10 415, all these floors, every floor on that wing a use variance?

11 CHAIRPERSON HILL: Ms. Brown-Roberts --

12 COMMISSIONER SMITH: I can't even see what's in the  
13 wing.

14 MS. BROWN-ROBERTS: Yes. From my understanding, that  
15 was what they were asking for, yes.

16 COMMISSIONER SMITH: So Ms. Roberts, have you seen  
17 what's in this wing, have you seen a floor plan of what you're  
18 recommending that we grant a variance for?

19 MS. BROWN-ROBERTS: No, I saw the building, but no, I  
20 haven't seen any floor plans. I mean, I did request them, but  
21 the Applicant was not able to provide them. But from her  
22 description, I figured that, you know, it was all of that space.

23 COMMISSIONER SMITH: Okay. Okay. Thank you.

24 CHAIRPERSON HILL: Are those floor plans, the ones that  
25 are in Exhibit 31? No.

1 MS. DOTSON: Those are previous floor plans. They're  
2 not very current. That is just all we were able to get by the  
3 time of the hearing. So it was better to provide, you know,  
4 something that kind of shows what's going on. But they're not  
5 the most current layout of the building.

6 CHAIRPERSON HILL: But you're testifying that all of  
7 those floors are offices like this layout that we're seeing in  
8 Exhibit 31, correct?

9 MS. DOTSON: Yes. Majority of it is office space, to  
10 my knowledge, yes.

11 VICE CHAIR JOHN: Okay. So just to clarify. So let's  
12 go back to the footprint. So we're saying that that building in  
13 that section has several floors, right?

14 MS. DOTSON: Yes.

15 VICE CHAIR JOHN: And all floors have been used for  
16 office space, all floors of 415; is that right?

17 MS. DOTSON: All floors are configured to be used as  
18 office space. I'm not saying that they all are currently used  
19 as office space, but they are configured as office spaces and  
20 there has been office use within 415. There -- like -- as I  
21 stated earlier, all of the office spaces are not currently leased  
22 out, but yes, they are configured as existing office spaces.

23 VICE CHAIR JOHN: Okay. So that introduces a little  
24 confusion for me because I thought the ask that the request was  
25 to -- where was that slide we were looking at -- was to allow

1 office use of that entire wing, which is currently configured as  
2 office space, but not all of those spaces are currently rented  
3 to nonprofits? So in other words, the Applicant wants to be able  
4 to just rent any space in that wing to a nonprofit, is that what  
5 you're asking -- your client is asking?

6 MS. DOTSON: Yes.

7 VICE CHAIR JOHN: Okay. And so my follow-up question  
8 is, since the building was built, has this section also been used  
9 as office space?

10 MS. DOTSON: When you say this section, are you  
11 referring to the 415?

12 VICE CHAIR JOHN: The wing, yes.

13 MS. DOTSON: Yes, it has been used as office space.  
14 Yes.

15 VICE CHAIR JOHN: And that use was not part -- was it  
16 not an accessory use to the seminary, that is it wasn't used by  
17 the seminary for office space for the purposes of the seminary,  
18 but it was rented out to nonprofits?

19 MS. DOTSON: Correct.

20 VICE CHAIR JOHN: Okay. That helps me.

21 COMMISSIONER SMITH: I think I have another question.  
22 The planning -- the floor plans. So Exhibit 40 -- and, you know,  
23 let me back up and say, you know, the plat itself, the plat itself  
24 shows the wing of this building that's at -- this portion of this  
25 building, it's all one building, but that portion, this wing's

1 address is 415 Michigan Avenue. So it's shaped like a T. So  
2 that's highlighted on this plan. I mean, on that plat. On your  
3 floor plan, all I see is the L shaped portion, not the portion  
4 that's running perpendicular to the rest of the building, so the  
5 stub of the T. Is -- are you requesting a use variance for the  
6 stub as well?

7 MS. DOTSON: The request is for the plat, what is  
8 hatched on the plat. Those floor plans do not accurately show  
9 the current state of the building, as I stated prior, those floor  
10 plans are older floor plans, but that was all that we had  
11 available to kind of give the Office of Planning a sense of the  
12 layout of the building. Was hoping to get more updated floor  
13 plans prior to our meeting -- this hearing today, but I was unable  
14 to do so. So the 415 portion of the building is the cross-  
15 hatched building on the plat. That is what we are requesting  
16 the variance for.

17 COMMISSIONER SMITH: Okay. So, you know, per -- I  
18 think it's the second or third time you've said that you were  
19 looking to hopefully get these plans into the record before this  
20 hearing and you were unable to. Is there a time in the future  
21 that you would be able to get these floor plans within the record  
22 so that we can have the most accurate complete record of what  
23 the request is?

24 MS. DOTSON: I don't have an estimated time. I can  
25 continue to try to push my contact at the -- with my Applicant

1 to do so, but I don't have an exact date that I can give you or  
2 an estimated date unfortunately.

3 COMMISSIONER SMITH: Okay. And to me, it's important  
4 to have the most up-to-date floor plans for what this request is  
5 for the record. So I would like to see the most up-to-date floor  
6 plan before, me personally, before acting on this use variance  
7 request.

8 MS. DOTSON: Understood.

9 VICE CHAIR JOHN: So just as a follow-up question,  
10 where is the door to the -- I'm looking at Exhibit -- oh boy,  
11 the plat. And I'm trying to see if the door would be located in  
12 that hatched portion, where is the door? Is it there if you were  
13 to continue the yellow-shaped diagram all the way across to the  
14 court or whatever that is. I'm looking at the updated plat.

15 MS. DOTSON: All right. The -- there is a separate  
16 door on this cross-hatched portion of the building. I'm not  
17 exactly sure -- are you -- you're asking where -- what are you  
18 asking that it's located at?

19 VICE CHAIR JOHN: That was a previous question, which  
20 I think went to the question of are the -- is this hatched  
21 portion, the yellow portion, a separate building, or is it  
22 integrated with the rest of the building?

23 MS. DOTSON: It's integrated with the rest of the  
24 building. There is a separate entrance located on the cross-  
25 hatched portion though. You can enter from that side of the

1 building, from the outside into that building. So there is a  
2 separate door and entrance on that side of the building.

3 VICE CHAIR JOHN: Okay. And how many floors, please  
4 remind me how many floors?

5 MS. DOTSON: It is five stories. It's a --

6 VICE CHAIR JOHN: Five stories.

7 MS. DOTSON: -- yeah, basement through four floors.

8 VICE CHAIR JOHN: Okay. It's -- okay. And. So it's  
9 five stories and the base- -- the Applicant in the basement, is  
10 that a basement level or one of the five floors? I don't  
11 understand what you --

12 MS. DOTSON: It's a basement level.

13 VICE CHAIR JOHN: Okay?

14 MS. DOTSON: Yes.

15 VICE CHAIR JOHN: And the Applicant will be in the  
16 basement.

17 MS. DOTSON: The Applicant -- the tenant will be in the  
18 basement. The Applicant --

19 VICE CHAIR JOHN: And then there are four floors above  
20 that?

21 MS. DOTSON: Yes, there are four floors above that,  
22 yes.

23 VICE CHAIR JOHN: Okay. I think that does it for me.  
24 Oh, one more question. And the representation that only 20  
25 percent of the building will be used for office space, does that

1 include the basement and the four floors of the yellow section?

2 MS. DOTSON: Yes.

3 VICE CHAIR JOHN: Okay. All right. That's it for me.

4 Thank you.

5 CHAIRPERSON HILL: Mr. Blake?

6 COMMISSIONER BLAKE: Yeah. I was just looking at the  
7 certificate of occupancy for the building, and it covers 139,186  
8 square feet. But these two buildings -- that would be the  
9 combined of the two buildings. So the C of O, while it uses the  
10 Michigan Avenue address, has 139,000 square feet. So that would  
11 be covering the entirety of the complex. It would not be just  
12 the, you know, 80,00 or 90,000 square feet of the one building  
13 or one wing. So to me, the C of O does cover both portions of  
14 the building based on what I'm reading here, as opposed to --  
15 and it would be helpful to have a separation between the C of O  
16 occupancy for 415 and 401 -- or not -- the measurement for those  
17 two so that we have a sense of it. On loopnet it simply says  
18 something like it's 88,934 feet for building -- for 401 and 48,000  
19 square feet for 415. So that (indiscernible) come to 137, which  
20 means the C of O is representing for both portions of the  
21 building, even though they only use the address for one. So I'm  
22 a little bit confused with that and it would be helpful to get a  
23 sense of are we now just trying to say this applies to the  
24 entirety, in which case I would argue the 139 on the C of O is  
25 saying that, and in which case -- I mean, I'm just -- can anyone

1 help me with that?

2 VICE CHAIR JOHN: I think you're correct, Mr. Blake,  
3 and that's a great observation because I did not look at the  
4 certificate of occupancy. If looking at it now, it's not  
5 specific. It says the theological seminary and office space. It  
6 doesn't say where the office space will be located. And so I  
7 agree with you, I could make an argument that there is a  
8 certificate of occupancy for this hatched portion as well. And  
9 so perhaps we could clarify that in our decision, which might be  
10 helpful in getting the certificate of occupancy amended to be  
11 more specific because it does say occupied square footage is  
12 139,000 square feet. So I agree with you there.

13 CHAIRPERSON HILL: Okay. All right. What do you guys  
14 want? So I got Mr. -- I mean, I see the -- and now I'm just  
15 asking my quick question. The connection between 415 and 401,  
16 they're all just -- it looks to me they're all just open hallways  
17 that go into the -- do you know, Ms. Dotson? Like, have you been  
18 to the building? Are these open hallways that go from 415 into  
19 401?

20 MS. DOTSON: I have not been to the building, but it's  
21 my understanding that there is a hallway that connects with a  
22 doorway, one -- the 401 side of the building to the 415 side of  
23 the building.

24 CHAIRPERSON HILL: Inside the building, inside the  
25 building?

1 MS. DOTSON: Inside of the building, yes. Like actually  
2 inside the building you can go from, you know, through that  
3 hallway, through that doorway to the other side of the building.

4 CHAIRPERSON HILL: Right. There's a door there.

5 MS. DOTSON: Yes, uh-huh.

6 CHAIRPERSON HILL: Okay. Well, I guess what -- and  
7 this is where I don't know how long this is going to take or what  
8 -- you know, where Mr. Smith may or may not end up in terms of  
9 more information. I guess, you know, Mr. Smith is interested in  
10 seeing floor plans of the area that the relief is being requested  
11 from. Okay? And I will agree that it is a little confusing  
12 where your plat is highlighted in one way, and then that diagram  
13 that you just most recently put in is highlighted in another way.  
14 So it does make it confusing as to what we're actually approving.  
15 Right? If I turn to the Office of Planning's report, go there  
16 real quick, okay, right, and so I mean, the Office of Planning  
17 they didn't highlight it the way I thought maybe. I guess I'm  
18 kind of -- and I'm happy to whatever makes everybody comfortable  
19 with their vote. I mean, I think we're going to get to the same  
20 place is what I'm trying to get at. The thing was built in 1914  
21 (sic) and it's been this way -- and I'll bet that those are all  
22 offices and they've been treated as offices. And then it's going  
23 to get me back to where the Office of Planning's argument is.  
24 And I don't know if Ms. Brown-Roberts -- and I'll come back around  
25 -- I don't know if Ms. Brown-Roberts -- Ms. Brown-Roberts, do you

1 need anything else?

2 MS. BROWN-ROBERTS: No, no, Mr. Chairman. You know,  
3 we had requested the site plan, the plans, just to get a better  
4 understanding of, you know, of the layout. But you know, it was  
5 sort of brought to my attention that in order to get the existing  
6 floor plans, they would have to go and get an architect to draw  
7 them, you know, because it doesn't exist. So that was sort of  
8 my understanding.

9 CHAIRPERSON HILL: So Theological College, whatever it  
10 is, they have to go out now and get an architect?

11 MS. BROWN-ROBERTS: That's correct. That was my  
12 understanding. You know, the Applicant may say -- may be able  
13 to correct me or, you know, agree with me or not, but that was  
14 my understanding of it. So I generally just asked her to really  
15 describe it to me so that I had a better understanding. And  
16 then, you know, with what she had submitted, so. So I don't  
17 really need anything.

18 CHAIRPERSON HILL: Okay. Okay. Okay. So then I'm  
19 just trying to go back to Mr. Smith as to like, you know, what  
20 we -- what hoops we want these guys to jump through, you know,  
21 which I don't disagree with, I'm just saying like, you know, I  
22 don't know how to -- I don't know what to ask -- Ms. Dotson  
23 doesn't seem to know when she's going to be able to get us what  
24 may or may not help with your decision.

25 COMMISSIONER SMITH: So I'll -- you know, I've also

1 found another concern. So you know, the set of floor plans show  
2 a hallway coming off the main entrance of 401 Michigan Avenue,  
3 much closer to that, you know, very prominent entrance of 401  
4 Michigan Avenue. The diagram on Exhibit 40 is hatching an area  
5 further away from that very prominent entrance. So you know, I  
6 agree with Chairman Hill that I think we will get to the same  
7 place, but my concern is I want to make sure what we are -- we're  
8 actually -- if we do approve this, if we do approve this variance,  
9 that we're granting them a variance for the entire area that  
10 they're requesting it for their own benefit. Because if I just  
11 go off of the diagram that, Ms. Dotson, you presented that has  
12 the hatched area, let's say that you want to -- you rent out all  
13 of those offices and guess what? You're going to be back here  
14 in front of us again if the Office of Planning and Department of  
15 Buildings, I'll say, Department of Buildings can't decipher where  
16 that line is in that building where you get that use variance  
17 where you can put in offices versus where you can't. And it's  
18 not clear to me in anything that you've submitted that that's a  
19 clear -- there's a clear divide. And I'm saying this because I  
20 -- as a benefit to you, as a benefit to the Theological College  
21 if they want to rent out all these spaces. So my recommendation  
22 -- I mean, we can go with this, but you can -- I think you have  
23 to define on the existing plans that you have here where that is  
24 and just outline the footprint of the building, first, second,  
25 the first and second floor, wherever you're proposing to put this

1 office outline and stand by it. If there's any floor plans for  
2 the existing building that can be tracked down, even if they're  
3 old, just as long as they're stamped, that show the area in  
4 question a little bit more clearer, then I think we will get to  
5 where we're trying to go with this. But to request a use  
6 variance, I think we need a little bit more information in the  
7 record to understand exactly in this building where we are  
8 granting a use variance, for a use that right now is not allowed  
9 within the zone. So let's clearly define, let's tie it down,  
10 then I think that's where I'm at. And those are the  
11 recommendations that I have if you can't find a floor plan.  
12 Clearly define it in your own records using this information that  
13 you've submitted where the offices are. If you can find the old  
14 floor plans, somebody at the Theological College can find the  
15 floor plan to the existing building, that 401, if there are  
16 portions of office that's not found in the floor plan, find that  
17 plan and also highlight those areas that would be office and this  
18 still T that's parallel to the building, if that's also part of  
19 your variance request, make that a little bit more clear.

20 CHAIRPERSON HILL: I saw Ms. John's hand and I might  
21 have even seen Mr. Blake's hand and I see Ms. Dotson taking notes,  
22 which is great.

23 Ms. John?

24 VICE CHAIR JOHN: So Mr. Smith, I respectfully have to  
25 take another look. They have a certificate of occupancy for

1 139,000 square feet, which covers basement first through fourth  
2 floor. And they were granted a use change in 2003. And unless  
3 the certificate of occupancy said or specified office space,  
4 which it does not, it's quite general -- and so my question is I  
5 don't know why they're here, because they could choose where to  
6 put the office space. That's what they have. Unless there's  
7 something else that the Department of Buildings has that says  
8 that they're limited to where they can put the office space.

9 COMMISSIONER SMITH: But I think they're here because  
10 this C of O is very vague on what the use change encompasses.  
11 Yes, it says theological seminary office space, but that's  
12 probably office space that's ancillary to the Theological College  
13 itself. And if I'm mistaken, Ms. Dotson, these particular office  
14 spaces aren't necessarily tied to the operation of the  
15 theological college, they're rented out to nonprofits.

16 MS. DOTSON: Yes, right.

17 COMMISSIONER SMITH: So it's a use that's separate from  
18 the operation of the college itself. So it's not -- and it's  
19 not accessory, so I think that's probably why the DOB, the zoning  
20 administrator, sent them here to get this variance for clarity.

21 VICE CHAIR JOHN: But Mr. Smith, they have a variance  
22 for 139,000 square feet, not 89, you see? So I don't see why  
23 they need to have another use change because that's what they got  
24 in 2003 for the basement and the first through fourth floors  
25 without any specification as to where they could put any use.

1 And it doesn't say -- it's not specific. I don't know if the  
2 Department of Buildings has something else. I would argue that  
3 this C of O says they can put the office space wherever they  
4 want.

5 COMMISSIONER SMITH: This is in reference to Exhibit  
6 8.

7 VICE CHAIR JOHN: Hmm?

8 COMMISSIONER SMITH: Or not Exhibit 8, sorry. Exhibit  
9 5?

10 VICE CHAIR JOHN: This is the C of O, I don't remember  
11 what exhibit -- Mr. Blake mentioned it. It's, yeah, Exhibit 5.

12 COMMISSIONER BLAKE: Also I mentioned this is a self-  
13 certified application. I don't see a referral from the Za on  
14 it.

15 VICE CHAIR JOHN: No. But someone at the Department  
16 of Buildings must have said they needed -- go ahead, Ms. -- go  
17 ahead Ms. Maxine Brown-Roberts.

18 MS. BROWN-ROBERTS: Mr. Chairman and Ms. John, I asked  
19 the Applicant the same questions because I had the same concerns.  
20 And what I was told was that because the -- it only said 401, so  
21 that's why they were sent here. It didn't say 40 -- it didn't  
22 say the 415 also, so that's why they sent them here.

23 MS. DOTSON: That's exactly right. That is why we're  
24 here. We've been operating with this C of O, as it, you know,  
25 as if it pertained to the entire building, that was our

1 understanding, but, you know, our tenant, you know, went to seek  
2 grant funding and presented the C of O and they were told because  
3 it doesn't say 415, it only says 401, it doesn't apply to 415,  
4 and that's how we, you know, in short how we ended up here seeking  
5 the use variance.

6 CHAIRPERSON HILL: I'm going to get you, Mr. Blake. I  
7 just have a question for Mr. Miller. Mr. Miller, do you have a  
8 thought?

9 ZC VICE CHAIR MILLER: Yes, I have a thought. Thank  
10 you. I'm sorry to interrupt other people's thoughts though  
11 because I've enjoyed hearing them. My thought is that this  
12 application is essentially legalizing a historical use by a  
13 religious institution for its own purposes and for nonprofit  
14 office rental purposes, which the revenue from which supports  
15 their mission, which our regulations or at least the case law  
16 interpreting our use variance regulations, has given greater  
17 flexibility to such religious institutions as public service  
18 organizations when they're using part of their property for other  
19 purposes that support their mission. This is the revenue that  
20 supports their mission. I -- the -- obviously the clarity --  
21 what -- more clarity was needed in the existing C of O to include  
22 the 415 address. So I'm not interested in putting any more  
23 burdens on this particular religious institution or any religious  
24 institution in the city, which it's a challenge to exist in our  
25 city, given the limited space and cost and everything else. So

1 I'm in support of the application. If we want to clar- -- I  
2 don't think we need to know exactly where in the one functional  
3 building the office use would be. It needs to -- the C of O, I  
4 guess, needs to say 415 in addition to 401, which is what might  
5 have brought them here. And you know, if our order could clarify  
6 that it's still primarily the whole thing, 401 enti- -- 415 as  
7 we've heard today is still primarily being used by the religious  
8 institution and the seminary or and dormitory or whatever  
9 associated with the religious institution. If we want to use the  
10 word primarily, which I think I heard an 80 percent figure, that  
11 it's only 20 percent of the whole thing that's being -- maybe we  
12 can include that, if that's appropriate. We can hear from our  
13 counsel if we need to, or they can just draft the order in a way  
14 that makes it appropriate and clear. But I don't think we need  
15 to get specifics about exactly where the office space is. Or at  
16 least I don't need to have that to consider the application  
17 favorably today. Thank you, Mr. Chairman.

18 CHAIRPERSON HILL: Thank you, Vice Chair Miller.

19 Mr. Blake, yep, I gotcha.

20 COMMISSIONER BLAKE: Actually, looking at this, it  
21 seems to me the address -- this is one building in a location  
22 that was built in 1917, predating the regulations in the first  
23 place. The thing is it was built purposely to do these things  
24 that it does. Now, it has two separate addresses, but should we  
25 focus on the addresses or should we focus on the lot and square

1 because the parcel -- forget about what the parcel is called  
2 nominally or addressed. The parcel itself is really what we  
3 would focus on. And if that parcel, one lot, one square, has  
4 this building that's 139 (sic) square feet on it, that is, you  
5 know, eligible for this and it's been -- would have been  
6 grandfathered into this if this were their historical uses as  
7 nonconforming, then this would not be something we need to look  
8 at because it seems to me that it existed as a single building  
9 since 1917, and we look at not these nominal addresses, but the  
10 lot and square, which I think is 133, 130 which is exactly what's  
11 the C of O, would cover that as opposed to nominal addresses.

12 CHAIRPERSON HILL: Okay. Well, I guess --

13 COMMISSIONER BLAKE: Maybe the Office of Planning could  
14 help me with that.

15 MS. BROWN-ROBERTS: I'm not sure -- can you ask the  
16 question again, what's the question?

17 COMMISSIONER BLAKE: The question is is it appropriate  
18 to look at the addresses or the lot and square to determine this,  
19 because addresses are not necessarily, as -- you know, lot and  
20 square is more the real deal?

21 MS. BROWN-ROBERTS: Yes, I think the lot and square is  
22 more appropriate. I mean, the address is I think it's just more  
23 of a convenience than anything else, you know, having the two  
24 addresses. But the building functions as one building, it's laid  
25 out as one building. You know, there are connections between

1 both portions. So I think looking at it as a single lot and  
2 square is fine.

3 CHAIRPERSON HILL: Okay. I don't know how that changes  
4 my motion or not. And then, Mr. Blake, you can help me make the  
5 motion.

6 COMMISSIONER BLAKE: Well, I mean to me, it -- if we're  
7 looking at this this property and it's one lot, one building, and  
8 the C of O is for the square footage that represents one lot,  
9 one building, we could even look at its history of the C of Os  
10 to this point, it's going to lead us to the conclusion that this  
11 is one lot on one -- it's only one lot, it's one build- -- it  
12 can't be two buildings on one lot, or it could be I guess, but  
13 it's one build- -- represented as one building on one lot in a  
14 continuous structure with a C of O, with the lot and square for  
15 139 (sic) square foot structure. So I believe that this -- it's  
16 done. I don't know what we need to do. I'm lost. Maybe -- I  
17 don't know.

18 CHAIRPERSON HILL: Okay. I -- my -- well, unless --  
19 this is my suggestion, unless anybody has anything and I don't  
20 know, but I'm with Mr. Miller, right, so I'm with Mr. Miller in  
21 that I am comfortable with what we have here. And if it's a bit  
22 of a punt, I suppose, as to Mr. Smith's point, maybe they'll come  
23 back here again. I don't know. Meaning that it is a self-  
24 certified application and I think that if we make the motion, as  
25 you know, 401 to 415 Michigan Avenue or Plat 133/130, I think

1 that building's been there, I think that it is configured as  
2 offices, I'll bet it's always been configured as off- -- I mean,  
3 I shouldn't say building -- I believe the testimony of the  
4 Applicant that it is configured as offices. It's been there  
5 since 1914 (sic). It is the way it is. And the only reason why  
6 it's pointed out -- well, the only reason why it has become this  
7 way is because somebody had tried to get a C of O, one of those  
8 nonprofits in the basement. As Commissioner Miller has  
9 mentioned, there is more flexibility that we have in these area  
10 variances when they are for the community and public good and  
11 nonprofits, which this is. And again, I mean, it's across the  
12 street from the basilica, you know, meaning that it's been there  
13 forever. And so -- but that is not trying to twist anybody's  
14 arm. I'm just saying I am comfortable with where we are moving  
15 forward. However, if anybody needs anything else, just let me  
16 know.

17               Okay. Go ahead, Mr. Smith.

18               COMMISSIONER SMITH: Okay. I'm just going to go on the  
19 record that it's not a situation of -- I recognize that this  
20 building was built before the imposition of zoning. My -- what  
21 I'm seeking is the clarity for the benefit of the Applicant,  
22 because they come here because DOB was not clear on either yes,  
23 this is addressed at 401, the C of O isn't clear. So my  
24 recommendation was for them to provide that clarity. That didn't  
25 mean that they had to go get, you know, pay to get a whole new

1 set of plans and we just to provide some additional clarity within  
2 the record for their own benefit. If it is the pleasure of the  
3 Board to approve it, by all means. I mean, to, I think, what  
4 Ms. John and Mr. Blake was saying, Ms. John was referencing that  
5 the entire -- the 168,000 square feet per the C of O was granted  
6 for the college and office use, is that 168,000 square feet the  
7 entire building?

8 VICE CHAIR JOHN: Yes.

9 MS. DOTSON: Yes.

10 COMMISSIONER SMITH: At 415 and 401?

11 VIEC CHAIR JOHN: Yes. That's the occupied certify-

12 --

13 COMMISSIONER SMITH: Then, you know, you want to  
14 provide the clarity, one way to do it is just to extend the  
15 variance across the entire building and not try to decipher where,  
16 so if that's what we want to do, we can do that. And there's  
17 the clarity there, the entire building.

18 VICE CHAIR JOHN: But that's what it says, that's what  
19 it says. So -- sorry, Chairman Hill.

20 CHAIRPERSON HILL: No, that's exactly what I was going  
21 to say. The motion is for 401 and 415 Michigan Avenue. So it's  
22 just going to be all -- it all -- it'll be encompassed again.

23 COMMISSIONER SMITH: Okay. Well, I stand corrected.  
24 I'll stand down. The request was for a portion. So I was trying  
25 to define what portion.

1 CHAIRPERSON HILL: Okay. I think that the lawyers,  
2 perhaps when they write the order, they can help clarify this.  
3 And I'll make a motion that I hope is clear. Okay. So I'm going  
4 to make a motion and see what happens.

5 VICE CHAIR JOHN: Can I say --

6 CHAIRPERSON HILL: Yeah.

7 VICE CHAIR JOHN: Can I say one more thing?

8 CHAIRPERSON HILL: Sure, go ahead, Ms. John.

9 VICE CHAIR JOHN: Because you see the seminary at some  
10 point -- let's say we have a mad rush for additional theological  
11 uses, the seminary could decide to put them in that wing as well.  
12 So you know, I think this C of O gives the seminary the  
13 flexibility to use the building for educational purposes related  
14 to -- for theological, you know, the seminary. So I'm fine with  
15 this flexibility and I don't believe -- are there other buildings'  
16 uses in the square, Ms. Maxine Roberts? You're on mute.

17 CHAIRPERSON HILL: You're on mute, Ms. Roberts.

18 MS. BROWN-ROBERTS: Yeah. I -- not on the lot. There  
19 are other buildings in the square, but not on that lot.

20 VICE CHAIR JOHN: Oh, okay.

21 MS. BROWN-ROBERTS: The lot only has one building.

22 VICE CHAIR JOHN: Okay. Thank you.

23 CHAIRPERSON HILL: I'm just kind of looking at my phone.  
24 Does anybody want to talk to counsel?

25 VICE CHAIR JOHN: No.

1 CHAIRPERSON HILL: Okay. Yeah, one no.

2 All right. So, okay. I'm going to make a motion.  
3 Okay. I'm going to make a motion to approve Application No.  
4 20844 for address 401 through 415 Michigan Avenue, N.W., 133/130,  
5 Lot 133/130, as amended, a self-certified application pursuant  
6 to Subtitle X 1002 for a use variance from U 401 to permit an  
7 office use, full stop. Can I get a second?

8 VICE CHAIR JOHN: Second.

9 CHAIRPERSON HILL: Okay. And I will ask the attorneys  
10 when they're writing the order to be clear of what was just --  
11 the motion that was just made. The motion has been made and  
12 seconded, Ms. Rose, if you want to take a roll call.

13 MS. ROSE: Did you want to close the record and the  
14 hearing?

15 CHAIRPERSON HILL: Oh, yeah, sorry. Sorry, I didn't  
16 realize the witness was still here. Are we -- oh (indiscernible).  
17 Okay.

18 We don't know -- Ms. Dotson, do you have anything you'd  
19 like to add at the end here?

20 MS. DOTSON: No. Just thank you for your time and  
21 consideration. I appreciate it.

22 CHAIRPERSON HILL: Okay. I'm going to close the hearing  
23 and the record. Bye, Ms. Dotson. Bye, Ms. Brown-Roberts.

24 MS. ROSE: I can take the roll call now.

25 CHAIRPERSON HILL: Okay. Yeah, go ahead. Thank you.

1 MS. ROSE: When I call your name, please respond.

2 Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MS. ROSE: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MS. ROSE: Board Member Smith?

7 COMMISSIONER SMITH: Yes.

8 MS. ROSE: Board Member Blake?

9 COMMISSIONER BLAKE: Yes.

10 MS. ROSE: Commissioner Miller?

11 ZC VICE CHAIR MILLER: Yes.

12 MS. ROSE: Staff would record the vote as five to zero

13 to zero to approve the application per the motion as revised.

14 This is on a motion by Chairman Hill seconded by Vice Chair John

15 with Board Member Smith, Board Member Blake, and Commissioner

16 Miller in support of the motion to approve.

17 CHAIRPERSON HILL: Okay. So what I suggest, there's  
18 one -- there's an odd thing I think that's happening with this  
19 next case, and then let's take a break before we take our last  
20 case. That would be my suggestion. And hearing no one say  
21 anything else, Ms. Rose, is anything -- did anything -- you want  
22 to announce 20766? I don't know if anything happened there.

23 MS. ROSE: Yes, I can call it.

24 CHAIRPERSON HILL: Okay.

25 MS. ROSE: The next application is No. 20766 of Konah

1 Duche. This is a referral from the zoning administrator for a  
2 special exception pursuant to Subtitle X, 901.2 and Subtitle E,  
3 Section 5201 from the minimum pervious surface requirements of  
4 Subtitle E, Section 204.1, area variances pursuant to Subtitle  
5 X, Section 1001 from the lot occupancy requirements of Subtitle  
6 E, Section 304.1, and from the maximum permitted building area  
7 of Subtitle E, Section 5003.1 to construct a new one-story  
8 accessory structure, a two-car garage, with a roof deck at an  
9 existing two-story semi-detached principal dwelling in the RF-1  
10 zone at 1313 West Virginia Avenue, N.W., Square 4064, Lot 81.

11 CHAIRPERSON HILL: Okay. Mr. Young, is the Applicant  
12 here?

13 MR. YOUNG: They are not.

14 CHAIRPERSON HILL: Okay. All right. So since the  
15 Applicant is not here, and this case has been postponed a number  
16 of times. And I think we have needed -- and even asked for  
17 information from this case and the Applicant is not here. So as  
18 I understand from the regulations, if the Applicant does not  
19 show, we can dismiss the case. Is that correct? Legal, if  
20 anybody wants to speak up.

21 MR. NICHOLAS: That's correct.

22 CHAIRPERSON HILL: Okay. Then I'm going to make a  
23 motion to dismiss this case as in there's nobody here to even  
24 talk to you and ask for a second, Ms. John. Oh, I'm going to  
25 dismiss Case 20766 as there's nobody here to actually talk to it.

1 It looks like Mr. Blake wants to second. Mr. Blake, will you  
2 second?

3 COMMISSIONER BLAKE: Second.

4 CHAIRPERSON HILL: Motion been made and seconded, Ms.  
5 Rose, if you could please take a roll call on my motion to  
6 dismiss.

7 MS. ROSE: Yes. When I call your name, please respond.  
8 Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MS. ROSE: Vice Chair John?

11 CHAIRPERSON HILL: You're on mute, Vice Chair John.

12 VICE CHAIR JOHN: Yes.

13 MS. ROSE: Board Member Smith?

14 COMMISSIONER SMITH: Yes.

15 MS. ROSE: Board Member Blake?

16 COMMISSIONER BLAKE: Yes.

17 MS. ROSE: Commissioner Miller?

18 ZC VICE CHAIR MILLER: Yes.

19 MS. ROSE: Then staff would record the vote as five to  
20 zero to zero to dismiss the application. This is on a motion by  
21 Chairman Hill, seconded by Board Member Blake with Vice Chair  
22 John, Board Member Smith, and Commissioner Miller in support of  
23 the motion to dismiss.

24 CHAIRPERSON HILL: Okay, guys, let's go ahead and take  
25 like ten minutes, then we'll come back and hear that last case.

1 Okay? Thank you.

2 (Whereupon, there was a brief recess.)

3 CHAIRPERSON HILL: Okay, Ms. Rose, I guess you want to  
4 call us back in and call our last case?

5 MS. ROSE: Yes. After a short break, we're resuming  
6 at 3:25 p.m. This is to address the merits of Application No.  
7 20843 of Christian Genetski and Anabel Genetski. This is a self-  
8 certified application pursuant to Subtitle X, Section 901.2 for  
9 special exceptions under Subtitle D, Section 5201 from the lot  
10 occupancy requirements of Subtitle D, Section 304.1 and the  
11 location restriction of Subtitle D, Section 5004.1(a) where an  
12 accessory building may not be located within a required rear  
13 yard, to construct a pavilion within the rear yard of an existing  
14 detached principal dwelling unit, three-story with cellar, in the  
15 RA-1B zone at premises 2234 49th Street, N.W., Square 1399, Lot  
16 33. And we have received a letter from Howard Fenton and Nora  
17 Carbine in opposition at Exhibit 31 and the Applicant's  
18 PowerPoint at Exhibit 32.

19 CHAIRPERSON HILL: Okay. Let's go ahead. And I think  
20 we're allowing those both in the record. I don't know if that's  
21 what you're asking or not, Ms. Rose, but unless my fellow Board  
22 members have any issues, I want to see everything in the record  
23 as it is.

24 Mr. Sullivan, if you can hear me, if you can introduce  
25 yourself for the record again?

1                   MR. SULLIVAN: Hi, thank you, Mr. Chairman. Marty  
2 Sullivan with Sullivan & Barros on behalf of the Applicant.

3                   CHAIRPERSON HILL: Great. Thank you.

4                   Ms. Gates, can you hear me? And if so, could you  
5 introduce yourself for the record?

6                   MS. GATES: I can hear you. Can you hear me?

7                   CHAIRPERSON HILL: Yes.

8                   MS. GATES: Alma Gates, a 50-year resident at 4911  
9 Ashby Street, N.W.

10                  CHAIRPERSON HILL: Okay. Great. Thank you, Ms. Gates.  
11 And Ms. Gates, also maybe you might want to mute yourself until  
12 we get to your portion of the hearing.

13                  Mr. Sullivan, if you want to go ahead and walk us  
14 through your client's application and why you believe they are  
15 meeting the criteria for us to grant the relief requested, I'm  
16 going to put 15 minutes on the clock so I know where we are, and  
17 you can begin whenever you like.

18                  MR. SULLIVAN: Thank you, Mr. Chairman and Board  
19 members. If Mr. Young could please load the PowerPoint  
20 presentation? This is 2234 49th Street, N.W. Next slide please?

21                  Also, I did want to mention that I'll be doing the  
22 presentation, but Mr. GEnetski is here with us as well if the  
23 Board has any questions for him throughout the course of this.  
24 So the property is located in the R-1B zone district. Applicant  
25 is proposing to construct a pavilion roof in the rear yard. The

1 roof is -- will cover space that's already finished patio space.  
2 So the proposal increases the lot occupancy to 43.4 percent,  
3 which is 3.4 percent over the 40 percent maximum. And the  
4 pavilion will also be located within a required rear yard, which  
5 is the first 25 feet from the building -- from the principal  
6 building back. And there's actually not much more room than that  
7 in the rear yard to begin with. So the Applicant's asking for  
8 special exception relief from lot occupancy and from that  
9 restriction against having the accessory structure in the  
10 required rear yard. Next slide please?

11                   Office of Planning is recommending approval. ANC 3D  
12 has also recommended approval with comment. And then also there's  
13 a letter of support from the adjacent neighbor to the north.  
14 Next slide please?

15                   So here's the photo that the Board saw in the discussion  
16 on party status. So you can see the subject property there on  
17 49th Street. And the pavilion is in the rear in the southwest  
18 corner, essentially, of that yard. Next slide please?

19                   And here you see on the plat where the proposed pavilion  
20 is in the left south corner of the yard. Next slide please?

21                   And this is just a larger photo of the full plat showing  
22 a higher level context of the location of the pavilion. Next  
23 slide please?

24                   So here you're looking at the patio that will be under  
25 the proposed pavilion. All of this is there already. Next slide

1 please?

2 And looking across the pool toward the area where the  
3 pavilion would be. Next slide please?

4 Here is a side elevation of the pavilion. Next slide  
5 please?

6 There's a perspective of the elevation from the north,  
7 from the yard or the pool of the Applicant. Next slide please?

8 So the proposal is in harmony with the general purpose,  
9 intent of the zoning regulations and zoning maps. The proposal  
10 meets the special exception specific conditions and is deemed to  
11 be in harmony with the general purpose and intent of the zoning  
12 regulations. The pavilion is effectively a porch over an existing  
13 impervious patio. The patio is partially sunken, so even though  
14 the pavilion has a height of about almost 13 feet, the total  
15 height is a couple feet below that, and it's set back three and  
16 a half feet from the property to the west, which is Ms. Gates'  
17 property. And it's the it's the side lot line of Ms. Gates'  
18 property at the rear of that property. And it's also constructed  
19 along the shared property line with the property to the south  
20 where there's already a fence. Next slide please?

21 Regarding light and air, the patio is not enclosed. So  
22 there's no walls, there's just the roof. It's -- the height, as  
23 mentioned, it's about ten feet above the grade. And any shadow  
24 cast from its relatively height, if any, would be to the north  
25 and west only. There's considerable tree cover in that area as

1 well to the west and south, although no shadow is cast to the  
2 south, of course, and immaterial shadow cast to the west. Privacy  
3 is only improved by a roof over this, so it doesn't impact  
4 privacy. And the pavilion's not materially visible from the  
5 street or any public way. Next slide please?

6 And that may be it. That's the last slide. Thank you.

7 CHAIRPERSON HILL: Okay. I'm going to let the Board  
8 ask you some questions, Mr. Sullivan, if they have any. I know  
9 that some of the questions that -- and I might as well ask them,  
10 like -- and I can also check with the Office of Planning, but  
11 some of the things that the party status person have brought up  
12 that seem to be listed also in the ANC's letter, do you -- can  
13 you speak to those bullet points?

14 MR. SULLIVAN: Sure. So I'll go by the ANC letter  
15 first.

16 CHAIRPERSON HILL: Sure.

17 MR. SULLIVAN: It mentions that Ms. Gates has a question  
18 about the number of accessory buildings on the site. So what  
19 she is referring to as an accessory building is just -- and I  
20 don't think I have it in the PowerPoint, I'm sorry, but I have  
21 -- I'll find out what exhibit it's in, in the photo exhibits,  
22 which is Exhibit 5, BZA Exhibit 5, Page 15, you see a patio,  
23 there's a first patio that when you walk out of the building.  
24 There's a cellar underneath that patio. So that's not an  
25 accessory structure, it's just part of the house. It's a cellar

1 underneath there that you access from over where you see that far  
2 couch through a stepway that goes down underground.

3 CHAIRPERSON HILL: And that's what you think is being  
4 mentioned in the ANC letter?

5 MR. SULLIVAN: That's my understanding of what Ms.  
6 Gates thinks the cellar is or is calling the second accessory  
7 building.

8 CHAIRPERSON HILL: Got it. That's that first bullet  
9 point. The next, again, about the swimming pool and lot  
10 occupancy?

11 MR. SULLIVAN: Yeah, so the lot occupanc- -- so this  
12 house was completely renovated and added to with an addition up,  
13 the footprint wasn't expanded. That was all done prior to the  
14 Applicant purchasing the house. And at that time the lot  
15 occupancy was 38 percent and there was no change in the lot  
16 occupancy as part of that project. Of course, that project was  
17 fully permitted, inspected, approved, finished. And then the  
18 GENetskis did their own project with the pool and some hardscape.  
19 That was completely permitted, inspected, approved, finished.  
20 That did not affect the lot occupancy at all. So we're going  
21 from a starting lot occupancy that was always this low lot  
22 occupancy for this property of 38 percent. And that's of course  
23 self-certified.

24 CHAIPIRSON HILL: Okay.

25 MR. SULLIVAN: And those are -- I mean, those were two

1 projects that had a lot of scrutiny, if you will, there were  
2 regular inspections and in addition to additional inspections  
3 resulting from calls made to DOB. That's -- the third bullet  
4 point --

5 CHAIRPERSON HILL: Last bullet point, it is a self-  
6 certified application, and you believe you are here for the  
7 correct relief?

8 MR. SULLIVAN: Correct. We're here for the correct  
9 relief. And we believe we've identified the correct starting  
10 point as well with our numbers. The last bullet point on the  
11 ANC letter was whether or not the Applicant should be applying  
12 for an area variance rather than a special exception. And I  
13 think I responded to that in our party status request. Special  
14 exception relief for the existence of or expansion of an accessory  
15 building in a required rear yard is a special exception. We've  
16 probably done at least 10 or 15 of those ourselves in the last  
17 couple years, but so there's plenty of history behind that. But  
18 I think the Office of Planning spells it out as well in their  
19 report when they note the 5201.2 references lot occupancy and  
20 yards. And this is a rear yard requirement -- the requirement  
21 that it not be located in a required rear yard comes from the  
22 rear yard requirement of the accessory building regulations.

23 CHAIRPERSON HILL: Okay.

24 Let's see, do my Board members have any questions of  
25 the Applicant?

1           Okay. Ms. Gates, can you hear me? Yeah, I think you  
2 might be doing it. Can you hear me?

3           MS. GATES: I gotcha.

4           CHAIRPERSON HILL: Yeah. Great. Perfect. So either  
5 you can give your presentation now and we can ask some questions  
6 or -- and do you have any questions of the Applicant?

7           MS. GATES: I don't think I do, to be honest with you.  
8 I continue to be bothered by what is there. I spend a lot of  
9 time on definitions, etc. in my submission, which no one seems  
10 to have read, but it -- I believe strongly that the cellar is an  
11 accessory building. It certainly fits the criteria. It is --  
12 it shares a rear wall with the house and then extends forward  
13 underground. It does not have access to the house, so it's  
14 accessory in that sense and in the definition sense. Once it  
15 comes out of the ground, it's not connected anymore. Okay. And  
16 the patio -- excuse me -- the patio is its roof. So it is a  
17 building.

18           CHAIRPERSON HILL: Okay. Ms. Gates, I read your letter,  
19 by the way. I wasn't -- I was going to ask the Office of Planning  
20 a little bit of specificity about some of the things that you  
21 mentioned in it. Did you have -- do you want to go ahead and  
22 then give your presentation?

23           MS. GATES: Or would you rather have OP Ogo?

24           CHAIRPERSON HILL: Whatever -- it doesn't -- I guess  
25 you're going to have some of the Office of Planning.

1 MS. GATES: I'm ready. I'm ready.

2 CHAIRPERSON HILL: Okay. Would you like to tell us a  
3 little bit about your presentation?

4 MS. GATES: I might be telling you a little bit about  
5 what?

6 CHAIRPERSON HILL: Do you want to give us a little bit  
7 of presentation -- your -- I know you're referring to your letter,  
8 would you like to either walk us through your letter or tell us  
9 a little bit about what you believe are the issues?

10 MS. GATES: Actually, I took your advice from this  
11 morning and came home and went to the Office of Planning report,  
12 which I had read, and did a new statement based on that. So you  
13 -- if you'll just listen, I'm happy to present that.

14 CHAIRPERSON HILL: Okay. Sure.

15 MS. GATES: Okay. We thank the Board for granting us  
16 party status on our lot, which abuts 2234 49th Street for its  
17 entire width. It's one of two -- and it's one of two lots that  
18 is most affected by this proposed application. The dates on the  
19 drawings for the pavilion show that they were drawn in June of  
20 2021, so the pavilion could have been located elsewhere on the  
21 lot. The application is for a special exception to allow an  
22 accessory building 3.5 feet from the rear property line. The  
23 rear yard is already overbuilt and lot occupancy is more than 38  
24 percent. It is beyond comprehension that the BZA would move  
25 forward with approval before the plat is updated and errors on

1 Form 135 are corrected, that is lot coverage and side yards.

2 The Board also needs to consider whether more than one  
3 accessory building is allowed in a required rear yard in the R-  
4 1B zone, as the cellar is an accessory building. A review of  
5 the Office of Planning zoning analysis for a special exception  
6 is based on Subtitle D, Sections 5201.2 and 5201.4 through 5201.7.  
7 Section 5201 permits an accessory --

8 CHAIRPERSON HILL: Ms. Gates, Ms. Gates, I didn't mean  
9 to interrupt you. Can I just -- can I get the Office of Planning  
10 to -- Mr. Cochran?

11 MR. COCHRAN: Mr. Chair?

12 CHAIRPERSON HILL: Thanks. I just want to make sure  
13 you're listening to all this, Mr. Cochran, because we're going  
14 to have some questions of you.

15 Go ahead, Ms. Gates. Sorry to interrupt you. I wanted  
16 to make sure Office of Planning was there.

17 MS. GATES: Section 5201 permits an accessory structure  
18 to occupy a maximum of the greater of 30 percent of a required  
19 yard area or 450 square feet. The pavilion will add 270 square  
20 feet to an already overbuilt required yard. The pavilion is not  
21 the only structure in the required rear yard, but according to  
22 this section of the Code, there can be any number of accessory  
23 structures in a required yard provided they do not occupy a  
24 maximum of the greater of 30 percent of a required yard area or  
25 450 square feet.

1           Then there's section 5004.1(a) that addresses rear  
2 yards and provides an accessory building other than a shed may  
3 be located within a rear yard in an R zone, provided that the  
4 accessory building is not in a required rear yard. Section 5201.4  
5 addresses the special exception requirements and perhaps Section  
6 (b) is the appropriate section to address. It provides the  
7 privacy of use and enjoyment of neighboring properties shall not  
8 be unduly compromised. The pavilion is proposed to be situated  
9 within 3.5 feet of our property. We already feel encroached upon  
10 by all the structures in the Applicant's yard -- I should say  
11 all the new structures in the Applicant's yard. It is impossible  
12 not to feel unduly compromised under these circumstances. The  
13 use and enjoyment of our rear yard has been altered and is no  
14 longer a place where we can sit and enjoy the quiet that has  
15 existed until the adjacent rear yard became overbuilt and noisy.  
16 Any sense of privacy has been lost. Adding an accessory building  
17 3.5 feet from the property line will just be more clutter and  
18 noise for the adjacent lots. What OP failed to mention is that  
19 the pavilion will house an entertainment center with large  
20 speakers on either side of the Jumbotron, which backs on the  
21 south side yard. The pavilion roof will be fully exposed because  
22 of its location along the side and rear lot lines. Our property  
23 actually can see the entire exposed south lot line as well as  
24 the one to the west, which abuts us.

25           The pavilion roof will be fully exposed because of its

1 location along the side and rear lot lines. Also of concern is  
2 the slant of the roof, which will either shed water on the south  
3 property yard or on site. Regardless, water runs downhill and  
4 that is where our property is located. We do not want to find  
5 erosion or silt along the fence line as there are a number of  
6 very mature holly trees that were installed years ago and would  
7 suffer if there is excessive runoff or silt. In spite of what  
8 the OP report says, the pavilion will add to the intensity of  
9 use of the property. It is said that the zoning regulations  
10 which address rear yards in R-1B zones and require a 25-foot rear  
11 setback had been shrunk to 3.5 feet between properties. And it  
12 was my understanding from your conversation with us this morning  
13 that we would be hearing from the Applicant. We did not. I'm  
14 through.

15 CHAIRPERSON HILL: Okay. Thanks, Ms. Gates. Yeah, no,  
16 we made a suggestion that if the Applicant wanted to reach out  
17 to you, but I guess they didn't.

18 Let's see. Okay. Does the Board have questions of Ms.  
19 Gates? Okay.

20 Does the Applicant have questions on this case?

21 MR. SULLIVAN: No, we do not. Thank you.

22 CHAIRPERSON HILL: Okay.

23 All right. Mr. Cochran, could you please introduce  
24 yourself and then you can help us with some of this?

25 MR. COCHRAN: Thanks, Mr. Chair, and members of the

1 Board. I'm Steve Cochran, representing the Office of Planning  
2 in this case, that OP is recommending that the Board approve the  
3 application for a special exception from Subtitle D 5004.1's  
4 restriction on an accessory structures being located within a  
5 required rear yard and for a special exception from the lot  
6 occupancy requirements of D Section 304. This is a self-certified  
7 application and the criteria under which OP has evaluated the  
8 requests are contained in Subtitle D, Section 5201 and Subtitle  
9 X, Section 901.

10           As you've heard, the property's developed with a  
11 single-family house that has a patio and a pool in its backyard.  
12 The Applicant is proposing to add an open-air pavilion atop a  
13 sunken portion of the existing patio. The location is within a  
14 required rear yard and in subtitle D, the section entitled 5004  
15 rear yard, and that's in quotes, prohibits locating an accessory  
16 structure within a required rear yard. The 250 square foot  
17 structure would also increase lot occupancy past the matter of  
18 right 40 percent permitted by Subtitle D, Section 304. However,  
19 Subtitle D, Section 5201.2(c) authorizes the Board to grant a  
20 special exception from rear yard requirements, which is where the  
21 prohibition on the structure is located and from lot occupancy  
22 requirements, as long as the lot occupancy doesn't exceed 50  
23 percent. That explains why they're here asking for these  
24 requests.

25           As we analyzed in our report, the proposal would meet

1 the specific special exception criteria in D 5201 and the general  
2 special exception criteria of X Chapter 9. The open-air structure  
3 would not impact the light or air available to neighboring  
4 properties. A person sitting or standing in the proposed pavilion  
5 would have no more of a view into neighboring properties than  
6 would a person standing on the existing sunken portion of the  
7 existing patio. While the pavilion would be approximately three  
8 to five feet taller than the fencing on the north and south of  
9 the property lines, the ability to see the top of the pavilion  
10 from neighboring property should not unduly compromise the  
11 enjoyment of use of neighboring properties, which could already  
12 see the Applicant's house. There would not be an intrusion on  
13 neighborhood character as viewed from public ways because the  
14 pavilion couldn't be viewed from public ways and the pavilion  
15 wouldn't introduce or expand a nonconforming use.

16 With respect to the general special exception criteria,  
17 the proposal would be not inconsistent with the intent of the R-  
18 1B zone, which is to provide for single-family detached houses  
19 on moderately sized lots. As noted, the pavilion shouldn't have  
20 an adverse effect on the use of neighboring properties. While  
21 there may already be lighting or video screening amplification  
22 in the backyard that is bothersome to the owners of neighboring  
23 properties, if that is the case, that condition already exists.  
24 There's nothing in the record's filings that indicates the  
25 pavilion would contain anything that would increase such

1 conditions. OP therefore recommends that the Board approve the  
2 relief requested in the self-certified application. And of  
3 course, I'm happy to answer any questions.

4 CHAIRPERSON HILL: Okay. Does the Board have questions  
5 of the Office of Planning?

6 So then, Mr. Cochran, those -- the issues that the ANC  
7 puts in that are of concern to the -- or have been, I guess, of  
8 concern to the party in opposition, the number of accessory  
9 buildings, is that in terms of the cellar or anything, is that  
10 something that -- is that cellar an additional accessory  
11 building, and if so, does it pertain?

12 MR. COCHRAN: I cannot answer that question. I have  
13 not seen the -- what is proposed as a cellar. I can't make a  
14 determination on that. And I probably couldn't even if I'd seen  
15 it, because that's something that's up to the zoning  
16 administrator and his staff.

17 CHAIRPERSON HILL: So then those items that have been  
18 permitted and built, that's -- let me put it this way. If  
19 something that when this go- -- if this were to move forward and  
20 then go to permitting, is accessory buildings something that  
21 would pop up in permitting?

22 MR. COCHRAN: If someone going through the building  
23 permit request for the pavilion examined the site or asked for  
24 additional information that determined that there was already an  
25 accessory structure in the backyard, then yes, that would -- it

1 would impact this. But we don't know whether there is an  
2 accessory structure in the backyard. We're relying on  
3 information provided by the Applicant. And there's nothing that  
4 indicates that there is already an accessory structure or that  
5 the lot occupancy exceeds 38 percent at the moment.

6 CHAIRPERSON HILL: Yeah, but what I'm saying is that  
7 would possibly again -- I'll get you, Ms. Gates, that would  
8 possibly again pop up in permitting if that were the case?

9 MR. COCHRAN: If.

10 CHAIRPERSON HILL: Right. Okay.

11 MR. COCHRAN: Correct, yeah.

12 CHAIRPERSON HILL: Okay. All right. Before I turn to  
13 the party status in opposition, does the Board have any further  
14 questions of the Office of Planning>

15 Okay. Ms. Gates, you have questions for the Office of  
16 Planning?

17 MS. GATES: I do. Mr. Cochran, did you visit the site?

18 MR. COCHRAN: I did not.

19 MS. GATES: So you -- when you say you can't address  
20 the cellar, the cellar is rather a prominent feature of the rear  
21 yard. I can speak to it because I've lived next to it for over  
22 50 years and was very good friends with the builders of that  
23 house, the original builders. So it bothers me that -- where  
24 did you get information to put in your analysis if you didn't  
25 visit the site?

1                   MR. COCHRAN: As always, we, in a self-certified  
2 application, we have to rely on the information provided by the  
3 Applicant.

4                   MS. GATES: Well, obviously the cellar was not included  
5 and instead of showing where the cellar line is, they show a new  
6 deck that overhangs the patio and masks where the cellar is. The  
7 only way you can see the cellar at all on the map or on the plat  
8 is the stairs that go down into it. So according -- but you do  
9 feel that the application meets the requirements for a special  
10 exception?

11                  MR. COCHRAN: That's what OP's analysis indicates, yes.

12                  MS. GATES: And that that was just done from the self-  
13 certification?

14                  MR. COCHRAN: That's correct.

15                  MS. GATES: Thank you.

16                  MR. COCHRAN: Yeah.

17                  CHAIRPERSON HILL: Okay.

18                  Mr. Sullivan, do you have any questions for the Office  
19 of Planning?

20                  MR. SULLIVAN: No, thank you.

21                  CHAIRPERSON HILL: Okay.

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

23                  MR. YOUNG: We do not.

24                  CHAIRPERSON HILL: Okay. All right.

25                  Ms. Gates, is there anything you'd like to add in

1 conclusion?

2 MS. GATES: I feel very badly about this, to be honest  
3 with you, that so much has happened and it doesn't seem to be  
4 properly documented, and so here we are trying to make a decision  
5 about a special exception, but there are already so many things  
6 wrong, which I understand it's not what you're considering today,  
7 but this is just one more thing to contend with. And when Mr.  
8 Cochran says that the roof over the pavilion area will, you know,  
9 prevent loss of privacy, that's absolutely not true. The pavilion  
10 does not cover the pool. It doesn't cover most of the yard of  
11 where all this other stuff is. So I just I feel really badly  
12 about this. But I also feel that it's a huge intrusion.

13 CHAIRPERSON HILL: Okay. Thank you, Ms. Gates. I'm  
14 sorry you feel badly.

15 Let's see, Mr. Sullivan, do you have any rebuttal  
16 and/or conclusion?

17 MR. SULLIVAN: Not really other than just -- I can  
18 clear up the cellar issue. As Ms. Gates stated, it's been there  
19 for 50 years. It hasn't changed. So it was always there. It  
20 was there when the Applicant moved in. It's below the level that  
21 it would count in lot occupancy, so it doesn't count in lot  
22 occupancy. It's not an accessory building. But even if it was,  
23 there's no restriction on having more than one accessory building  
24 in a yard at all or on a property, period. In fact, it's  
25 contemplated if you go through the regulations, it doesn't say

1 you can have as many as you want, but it's clear that you can  
2 have more than one accessory building. And I'm not even sure if  
3 that's necessarily the complaint, but there is no problem with  
4 it. There's a lot of discussion about problems. There's no  
5 problems with this. A major renovation and addition went through  
6 the DOB process at a proposed 38 percent lot occupancy, at an  
7 existing proposed 38 percent lot occupancy, and then went  
8 through, that work was done, it was inspected. So there's really  
9 no confusion about what that number is. And the cellar is a red  
10 herring. It's been there for 50 years. It's not part of the  
11 application. So if -- unless the Board has any questions about  
12 that or any other aspect of that -- of this, I mean, obviously  
13 the pavilion has nothing to do with any noise that would go on  
14 other than it might make it less so, so that we don't think that's  
15 implicated in the application. And so I don't think I have  
16 anything else to add unless the Board has a specific question on  
17 any of this or a question for Mr. Genetski.

18 CHAIRPERSON HILL: Okay. Does the Board have any --  
19 go ahead, Ms. John.

20 VICE CHAIR JOHN: Mr. Sullivan, can you show me again  
21 in one of the photographs where the cellar is supposed to be? I  
22 accept your statement it's been there for 50 years, but just so  
23 I understand the discussion.

24 MR. SULLIVAN: Sure. So in Exhibit 5.

25 VICE CHAIR JOHN: Okay.

1                   MR. SULLIVAN: Actually look at page four of Exhibit  
2 5, and so that's a good view of it too. The cellar is underneath  
3 that patio that is three steps above the pool level.

4                   VICE CHAIR JOHN: Exhibit 5, I mean --

5                   MR. SULLIVAN: Exhibit 5, Page 4.

6                   VICE CHAIR JOHN: Page 4. Let me try again, because  
7 that's not what I'm seeing. Exhibit 5.

8                   MR. SULLIVAN: Exhibit -- it says Exhibit 5, it says  
9 Exhibit 4 when I pull it up. It's the color photographs.

10                  VICE CHAIR JOHN: Yes. So okay, in this one there is  
11 -- there are three umbrellas.

12                  MR. SULLIVAN: Yes.

13                  VICE CHAIR JOHN: Okay.

14                  MR. SULLIVAN: Yes, so that's the patio. If you look  
15 to the left, you'll see a railing.

16                  VICE CHAIR JOHN: Yes.

17                  MR. SULLIVAN: There are stairs down into that cellar  
18 from there.

19                  VICE CHAIR JOHN: Okay. And all of that was built by  
20 the previous owner and permitted?

21                  MR. SULLIVAN: Yes. Yes. And actually even Ms. Gates  
22 testified that that was there for 50 years. So that's all --  
23 and that was all considered -- that's been through two permit  
24 processes, including the addition and then the hardscape work  
25 after that.

1 VICE CHAIR JOHN: Okay. And the -- this is the rear,  
2 right?

3 MR. SULLIVAN: Yes.

4 VICE CHAIR JOHN: So just for educational purposes, do  
5 you have a photograph of the front of the property that might  
6 show that it's a basement, not an additional story -- that's what  
7 you said, right? I believe that what Ms. Gates is saying is that  
8 it's an accessory structure in the rear yard. Okay. Forget it.  
9 Forget it. Yeah, forget it. I'm fine. Thank you.

10 CHAIRPERSON HILL: Mr. Smith?

11 MR. FOWLER: To follow along with what Ms. John -- the  
12 exhibit that we pulled up for -- that's showing the rear yard  
13 -- and this is probably a question for Mr. Cochran more so.  
14 Looking at Exhibit 4, my question is related to what is the --  
15 what counts against lot occupancy and, you know, I think Ms.  
16 Gates brought up the depth. I'm assuming that means what she's  
17 referencing is that the decking system off the rear of the  
18 building, and it looks like there's some kind of -- there's a  
19 wet bar or something underneath -- it's a projecting deck. Does  
20 that area that's projecting out from the rear of the house count  
21 against lot occupancy?

22 MR. COCHRAN: If it were -- I know that if it were a  
23 newly constructed deck where nothing had existed before and it  
24 was more than four feet above the grade, then yes, it would count  
25 towards the lot occupancy.

1                   COMMISSIONER SMITH: Is it a new deck?

2                   MR. COCHRAN: I don't know whether this is a new deck  
3 or whether it's a deck on top of something that existed already.  
4 Remember that an accessory structure is -- if this were an  
5 accessory structure, it wouldn't even be defined as one if it  
6 were constructed with the original building, because under the  
7 definition, accessory structure is constructed after the original  
8 building.

9                   COMMISSIONER SMITH: Okay. So I'm assuming it's --  
10 okay. So would a deck be considered an accessory structure per  
11 the zoning regulation.

12                  MR. COCHRAN: Again, all I can speak to is the cases  
13 that I've known. If there were nothing under this deck and this  
14 deck was newly constructed and it was more than four feet above  
15 grade, then yes, that kind of deck would count towards lot  
16 occupancy. Ms. Gates seems to indicate that this deck is the  
17 roof to whatever -- to something that exists under it, be that  
18 an accessory structure or not, I don't know.

19                  COMMISSIONER SMITH: Okay. So just for cost  
20 conservative reasons --

21                  CHAIRPERSON HILL: One second, Ms. Gates.

22                  COMMISSIONER SMITH: -- did the Office of Planning do  
23 a calculation of that area, what the square footage of the area  
24 is, and if it did count would that max out their lot occupancy?

25                  MR. COCHRAN: If it's a self-certified application, we

1 rely on what the Applicant supplies.

2 COMMISSIONER SMITH: Okay. Mr. Sullivan --

3 CHAIRPERSON HILL: One second, Ms. Gates.

4 COMMISSIONER SMITH: Mr. Sullivan, so you --

5 MS. GATES: May I -- may I read --

6 CHAIRPERSON HILL: Ms. Gates, let me -- let Mr. Smith  
7 just finish his questions and then I'll come to you.

8 MS. GATES: Okay. Because that's what I'm going to  
9 answer.

10 CHAIRPERSON HILL: Okay.

11 Go ahead, Mr. Smith.

12 COMMISSIONER SMITH: Mr. Sullivan, was there any  
13 calculation done on the part of your Applicant of that area? And  
14 I'm not saying that it counts against lot occupancy. I'm just  
15 asking what that area is.

16 MR. SULLIVAN: I'm not -- I'm not clear, what area are  
17 you asking about?

18 COMMISSIONER SMITH: The square footage of the area  
19 below the deck.

20 MR. SULLIVAN: What -- you mean the area they're calling  
21 -- we're calling the cellar?

22 MS. GATES: Yes.

23 CHAIRPERSON HILL: No, the area underneath the second  
24 story deck.

25 COMMISSIONER SMITH: Yes.

1                   MR. SULLIVAN: No, I have no idea.

2                   COMMISSIONER SMITH: Okay.

3                   MR. SULLIVAN: I didn't calculate it myself. The Office  
4 of Planning doesn't calculate it. And the numbers were taken  
5 -- done by the Applicant's consultants. And the 38 percent lot  
6 occupancy were taken from the approved permitted plans from the  
7 addition.

8                   COMMISSIONER SMITH: Gotcha, okay. All right. Thank  
9 you.

10                  MR. SULLIVAN: I didn't personally measure that space,  
11 no.

12                  COMMISSIONER SMITH: Okay.

13                  CHAIRPERSON HILL: Mr. Cochran, were you about to say  
14 something?

15                  MR. COCHRAN: I had -- well, my answers were based on  
16 the assumption that Mr. Smith was referring to the area that is  
17 one to three steps above the pool deck. Please excuse me if you  
18 were actually referring to the deck that has the modern horizontal  
19 metal railing.

20                  COMMISSIONER SMITH: That's what I was referring to.  
21 So would the area below that deck, this modern second floor deck,  
22 that space, does that count against lot occupancy?

23                  MR. COCHRAN: That would likely count against lot  
24 occupancy, yes. But again, it's an existing condition.

25                  COMMISSIONER SMITH: Gotcha.

1 CHAIRPERSON HILL: Okay. Ms. Gates, you had your hand  
2 up.

3 MS. GATES: I thought Mr. Smith was asking a question  
4 about the pool and the part that's exposed. And I was --

5 COMMISSIONER SMITH: No, Ms. Gates, I wasn't.

6 MS. GATES: So I'm -- that -- I'm fine with that.  
7 However, when Mr. Cochran says that the deck is existing or it  
8 existed, that's new. That was added when the house was renovated.

9 CHAIRPERSON HILL: Are you asking a question, Ms.  
10 Gates? You're just --

11 MS. GATES: No, I'm just --

12 CHAIRPERSON HILL: Okay.

13 MS. GATES: I'm just commenting that the deck is new,  
14 so it should be counted in lot occupancy, and I don't think it  
15 is.

16 CHAIRPERSON HILL: Mr. Cochran, you had your hand up?

17 MR. COCHRAN: The deck exists. It may be new within  
18 the last five years, I don't know, three years, but it is not  
19 new from the standpoint of this application. It's already there.

20 CHAIRPERSON HILL: Okay. All right.

21 VICE CHAIR JOHN: In other words, I think what I hear  
22 is that if the deck is not counted in lot occupancy, and if the  
23 deck existed with the previous owner and it wasn't permitted and  
24 it was more than the 38 percent, then that's an enforcement issue,  
25 Ms. Gates. This application, it's not about that deck.

1 MS. GATES: That's not the case. That's not the case.

2 Mr. John.

3 VICE CHAIR JOHN: Okay. When was the deck constructed,  
4 Ms. Gates?

5 MS. GATES: When the house was renovated before the  
6 Genetskis moved in. The Genetskis -- this was a spec house the  
7 Genetskis bought. However, the builder put that deck out. So  
8 these were the first owners in the house with the deck.

9 VICE CHAIR JOHN: Okay. Thank you.

10 CHAIRPERSON HILL: Okay. All right.

11 Go ahead, Mr. Smith.

12 COMMISSIONER SMITH: This is you know, just as a  
13 clarification and I think Mr. Sullivan and Mr. Cochran, you're  
14 speaking to this. That -- I'm assuming -- it could be a  
15 possibility that that deck, as Ms. Gates was saying, was  
16 constructed when the building was expanded as a spec renovation.  
17 But I think what y'all are saying is that that area was, if it  
18 did count against lot occupancy, it was factored in at that  
19 particular point in time during the DOB review process though.  
20 This 38 percent is encompassing everything that would count  
21 against lot occupancy at the time of that permit.

22 MR. SULLIVAN: Yes, that's my -- and that's what we  
23 assume almost in any case. Right? I mean, because I don't make  
24 specific calculations myself. But we go based on information  
25 that we get from the professionals. But it's not -- there's no

1 reason why a project like this in this neighborhood and it was  
2 well vetted by the neighbors as well --

3 MS. GATES: That's not true.

4 MR. SULLIVAN: -- wouldn't be -- wouldn't be -- but it  
5 doesn't matter. I mean, like you said, which -- it's 30 percent  
6 is what we're proposing, it's self-certified. But I don't have  
7 any reason to believe that that number would be wrong.

8 CHAIRPERSON HILL: Okay. All right.

9 Okay. Mr. Sullivan. That's it.

10 Anybody have anything else before I close the hearing  
11 and the record?

12 Mr. -- Commissioner Miller?

13 ZC VICE CHAIR MILLER: Yeah. Just one question of --  
14 well, thank you for the Applicant and for the presentation and,  
15 Mr. Cochran, for your report, and, Ms. Gates, for your testimony  
16 and statements in the record.

17 Ms. Gates, just one question. Did you -- I think you  
18 had questions and maybe a dialog with the zoning administrator  
19 at the time of the renovation, I believe, because I think --

20 MS. GATES: No.

21 ZC VICE CHAIR MILLER: No? I thought I saw --

22 MS. GATES: No, it's when the pool was going on.

23 ZC VICE CHAIR MILLER: When the pool was going in,  
24 yeah. Did you -- you didn't appeal the permit for the pool or  
25 did you?

1 MS. GATES: I didn't appeal it because, as I noted in  
2 my submission, I didn't hear back from them until January and  
3 this was like September. So even though I did write and ask Matt  
4 what was going on, I didn't hear anything. All I know is that  
5 there was this large wall against our back fence and it turned  
6 out to be the actual back of the -- side of the pool. So --

7 ZC VICE CHAIR MILLER: Okay. Thank you.

8 MS. GATES: -- I think DCRA just completely dropped the  
9 ball on this.

10 ZC VICE CHAIR MILLER: Okay. Thank you, Ms. Gates.

11 CHAIRPERSON HILL: Okay. All right. Ms. Gates, thank  
12 you for coming in and for your testimony. It sounds like it's  
13 been a journey for you. And I guess that's it. I'm going to go  
14 ahead and close the hearing and the record and please excuse  
15 everyone.

16 Okay. I'm a little disappointed, I suppose, as to what  
17 -- I shouldn't say -- we're here for the pavilion. This is where  
18 it's getting problematic with all these other things that are  
19 going on. And I don't know, again, that -- the Department of  
20 Buildings and the permitting process is supposed to catch  
21 anything that is not correct in the permitting process. And I  
22 -- since it's not our area that we even talk about. I have to  
23 assume that the permitting process is doing their job and the  
24 building was permitted properly, the pool was permitted properly,  
25 and that deck, as Mr. Smith mentions, when they did the permitting

1 and they came in, and the Applicant has testified that there was  
2 an inspection done, that lot occupancy that was given, the 38  
3 percent would include that deck if that deck were to count towards  
4 lot occupancy as they came and they inspected it. And so I have  
5 to assume that. Then what is disappointing -- or again not  
6 disappointing, the testimony that we received from the party  
7 status in opposition also with regard to her exhibit speaks to  
8 the back and forth with the zoning administrator concerning the  
9 swimming pool that was built. And that again then was built,  
10 permitted, and inspected. And that again, I have to assume took  
11 place accurately, and/or if there is an issue with adjudicating  
12 that, that would be something that would need to be taken up, I  
13 guess, with the zoning administrator if the pool were built  
14 incorrectly. So then what is again before us is this pavilion,  
15 which in comparison to -- in comparison to everything else that's  
16 there seems like a small issue. Right? That the pavilion, it's  
17 a self-certified application for the special exception to  
18 increase the lot occupancy and for an accessory building in a  
19 rear yard. If it were just the pavilion on its own, then I think  
20 it's a very simple straightforward situation. And unfortunately  
21 that's kind of what's before us is just that pavilion. And so I  
22 would have to now go with the analysis that the Office of Planning  
23 has put forward for this pavilion. And the issues with, again,  
24 the cellar or the swimming pool, those are things I guess that  
25 again, I guess can be adjudicated. I don't actually know, but

1 it doesn't seem that that's necessarily before us. What's before  
2 us is this pavilion. What is -- I am hopeful that the neighbor  
3 would be again, to quote Chairman Hood, a good neighbor, and that  
4 the television or sound or anything like that, that's not  
5 something that would bother, they would be respectful and not  
6 play it at a level that is disruptive to the neighbors. And then  
7 there's even regulations, I think, in terms of noise and how loud  
8 things can be outside and that can again then be upheld.

9                   So based upon what the record has, I think, before us.  
10 I think I have to approve the pavilion. I believe they're meeting  
11 the criteria for us to approve the pavilion. I would be  
12 interested in hearing what my colleagues have to say.

13                   And I will turn, I guess, to you, Mr. Smith, if you  
14 want to go next.

15                   COMMISSIONER SMITH: I agree with your assessment on  
16 this particular case. I do hear, you know, I do hear, you know,  
17 some of the concerns raised by Ms. Gates. But as you stated, we  
18 can't adjudicate the pool and the other accessory structures and  
19 the primary structure, those permits have been closed out. The  
20 adjudication for those is a civil matter at this point. But the  
21 assumption here is that given those permits have been closed out,  
22 what is before us is an existing lot occupancy of 38 percent.  
23 Given the size of this particular lot, that pavilion, which will  
24 be 270 square feet, will not max out the occupancy. And probably  
25 even if you include the pool, I don't think it -- it would -- it

1 wouldn't even max -- it wouldn't hit 50 percent. So I believe  
2 that the -- based on the record and based on what was presented,  
3 I do believe that the Applicant's met the burden of proof for us  
4 to grant this special exception for lot occupancy. And I do  
5 believe, at least on the general special exception standards, I  
6 will reiterate exactly what you said, Chairman Hill, it seems to  
7 be that there -- Ms. Gates may have some concerns about noise,  
8 and I would hope that the Applicant would be a good neighbor and  
9 you know, and behave in a manner that respects the neighbors'  
10 privacy. And as you stated, there are other regulations beyond  
11 zoning that relate to that noi- -- that relate to the noise that  
12 there -- that the party in opposition could pursue as a relief  
13 valve against any of those concerns that may arise if there is  
14 noise related to entertainment in the rear yard. So I agree with  
15 your statements. I agree with the position of the Office of  
16 Planning and will support the application.

17 CHAIRPERSON HILL: Mr. Blake?

18 COMMISSIONER BLAKE: Mr. Chair, I agree with the  
19 statements that you and Board Member Smith made with regard to  
20 the application. I don't have anything to add. Thank you.

21 CHAIRPERSON HILL: Commissioner Miller?

22 ZC VICE CHAIR MILLER: No questions, Mr. Chairman.

23 CHAIRPERSON HILL: Vice Chair John?

24 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have no  
25 comments. I agree with all of the comments so far, and I will

1 give great weight to the Office of Planning's analysis and  
2 recommendation.

3 CHAIRPERSON HILL: Okay. And I'll just refer back  
4 again to that report from the Office of Planning again where  
5 they're speaking to the light and air not being unduly affected.  
6 They're speaking to the privacy and use of enjoyment not being  
7 unduly compromised. And I think they did specifically speak to  
8 what they -- again this pavilion is what is before us, this  
9 pavilion, and that it may, in fact, help the privacy, at least  
10 from seeing looking down above it, if you were looking down above  
11 it. But I go back to again hoping that the neighbors are able  
12 to work together in a manner that -- even now, the way it is now,  
13 I mean, it's a swimming pool with television and everything. I  
14 hope that everyone is trying to be respectful of one another's,  
15 you know, noise, living in a close environment. So okay, I'm  
16 going to go ahead and make a motion to approve Application No.  
17 20843 as captioned and read by the secretary and ask for a second,  
18 Ms. John.

19 VICE CHAIR JOHN: Second.

20 CHAIRPERSON HILL: The motion's been made and seconded,  
21 Ms. Rose, if you'd take a roll call?

22 MS. ROSE: Yes. When I call your name, please respond.

23 Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MS. ROSE: Vice Chair John?

1 VICE CHAIR JOHN: Yes.

2 MS. ROSE: Mr. Blake?

3 COMMISSIONER BLAKE: Yes.

4 MS. ROSE: Mr. Smith?

5 COMMISSIONER SMITH: Yes.

6 MS. ROSE: Commissioner Miller?

7 ZC VICE CHAIR MILLER: Yes.

8 MS. ROSE: The staff will record the vote as five to  
9 zero to zero to approve the application. This is on a motion by  
10 Chairman Hill, seconded by Vice Chair John, with Board Members  
11 Smith and Blake and Commissioner Miller in support of the motion  
12 to approve.

13 CHAIRPERSON HILL: Okay. Thank you, Mr. Rose. All  
14 right, everybody, if that's it for us, then I will not see you  
15 guys next week. Vice Chair John has been gracious enough to  
16 cover for me. And I will see you guys the week after that, all  
17 right? Thank you. Bye-bye.

18 (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: 03-22-2023

Place: Teleconference

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

*Danielle Garnett*

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DANI GARNETT, CET-821