

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 3, 2023

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK D. HILL, Chairperson  
LORNA L. JOHN, Vice Chairperson  
CHRISHAUN SMITH, Member  
ANTHONY HOOD, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

TRACEY ROSE, Staff  
CLIFFORD MOY, Secretary  
PAUL YOUNG, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

RYAN NICHOLAS, Esquire

The transcript constitutes the minutes from the Public Hearing held on May 3, 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 to the Board of Zoning Adjustment. Today's date is 5/3/2023.  
5 This public hearing will please come to order. My name is Fred  
6 Hill, Chairperson of the District of Columbia Board of Zoning  
7 Adjustment. Joining me today is Board Members Chrishaun Smith  
8 and Zoning Commissioner Anthony Hood.

9 Today's meeting and hearing agenda are available on the  
10 Office of Zoning's website. Please be advised this proceeding  
11 is being recorded by a court reporter and is also webcast, live  
12 via Webex and YouTube Live. The video of this webcast will be  
13 available on the Office of Zoning's website after today's  
14 hearing. Accordingly, everyone who's listening on Webex or  
15 telephone will be muted during the hearing. Also, please be  
16 advised we do not take any public testimony at our decision  
17 meeting sessions.

18 If you're experiencing difficulty accessing Webex or  
19 with your call-in, then please call our OZ hotline number 202-  
20 727-5471. Once again, 202-727-5471 to receive Webex login or  
21 call-in instructions It's also listed on the screen in front of  
22 you.

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

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

7                   In today's hearing session everyone who is listening  
8 on Webex or by telephone will be muted during the hearing, and  
9 only person who have signed up to participate and testify will  
10 be unmuted at the appropriate time. Please state your name and  
11 home address before providing oral testimony or your  
12 presentation. An oral presentation should be limited to summary  
13 of your most important points. When you're finished speaking,  
14 please mute your audio so that your microphone is no longer  
15 picking up sound or background noise. All persons planning to  
16 testify either in favor or opposition should have signed up in  
17 advance. They will be called by name to testify. If this is an  
18 appeal, only parties are allowed to testify. By signing up to  
19 testify all participants must complete the oath or affirmation  
20 as required by Subtitle Y, Section 408.7. Requests to enter  
21 evidence at the time of an online virtual hearing, such as written  
22 testimony or additional supporting documents other than live  
23 video, which may not be presented as part of the testimony, may  
24 be allowed pursuant to Subsection Y 103.13, provided that one,  
25 the person making the request to enter an exhibit and explain how

1 the proposed exhibit is relevant, the good cause it justifies  
2 allowing the exhibit into the record, including an explanation  
3 of why the requester did not file the exhibit prior to the hearing  
4 pursuant to Y 206, and how the proposed exhibit would not  
5 unreasonably prejudice any parties. The order of procedures for  
6 special exceptions and variances are pursuant to Y 409.

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

21 Finally, the District of Columbia Administrative  
22 Procedure Act requires that the public hearing on each case be  
23 held in the open before the public. However, pursuant to Sections  
24 405(b) and 406 of that Act, the Board may, consistent with its  
25 rules of procedures and the Act, enter into closed meetings on a

1 case for purposes of seeking legal counsel on a case pursuant to  
2 D.C. Official Code § 2-575(b)(4) and/or deliberating on a case  
3 pursuant to D.C. Official Code § 2-575(b)(13), but only after  
4 providing the necessary public notice and in the case of an  
5 emergency closed meeting after taking a roll call vote.

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

7 MS. ROSE: Good morning, Mr. Chairman. I'll be in for  
8 Mr. Moy until he gets back from his training. We have a couple  
9 of preliminary matters. Application No. 20834 of Academy  
10 Holdings, LLC has been postponed to September 13, 2023;  
11 Application No. 20837 of Howard University has been postponed to  
12 July 26, 2023 and Application 20828 of Olufemi Awoseye has been  
13 postponed to September 20th, 2023. We can call any other  
14 preliminary matters when we call the cases.

15 CHAIRPERSON HILL: All right. Great. Thank you, Ms.  
16 Rose. All right. If you could call our first case then, that  
17 would be wonderful.

18 MS. ROSE: That is Application No 20881 of Daniel Parent  
19 and Andrea Lippin. This is a self-certified Application pursuant  
20 to Subtitle X § 901.2 for special exceptions under Subtitle E §  
21 205.5 to allow construction of the rear wall of an attached  
22 building to extend more than ten feet beyond the furthest rear  
23 of any principal residential building on an adjacent property and  
24 under Subtitle E § 5201 from the lot occupancy requirements of  
25 Subtitle E § 304.1 to construct a two story rear addition to an

1 existing two story semi-detached principal dwelling in the RF-1  
2 zone at 214 Warren Street, NE, Square 1033, Lot 830, and we have  
3 a letter in support in the record from Anwar Mirza (phonetic).

4 CHAIRPERSON HILL: Okay. Great. Thank you. Ms.  
5 Fowler, if you can hear me, can you introduce yourself for the  
6 record?

7 MS. FOWLER: Good morning, everyone. I'm Jennifer  
8 Fowler with the Fowler Architect firm representing the  
9 homeowners.

10 CHAIRPERSON HILL: Great. Thank you. Ms. Fowler, if  
11 you can walk us through your client's application and why you  
12 believe they're meeting the criteria for us to grant their relief  
13 in question. I'm going to put 15 minutes on the clock so I know  
14 where we are and you can begin whenever you like.

15 MS. FOWLER: Okay. Thank you. So yes, this is a  
16 request for lot occupancy relief as well as the rear yard setback  
17 for a two story rear addition. The house is two stories and  
18 we're building back with a 14 foot addition beyond the existing  
19 house. I just wanted to point out that there is an interesting  
20 lot configuration and you can see it on the plat, Exhibit 2 that  
21 the property line is set in from where the demising wall is.

22 So currently there's a rear addition that exists that  
23 kind of encroaches on 216 and there's a two level, an upper level  
24 deck that also encroaches that we are removing. So we're taking  
25 down the deck and we're proposing this new addition that's going

1 to actually bind (phonetic) on the property line and be faced on  
2 line.

3 So the existing addition goes back to 16 feet seven  
4 beyond 216 Warren and our proposed addition goes back another 14  
5 feet from there. So it is about a little over 30 feet beyond  
6 216. However, because the lots are very deep, we're only asking  
7 for 61.6 percent occupancy. Currently, we're at 59.6 because of  
8 the deck.

9 So we did do a sun study to kind of look at the effects  
10 on the adjacent properties and the sun study is in the record  
11 and it's Exhibit 18, and what we found is that because the house  
12 is already a certain depth, the additional depth is only going  
13 to be impacting kind of the rear yard of the adjacent property  
14 primarily, so there was no impact to the sun enjoyed by the  
15 interior of the house at that property. They also signed a letter  
16 of support. It was actually put in the record, I believe,  
17 yesterday from 216 Warren Street. So that was the neighbors they  
18 had been talking to for a few months and had never had any  
19 concerns, but we did finally get the letter put in the record.  
20 And we also a couple other additional letters of support from  
21 nearby houses.

22 So we also received ANC support and the Office of  
23 Planning, so overall it's been very well received. That's all I  
24 have to share right now, and I'll open it up to questions.

25 CHAIRPERSON HILL: Ms. Fowler, the letter I see is from

1 214 Warren Street. Is there another one?

2 MS. FOWLER: 214 is the subject property, so 216 is the  
3 adjacent property. It was put in the record.

4 CHAIRPERSON HILL: Oh, sorry. I'm sorry.

5 MS. FOWLER: Yes.

6 CHAIRPERSON HILL: Okay.

7 MS. FOWLER: And it's weird. It jumps to 222, so  
8 there's no 218 or 220. It jumps to 222.

9 CHAIRPERSON HILL: Make sure. Can you remind me again  
10 where the, oh, never mind, I see it on the report.

11 MS. FOWLER: Oh, and I also meant to address the  
12 privacy. Currently, there's the deck on the second floor. The  
13 approximate depth of this proposed addition that offers kind of  
14 full views in all directions of adjacent properties. So with  
15 this new addition, we're actually increasing the privacy for  
16 neighbors on actually both sides, you know, to the north and to  
17 the south. Thank you.

18 CHAIRPERSON HILL: Thank you. All right. Does anybody  
19 have any questions for the Applicant? Okay. I'm going to turn  
20 to the Office of Planning.

21 MR. MORDFIN: Mr. Chair, and Members of the Board. I'm  
22 Stephen Mordfin with the Office of Planning. The Office of  
23 Planning is in support of this application and rests on the record  
24 and I'm available for any questions. Thank you.

25 CHAIRPERSON HILL: Okay. Great. Thank you. Does

1 anyone have any questions for the Office of Planning? Mr. Young,  
2 is there anyone here who wishes to speak?

3 MR. YOUNG: Yes. We have one witness who is calling  
4 in by phone and her name is Ms. Michelle Hopein.

5 CHAIRPERSON HILL: Hopein? Okay. Ms. Hopein, can you  
6 hear me? Ms. Hopein? Ms. Hopein, can you hear me?

7 MS. HOPEIN: Yes, now I can. Thank you.

8 CHAIRPERSON HILL: Good morning. Could you introduce  
9 yourself for the record, please?

10 MS. HOPEIN: Sure. My name is Michell Hopein. I've  
11 lived at 1340 Constitution Avenue for 37 years. My property is  
12 shared, a courtyard that abuts to the alley that runs alongside  
13 the property in question, and my concern is a water run-off  
14 because since the time that I've lived here, the addition that  
15 was made to the questioned property before the new residents  
16 moved in, as well as my neighbors to the west of me, has full  
17 additions to their properties that renders our courtyard, which  
18 is probably about 46 inches below the adjacent property, a  
19 potential flood problem. And even though we have drains here,  
20 I've seen a great increase in run--off.

21 So I'm always concerned when there's going to be new  
22 pavement because it does have an impact on our property.  
23 Currently, four properties feed their downspouts into our plaza  
24 as well as the adjacent property, which is higher comes in and  
25 the floods -- and the waters that come out after a storm overwhelm

1 the city's stormwater system, you know, so I'm always concerned  
2 and as well as the fact that the addition has, and my neighbor's  
3 addition, has virtually made any direct light even more scarce.

4                   But, anyway, I'm not really calling to oppose it, I  
5 just want to be cautious that when the Zoning Board I hope takes  
6 into account any variance concerning property coverage with great  
7 respect, because it does have an impact and the storms are only  
8 getting heavier and a lot -- I'm sorry, I'm blundering here --

9                   CHAIRPERSON HILL: No, no. Take your time.

10                  MS. HOPEIN: -- but it's, you know, it really has  
11 created an impact and my neighbors, for example, those at 202A  
12 and B on Warren which are just across the alley from the property  
13 in question, they only have about three and five eighths inch  
14 rise before it would actually flood their property. So I'm a  
15 little luckier. I have two steps up to my door, but.

16                  CHAIRPERSON HILL: Okay. Okay. Great. That is an  
17 area that is usually taken up concerning -- during permitting in  
18 terms of, you know, the water run-off or things like that/ But  
19 I will ask Ms. Fowler, do you have any thoughts or comments  
20 concerning the testimony?

21                  MS. FOWLER: Yes. I do and actually (indiscernible)  
22 the neighbor's concerns. We're dealing, you know, definitely  
23 dealing with water run-off issues overall (phonetic), but you  
24 know, we're proposing to kind of raise the parapet along the  
25 alley wall so that the water doesn't run off the side. So

1 basically if you look at the side elevation, there's kind of a  
2 flat parapet that's kind of managing the water flow and then  
3 we're going to drain everything to the rear yard. And then DCOB  
4 is actually very strict about water run-off and making sure that  
5 everything's managed on the site. So we're not allowed to dump  
6 water into the alley from the new proposal, from the new addition.  
7 So overall, I think we'll be improving the water management by  
8 fixing things that were done improperly in the past and making  
9 sure that, and luckily they have a very deep lot so there's a  
10 lot of kind of permeable space to be able to manage that.

11 CHAIRPERSON HILL: Okay.

12 MS. HOPEIN: Good.

13 CHAIRPERSON HILL: Thanks, Ms. Fowler. All right.  
14 Does anybody have any questions for the witness? Okay. Ms.  
15 Hopein, thank you for your testimony.

16 MS. HOPEIN: Thank you. Bye.

17 CHAIRPERSON HILL: Bye bye.

18 ZC COMMISSIONER HOOD: Mr. Chairman?

19 CHAIRPERSON HILL: Yes.

20 ZC CHAIRPERSON HOOD: I do have a question.

21 CHAIRPERSON HILL: Yes?

22 ZC CHAIRPERSON HOOD: I do have a question. Forgive  
23 me, because my other screen went out and I'm trying to get it  
24 back up.

25 CHAIRPERSON HILL: Sure. Go ahead.

1                   ZC CHAIRPERSON HOOD: Let me ask Ms. Fowler. Ms.  
2 Fowler, so there was no opposition in this case that you know of  
3 other than the young lady who had a concern, I don't think that  
4 was opposition that she stated?

5                   MS. FOWLER: There was a letter from the owner of 222  
6 who had concerns, it was Exhibit 17, I think was raising concerns  
7 with the lot occupancy calculations and I think that kind of  
8 boiled down to this encroachment and their opinion was that we  
9 should count that towards our occupancy, but that's kind of  
10 impossible to do because you're looking at this specific lot.

11                  So I think it was that and potentially run-off  
12 questions as well. But we did provide a sun study to that  
13 particular neighbor who requested it, you know, a few months ago.  
14 So I know that the homeowners have been working, you know,  
15 discussing with them over the last few months.

16                  ZC CHAIRPERSON HOOD: Okay. I think there was very -  
17 - was that the minimum because I'm trying to remember. I think  
18 it was like 59 I think you mentioned in your testimony, I think  
19 he was at 62. Help me understand what the calculation was.

20                  MS. FOWLER: Well, so they're currently at 59.6 and  
21 because there's a second level deck that counts towards the  
22 occupancy that's getting removed, and then the addition is taking  
23 us to 61.6.

24                  ZC CHAIRPERSON HOOD: Okay.

25                  MS. FOWLER: Yes. It's a pretty small percentage.

1 It's more -- I think the rear yard setback is the biggest hurdle  
2 relief on us.

3 ZC CHAIRPERSON HOOD: Okay. I'm good.

4 MS. FOWLER: Yes.

5 ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman.

6 CHAIRPERSON HILL: Thank you. Let's see.

7 ZC CHAIRPERSON HOOD: I'm sorry. Thank you, Ms. Fowler.

8 CHAIRPERSON HILL: All right. Does anybody have any  
9 final questions? Ms. Fowler, do you have anything you'd like to  
10 add at the end?

11 MS. FOWLER: No, I do not. Thank you.

12 CHAIRPERSON HILL: Okay. Mr. Young, if you can please  
13 excuse her and close the hearing. Okay.

14 I will agree with the Applicant in this case in terms  
15 of how they're not causing any undue impact, particularly with  
16 the shadowing and light and air. I'm looking at their shadow  
17 studies which were actually quite helpful and I appreciate that.  
18 It is a pretty big extension, but given that it's on an alley, I  
19 don't have as much concern about it. And as I look kind of  
20 further down the block, it does kind of seem to be matching some  
21 of the, like the sizes of the other homes. It is a deep lot;  
22 however that deep lot, again, also seems to have something already  
23 at the end it for this particular property. But we always -- I  
24 always take a look at more when they're like, you know, going to  
25 be on this ten foot rule that we are asked to ponder upon. And

1 so in this particular case I would agree with the Applicant and  
2 the Office of Planning as well as that of the ANC and be voting  
3 in favor.

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

5                   MR. SMITH: No. By and large, I agree with your  
6 assessment. This case has been a lot of twists and turns with  
7 this case. We originally saw it as a variance and the Applicant  
8 has revised the application to be, you know, two special  
9 exceptions, one for the occupancy, the other for the rear yard  
10 and the rear yard requirements. Based on what was presented in  
11 the revised design for the building I do believe that the  
12 Applicant has met the burden of proof as to special exceptions.  
13 I do believe that the, you know, looking at the shadow studies  
14 that it would not be an undue adverse impact on the adjacent  
15 properties given the size and scale of the properties that are  
16 further down the block or directly adjacent to this property in  
17 line with this property and I don't believe it would be undue.  
18 And I believe that the design of this building, it's mostly in  
19 character with what we're seeing occur along that block. So with  
20 that, I will give the OP staff report great weight and support  
21 the Applicant.

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

23 Chairman Hood?

24                   ZC CHAIRPERSON HOOD: Mr. Chairman, I will -- I don't  
25 have my screen. I'm having problems getting my other screen up

1 but I would go along with this. I remember the question about  
2 the delta for 59 versus 62 percent. I don't think -- I think  
3 that's very de minimis. I think, as you all have already  
4 mentioned, I don't see any undue impacts of the relief in  
5 question, and I think if there were impacts I think it's been  
6 mitigated in this case and I don't have anything further on that,  
7 and I will be voting in favor.

8 CHAIRPERSON HILL: Thank you, Mr. Chairman. I'm going  
9 to make a motion to approve application No. 20881 as captioned  
10 and read by the Secretary and ask for a second. Mr. Smith?

11 MR. SMITH: Second.

12 CHAIRPERSON HILL: The motion has been made and second.  
13 Ms. Rose, if you can take a roll call for us? Can you take a  
14 roll call?

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

17 CHAIRPERSON HILL: Yes.

18 MS. ROSE: Board Member Smith?

19 MR. SMITH: Yes.

20 MS. ROSE: Commissioner Hood?

21 ZC CHAIRPERSON HOOD: Yes.

22 MS. ROSE: And staff will report the vote is three to  
23 zero to two to approve the application, this is on a motion by  
24 Chairman Hill, seconded by Mr. Smith with Mr. Hood in support of  
25 the motion. Ms. John not participating, not present, not

1 participating and one Board seat vacant.

2 CHAIRPERSON HILL: Great. Thank you, Ms. Rose. Maybe  
3 -- you guys, there's kind of a weird delay from some of us today  
4 so we will, I'll mute myself and we can all mute ourselves when  
5 we're not talking.

6 Ms. Rose, can you go ahead and call our next case,  
7 please?

8 MS. ROSE: Yes. This is application No. 20862 of Jason  
9 Cohen. This is a self-certified application pursuant to subtitle  
10 X § 901.2 with special exceptions under Subtitle E § 205.5 to  
11 allow a rear wall to extend farther than ten feet beyond the  
12 farthest rear wall of a principal residential building on an  
13 adjacent property under Subtitle E §§ 206.4 and 5207 from the  
14 rooftop architectural feature requirements of Subtitle E § 206.1  
15 and under Subtitle U § 320.2 to allow the conversion of a pre-  
16 1958 residential building to apartment house use to construct a  
17 third story and rear additions and convert to a three unit  
18 apartment house, an existing attached, two story with cellar  
19 principal dwelling unit in the RF-1 zone at 731 Kenyon Street,  
20 Northwest, Square 2892, Lot 37. And we have a motion to accept  
21 the untimely filing of the revised plans.

22 CHAIRPERSON HILL: Okay. Thank you. Mr. Cross, can  
23 you introduce yourself for the record, please, if you can hear  
24 me?

25 MR. CROSS: Michael Cross. I'm the architect responsible

1 for this project presenting on behalf of the owner joined here  
2 today by Ms. Elizabeth Stuart and Victoria Gundrum.

3 CHAIRPERSON HILL: Okay. Let's see. The plans, unless  
4 my fellow Board Members have any issues, I would like to see the  
5 most updated plans. So if you could go ahead and add those into  
6 the record if they're not already in there and we can go ahead  
7 and see. I see some in 35A. Do you know, Mr. Cross, if there  
8 are some that are updated after that?

9 MR. CROSS: I believe 35A is the most up to date set.

10 CHAIRPERSON HILL: Okay. All right. Then it appears  
11 as though they're in, so unless the Board has any issues we'll  
12 go ahead and take a look at those. Mr. Cross, if you want to  
13 walk us through your client's application and why you believe  
14 they're meeting the criteria for us to grant the relief requested  
15 and I will let you begin whenever you like.

16 MR. CROSS: Yes. If we could actually get those plans  
17 from Exhibit 35A pulled up I'll present off of those. While  
18 those are coming up -- much appreciated.

19 We're here today on behalf of the property owners at  
20 731 Kenyon street Northwest. As disclosed, our client is seeking  
21 relief from three areas, Subtitle U § 320.2 to convert an existing  
22 single family home in the RF-1 zone to a three unit apartment.  
23 This property is a 3,500 square foot lot 3,563. We're also  
24 seeking relief from Subtitle E 205.4 to extend the rear addition  
25 of beyond ten feet past the adjoining neighbors. And lastly,

1 from Subtitle E § 206.1 to modify the existing architectural  
2 rooftop element.

3 Next slide, please. The project is located on the  
4 north side of Kenyon Street between Sherman and Georgia Avenue.

5 Next slide. I apologize. This one seems like it's  
6 possibly rotated. Hopefully you can see there are three family  
7 size units being proposed here for this three unit conversion.  
8 Two of them will be five bedroom units and one of them will be a  
9 four bedroom unit in the rear. Due to the court that's been  
10 created by the setback from the property line, each unit receives  
11 ample air and outdoor circulation.

12 Next slide, please. The proposed three unit project  
13 is fully attached at the front to maintain the continuity of  
14 facades along Kenyon street. Each unit of the building is its  
15 own three story mass, connected by a single story connection,  
16 which helps light and air pass through the rear, through our  
17 structure to the rear of the adjacent properties. The rear  
18 addition is proposed to extend 38 feet past the adjoining neighbor  
19 at 729 Kenyon Street, Northwest, and approximately 57 feet past  
20 the structure at 735. At the rear of the property there's going  
21 to be two parking spaces as well as a dedicated trash area.

22 Next slide, please. The exterior is proposed to be  
23 compatible with the existing buildings in the area. We're  
24 currently showing a full brick facade with dark cementitious  
25 panel systems as an accent. The area of a third story that sets

1 back is also shown in dark panel to give depth and keep focus on  
2 the brick frontage. And I think the next slides are actually  
3 all the way at the end. Mr. Young might be able to just skip  
4 all the way down to the end and then we'll go up to the second  
5 to last or we could go last.

6 These slides are showing the solar study's shading, of  
7 the proposed mass. So, appreciate it. So this one, well, all  
8 of these have been prepared to show the net difference between  
9 the matter-of-right shadows and those of the proposed structure.  
10 To make it clear, we have indicated the net increase in shadows  
11 by changing that color to red. This page is showing the shadows  
12 during the summer months at summer solstice and during the summer  
13 the majority of the increased shading occurs within our own  
14 property or on the rooftops of the adjacent properties with  
15 minimal additional shading to 735 in the morning, which is  
16 potentially even more negligible if we took into account the  
17 existing fence line there and then virtually none at 729 in the  
18 afternoon. Slight uptick there just in front of their rear  
19 garage.

20 Next slide. This sheet shows the same shadow studies  
21 with the net increase of the proposed at the winter solstice. At  
22 this time, the additional shading is largely limited exclusively  
23 to our property. The rooftops of the adjacent structures and here  
24 in the public alley behind these properties. There is no  
25 anticipated shading impacting either of the adjacent properties

1 during this period and we can probably jump back to the very  
2 beginning.

3                   But we appreciate your time and happy to answer any  
4 questions that you might have.

5                   CHAIRPERSON HILL: Okay. I might have some questions  
6 but I'm going to wait until after the Office of Planning. Does  
7 the Board have any questions of the Applicant?

8                   ZC CHAIRPERSON HOOD: Mr. Chairman, I do have a question  
9 of Mr. Cross, but I believe Mr. Young took down the rendering.  
10 So on the front façade on the, I guess it's the third floor.  
11 What's going -- is that a door? What's going on in that, and I  
12 forget the exhibit. What's going on in that? Let me see if I  
13 can pull it up, look at it right here.

14                  MR. CROSS: So I think what you're seeing potentially  
15 is on the left hand side there. It's like it's effectively a  
16 front façade, a balcony and then beyond it when you're seeing in  
17 that two-dimensional perspective, you're obviously able to see a  
18 great deal and so beyond it there are some exterior stairs that  
19 go up to a roof deck. Those are obviously set back from the  
20 front facade and with the slope we anticipate would be minimally  
21 visible from the street.

22                  ZC CHAIRPERSON HOOD: Okay. All right. All right. So  
23 thank you. I appreciate, I actually like the design, so thank  
24 you, of what you have here. Thank you. Thank you, Mr. Chairman.

25                  CHAIRPERSON HILL: Thanks, Chairman Hood. Now, Mr.

1 Cross, so you guys have five bedroom and four bedroom, one is a  
2 four bedroom unit and one is a five bedroom unit?

3 MR. CROSS: Yes. This design was developed in order  
4 to try to create three sort of autonomous townhouses for the  
5 three dwelling units. It's obviously an incredibly large lot,  
6 almost large enough to have four units. And so to use that area  
7 we decided to give more, you know, a family-sized townhouse living  
8 which develops additional bedrooms because we basically are three  
9 stories over a cellar in most of these cases.

10 CHAIRPERSON HILL: Okay. No, I'm just curious that the  
11 program, how did the owner get the four and five bedrooms? They  
12 were used to try to maximize the space?

13 MR. CROSS: Yes. I think that in today's age, I think  
14 that probably many of these might be used as like office space,  
15 et cetera, but yes, they are large units.

16 CHAIRPERSON HILL: Okay. All right. Thank you. All  
17 right. Can I hear from the Office of Planning, please?

18 MR. KIRSCHENBAUM: Good morning, Chair Hill and Members  
19 of the Board of Zoning Adjustment. I am Jonathan Kirschenbaum  
20 with the Office of Planning.

21 We recommend approval of the apartment house conversion  
22 special exception the rooftop architectural element modification  
23 special exception and the rear wall extension special exception.  
24 And our recommendation is based on two conditions, the first one  
25 being that the rooftop cornice that is shown above the second and

1 third floors on sheets BZA01 and BZA05, now in Exhibit 35A, shall  
2 be built as shown. This condition would help mitigate any adverse  
3 impacts on character as shown on the street frontage and would  
4 result in -- would be less visually intrusive in connection with  
5 the design, sorry, in relation to the relief requested to remove  
6 the existing rooftop architectural element. And the second  
7 condition would be there shall be no ducts, terraces or recreation  
8 space on the roofs of any of the proposed units. This condition  
9 would help mitigate any adverse impacts on privacy of use and  
10 enjoyment of neighboring properties in connection with the rear  
11 requested relief to convert this to an apartment house and goes  
12 well beyond ten feet of the existing rear wall of the property  
13 to the east, and with that I am available for any questions.  
14 Thank you.

15 CHAIRPERSON HILL: All right. Does anybody have any  
16 questions for the Office of Planning? Okay.

17 Mr. Kirschenbaum, I've got to say to me it seems like  
18 a bigger project than I'm used to seeing, even though the lot is  
19 a big lot, like just the way they've kind of configured it and I  
20 think it's interesting how they've configured it and how they're  
21 working through the regulations, and so the Office of Planning,  
22 you just didn't have any concerns with this project; is that  
23 correct?

24 MR. KIRSCHENBAUM: With regards to I guess one in  
25 particular?

1 CHAIRPERSON HILL: The size.

2 MR. KIRSCHENBAUM: The size? Well, we did in terms of  
3 a little bit of the privacy of use and enjoyment which is why  
4 we're recommending that the terraces as shown on the -- the roof  
5 terraces as shown in the plans are not provided because, you  
6 know, that's a lot of recreational space that goes along to the  
7 entire lot.

8 But with regards to the other criteria, we do believe  
9 that because the compliant with the current rear yard is being  
10 provided, it is not over the maximum 35 feet for medium height  
11 The zone, I mean, is broken up into sort of three different, as  
12 the architect said, three different sort of contained townhouses  
13 that would help mitigate, you know, any adverse impacts to light  
14 and air. It's also providing the equivalent of a side yard for  
15 the majority of the property along the west side and that setback  
16 would be, you know, about a foot longer than what would be  
17 required if a side yard had to be provided.

18 CHAIRPERSON HILL: Okay. Mr. Cross, your client is  
19 comfortable with the conditions that have been listed by the  
20 Office of Planning?

21 MR. CROSS: Yes, I believe so. I guess, I think that  
22 we always say we'd love to maintain the roof decks since they  
23 are matter-of-right. But if the Board felt that that was a  
24 condition that they wanted to uphold, I think that we would be  
25 able to accommodate that condition.

1 CHAIRPERSON HILL: Okay. Let's see. Okay. And then  
2 how did it go at the ANC? Like they, the ANC, what were their  
3 thoughts on the project?

4 MR. CROSS: Yes. So we met with the ANC Zoning and  
5 Planning Committee back in February. We had a discussion with  
6 them about, you know, obviously the hop-back strategy. It seems  
7 like much of that discussion, based on the notes that I have in  
8 front of me, actually was really limited to talking about the  
9 front façade. In this particular case they were very appreciative  
10 of this front facade. We talked about the pervious surface  
11 requirements as in the case before this. Everybody's concerned  
12 about water run-off and we described how the DOB requirements  
13 would increase the pervious surface here and should improve that  
14 and we talked about the amount of parking shown that we're showing  
15 two spaces, which is more than sufficient for the three units we  
16 propose and how that also provides an autonomous area for trash  
17 which was a concern of theirs, and at the end they had unanimous  
18 support. That's at the subcommittee level. We got similar  
19 support at the ANC level. It looks like it was effectively  
20 unanimous as well, six zero to one (indiscernible).

21 CHAIRPERSON HILL: Okay. And the, I'm looking over the  
22 -- what were the adjacent, the feedback from the adjacent property  
23 owners?

24 MR. CROSS: Well, I do think that there's a letter of  
25 opposition in the record from one property owner that was entered

1 in there recently. That is the owner at 7 --

2 CHAIRPERSON HILL: Thirty five.

3 MR. CROSS: -- 35, thank you, and so we've worked with  
4 them. My client I should say has worked with both property owners  
5 throughout this time. He was -- they did get a chimney extension  
6 agreement in place with 735, but this letter of opposition is the  
7 first time that we were aware of their concerns.

8 I think their concerns are mostly DOB issues. I'm  
9 happy to speak to those as well, and the neighbor at 729 has had  
10 ongoing discussions again with my clients. There all seem to be  
11 familiar with each other for some time, but unfortunately they  
12 were unable to finalize the chimney extension agreement prior to  
13 this hearing and that's why we had the late plan filing where we  
14 updated our third story to set back to reduce our third story,  
15 the rear of the front unit, in order to accommodate the chimney  
16 of the property at 729 Kenyon Street.

17 CHAIRPERSON HILL: Okay. You say you could speak to  
18 the DOE issues?

19 MR. CROSS: Sure. So in summary, the letter of  
20 opposition seems to be broken into three parts. The first being  
21 a structural concern about our proposed underpinning and cellar  
22 construction and I think I would, as OP pointed out, that on that  
23 particular side while we are underpinning their existing  
24 structure, a shared party wall which is typical, and all of the  
25 additional structure beyond that would be set back a distance of

1       six feet six inches approximately from the property line which  
2 would, you know, largely mitigate a lot of the concerns that they  
3 have and that at the end of the day obviously we would be  
4 complying with all of the protection requirements established  
5 under DCMR 12-3307 including special inspection process, et  
6 cetera, of our underpinning (phonetic).

7           CHAIRPERSON HILL: Okay. All right. Anyone else for  
8 the witness, I'm sorry, the Applicant? Mr. Young, is there anyone  
9 here wishing to speak?

10          MR. YOUNG: Yes. We have one witness calling in by  
11 phone and that is David Jimenez Hernandez.

12          CHAIRPERSON HILL: Mr. Jimenez Hernandez, can you hear  
13 me? Hello, can you hear me? Hello? Hello, can you hear me?

14          MR. JIMENEZ HERNANDEZ: Hello?

15          CHAIRPERSON HILL: Yes, can you hear me?

16          MR. JIMENEZ HERNANDEZ: Do you hear me?

17          CHAIRPERSON HILL: Yes, yes. Could you introduce  
18 yourself for the record, please?

19          MR. JIMENEZ HERNANDEZ: I am David Jimenez Hernandez.

20          CHAIRPERSON HILL: And where do you live, sir?

21          MR. JIMENEZ HERNANDEZ: 729 Kenyon Street, Northwest,  
22 Washington, D.C.

23          CHAIRPERSON HILL: Okay. Great. Mr. Jimenez Hernandez,  
24 you have three minutes to give your testimony and you can begin  
25 whenever you like.

1                   MR. JIMENEZ HERNANDEZ: Okay. I'm opposing to the  
2 construction because from the beginning I try to be nice and get  
3 on with the people who came to the neighbor, but I have the same  
4 problem with my -- I have my (indiscernible). He build three  
5 units and he said he's going to be like the economy units and  
6 he's going to send a (indiscernible) and now he's rented by rooms.  
7 So I want to have like many units as well because they make a  
8 mess. When they leaving, they moving out, sometimes they live  
9 like a couple of months and they leave and leave out trash, like  
10 furniture (phonetic) and they do it to my grass sometimes. I  
11 have to move it over because they don't even have like regulation  
12 on the trash, and Jason he trying to make I think three units,  
13 and I'm opposed to three units, and the basement too for the  
14 foundation.

15                   CHAIRPERSON HILL: Okay. Mr. Jimenez Hernandez, do you  
16 have contact with the owner?

17                   MR. JIMENEZ HERNANDEZ: With the owner?

18                   CHAIRPERSON HILL: With the owner of the property, yes?

19                   MR. JIMENEZ HERNANDEZ: I'm the owner of 729 Kenyon  
20 Street, Northwest.

21                   CHAIRPERSON HILL: No, I'm sorry. I mean do you have  
22 contact with the owner of 731 Kenyon Street?

23                   MR. JIMENEZ HERNANDEZ: No.

24                   CHAIRPERSON HILL: Do you know that, Mr. Cross? Have  
25 you ever been in contact with this person or your client?

1                   MR. JIMENEZ HERNANDEZ: I don't have that -- did you  
2 say contact?

3                   CHAIRPERSON HILL: Yes, contact information, Mr.  
4 Jimenez Hernandez.

5                   MR. JIMENEZ HERNANDEZ: Not right now.

6                   CHAIRPERSON HILL: Okay. Give me one second. Mr. Cross,  
7 do you have this gentleman's contact information?

8                   MR. CROSS: I might have to defer to my client, the  
9 owner, Jason Cohen, who I believe is on the line. I believe they  
10 are -- have been in touch for this project and other purposes.

11                  Jason, are you able to speak to whether you've been in  
12 touch with Mr. Hernandez and whether you believe you share each  
13 other's contact information?

14                  MR. COHEN: Good morning. Yes. (Audio interference)  
15 Mr. Hernandez's 2008 we talked (audio interference) and so he has  
16 my contact information.

17                  CHAIRPERSON HILL: Mr. Cohen, can you introduce  
18 yourself for the record real quick?

19                  MR. COHEN: Sure. I'm Jason Cohen. I am the owner of  
20 731 Kenyon Street. I've owned that property since 2012.

21                  CHAIRPERSON HILL: Okay. Great. Thank you. All right.

22                  Mr. Hernandez, can you hear me?

23                  MR. JIMENEZ HERNANDEZ: Yes.

24                  CHAIRPERSON HILL: I'm going to ask the Applicant to  
25 be in contact with you.

1                   MR. JIMENEZ HERNANDEZ: Okay.

2                   CHAIRPERSON HILL: To make sure that there's, you know,  
3 at least communication between you guys concerning your concerns  
4 about moving in, move out and if this were to go forward make  
5 sure that, you know, you all are able to communicate with each  
6 other concerning, you know, what your issues are. Okay?

7                   MR. JIMENEZ HERNANDEZ: Okay.

8                   CHAIRPERSON HILL: But in terms of the zoning issues,  
9 we'll have to see what happens as this case continues. Does the  
10 Board have any questions for the witness?

11                  ZC CHAIRPERSON HOOD: I actually have a question for  
12 Mr. Cohen --

13                  CHAIRPERSON HILL: Go ahead, Chairman Hood.

14                  ZC CHAIRPERSON HOOD: -- on something that he said.  
15 Mr. Cohen, you mentioned that you've been working with Mr.  
16 Hernandez I believe since 2008, but you haven't owned the property  
17 since - up until 2012. Did I capture that correctly?

18                  MR. COHEN: Yes. Yes, sir, Mr. Hood. I actually moved  
19 to that street in 2008 at a different house, different location  
20 747 Kenyon and we became friends in 2008. Mr. Hernandez is an  
21 excellent carpenter and so I used his services to help me with  
22 different things. So we've known each other, I consider ourselves  
23 friends going back, you know, 15 years now.

24                  ZC CHAIRPERSON HOOD: So, for instance, say I have to  
25 move trash and I put the trash in front of the residence, so I

1 can (indiscernible) to that. But also, Mr. Cohen, in the letter  
2 here from the, and I'm sorry they're not here because I have some  
3 questions even though some of this is DOB, but I think from the  
4 letter from Ethan Maresh (phonetic) and Chase Harmon (phonetic),  
5 unfortunately they're not here, but have you had conversations  
6 with them? I think you have that I know of.

7 MR. COHEN: Yes, sir. I have.

8 ZC CHAIRPERSON HOOD: So you know what the full  
9 outstanding issues are; right?

10 MR. COHEN: Yes. Mr. Cross sent me that letter  
11 yesterday. I have been in touch with them and tried to address  
12 their concerns and, you know, be available. I'm extremely  
13 available on that street. I am always around. I make it a point  
14 to, you know be readily available. So, yes, I have heard some  
15 of their concerns and vacated (phonetic) those with Michael Cross  
16 and that was one of the big reasons the units the way we did, so  
17 that they wouldn't be just one large mass that goes (audio  
18 interference). You know, we really tried to make sure that we  
19 designed it, you know, in a way that would be friendly for both  
20 sides of the neighbors, both sides.

21 ZC CHAIRPERSON HOOD: Okay. Thank you, Mr. Cohen.  
22 Thank you, Mr. chairman.

23 CHAIRPERSON HILL: Thank you. All right. Thank you,  
24 Mr. Hernandez.

25 MR. JIMENEZ HERNANDEZ: Hello?

1 CHAIRPERSON HILL: Yes. Hello, Mr. Hernandez?

2 MR. JIMENEZ HERNANDEZ: Hello? I want to add something  
3 else. Hello?

4 CHAIRPERSON HILL Yes. Go ahead, Mr. Hernandez.

5 MR. JIMENEZ HERNANDEZ: Hello?

6 CHAIRPERSON HILL: Yes, hello.

7 MR. JIMENEZ HERNANDEZ: Okay. You hear me?

8 CHAIRPERSON HILL: Yes.

9 MR. JIMENEZ HERNANDEZ: Okay. I think the question  
10 that you asked me is do I have contact? I don't understand that  
11 part.

12 CHAIRPERSON HILL: Contact. Do you have each other's  
13 phone number?

14 MR. JIMENEZ HERNANDEZ: Yes, I do. I have the home  
15 number for Jason.

16 CHAIRPERSON HILL: Okay. That's all I was asking.

17 MR. JIMENEZ HERNANDEZ: But, yes, but the thing is when  
18 I talk to Jason, he told me he want to do two units and he's  
19 going to keep it renting, you know, and, you know, right now he  
20 has a renting of the unit and the renter he make parties on the  
21 night and he has a group on the patio adjacent to my property  
22 and they have the music loud and all, that now make me madder  
23 because sometimes they don't let me sleep, you know, and I have  
24 to be (indiscernible). And he, Jason, he's planning to do like  
25 that roof deck. This is going to be a problem too because these

1 people that they rent this place they're going to start doing  
2 parties there and they're not going to let me sleep like the  
3 previous problems that I have with the idiot (phonetic) from 727.  
4 They make the parties on the patio and they don't let me asleep  
5 with the loud music. I have to call 9-1-1 every time they make  
6 a big party.

7 So that's the argument that I have to say no for this  
8 construction.

9 CHAIRPERSON HILL: Mr. Cohen?

10 MR. COHEN: Yes, sir.

11 CHAIRPERSON HILL: Where is this other property that  
12 Mr. Hernandez is talking about? I'm just curious.

13 MR. COHEN: 727 Kenyon was another three unit  
14 conversion.

15 CHAIRPERSON HILL: And you still have that?

16 MR. COHEN: No, no, no, that's not my -- that's not my  
17 property. That's a different owner. He was mentioning Adrien  
18 (phonetic) who is the owner of that property.

19 CHAIRPERSON HILL: I got you. I got it.

20 MR. COHEN: This was -- yes. This was built that was  
21 --

22 CHAIRPERSON HILL: Mr. Cohen, you're going to -- and  
23 I'm, since Chairman Hood he coined this phrase -- you're going  
24 to be a "good neighbor," Mr. Cohen, is that correct, and help  
25 your neighbors if they have any concerns about tenants?

1 MR. COHEN: Absolutely.

2 CHAIRPERSON HILL: Noise?

3 MR. COHEN: Absolutely. Yes, absolutely.

4 CHAIRPERSON HILL: Right. So you're assuring the Board  
5 that you're going to help your neighbors, is that what you're  
6 trying to convey?

7 MR. COHEN: I'm hands on. In fact, I'm generally there  
8 at least four to five times a week helping the, you know, to pick  
9 up trash and to help, you know. I think there's a lot of neighbors  
10 that didn't join today but if they did they would, you know,  
11 share their support for me as a neighbor and a good asset to  
12 Columbia Heights and (indiscernible).

13 CHAIRPERSON HILL: Mr. Cohen? Will you assure me that  
14 you will reach out to Mr. Hernandez today just so he has your  
15 contact information fresh in his mind?

16 MR. COHEN: Absolutely.

17 CHAIRPERSON HILL: Okay. Thank you. All right, Mr.  
18 Hernandez. Thank you so much for your testimony and it actually  
19 was heard and appreciated, and you have a good day.

20 MR. JIMENEZ HERNANDEZ: Okay.

21 CHAIRPERSON HILL: Thank you.

22 MR. JIMENEZ HERNANDEZ: But I have -- hello?

23 CHAIRPERSON HILL: Hello? I can hear you.

24 MR. JIMENEZ HERNANDEZ: But I want to see how the day  
25 (phonetic) ending? Is going to be approved or no? What's the

1 situation then?

2 CHAIRPERSON HILL: You can watch, Mr. Hernandez. A lot  
3 of the issues that you --

4 MR. JIMENEZ HERNANDEZ: I don't have -- I can't watch  
5 nothing. I'm just talking on the phone.

6 CHAIRPERSON HILL: Okay. I think Mr. Young, is he able  
7 to stay on the phone and listen?

8 MR. YOUNG: Affirmative head shake.

9 Yes, Mr. Hernandez. You can still keep listening. You  
10 just won't be able to be -- you won't be able to talk to us.

11 MR. JIMENEZ HERNANDEZ: Okay.

12 CHAIRPERSON HILL: Okay? Okay, thank you, Mr.  
13 Hernandez.

14 MR. JIMENEZ HERNANDEZ: All right.

15 CHAIRPERSON HILL: Bye bye. Mr. Cohen, can you hear  
16 me? Mr. Cohen?

17 MR. COHEN: Yes, I'm here.

18 CHAIRPERSON HILL: Yes. So I mean my original thing  
19 about this was kind of interesting again, like I'm going to cross-  
20 talk here and ask a couple of questions. Mr. Cross, what -- you  
21 called it a hop-back? I'm just trying to -- what did you call  
22 it?

23 MR. CROSS: I, you know, I think I I'm using that term  
24 correctly. It seems like the sort of colloquial term for these  
25 types of sort of --

1 CHAIRPERSON HILL: That's great. I appreciate it.

2 MR. CROSS: -- a carriage house, carriage house  
3 developments behind a principal structure is considered a hop-  
4 back and while I don't know if we've ever sort of seen or  
5 discussed this double hop-back, but that seems to be kind of the  
6 typology we're presenting here today.

7 CHAIRPERSON HILL: Yes. So Mr. Cohen, your current  
8 thought is you're going to rent all these? You're allowed to do  
9 whatever you want to do, I'm just asking.

10 MR. COHEN: Could be for sale or we could (audio  
11 interference). It depends on how the market turns out. But the  
12 main reason for the four and five bedrooms is because, you know,  
13 we're lacking family-style housing. There's a lot of condos in  
14 the neighborhood and we'd really like to be able to provide more  
15 housing for families so that, you know, we're seeing a lot, a  
16 big trend where families will move outside of the city because  
17 they're just not large enough units and that was really one of  
18 the big reasons for getting it to be four to five bedrooms so  
19 that families can, you know, they can allow for more space for  
20 growing families.

21 CHAIRPERSON HILL: And that's a good thing. Mr. Cohen,  
22 I'm sure you're getting this because you figured out whatever you  
23 think the market's going to demand and however it works is how  
24 you're getting the four and five units. I don't usually see --  
25 we don't usually see five units, I'm sorry, five bedrooms; right?

1 And I guess even, Mr. Cohen -- oh, not Cohen -- Mr. Cross, that  
2 he's mentioning which is interesting because the pandemic's done,  
3 you know, right. Now offices are, you know, also now kind of  
4 needed so I can understand that. It's just kind of -- it's a  
5 newer thing for me to see. Again, as now maybe what Mr. Cross  
6 said, a double hop-back, you know, is not what I see that often  
7 and so it's just something that I'm kind of processing and also  
8 think about how it goes against the -- no, no, goes with the  
9 regulations and so, Mr. Cohen, just to again make us or make me  
10 feel more comfortable about our decision again, you had said  
11 you're going to reach out to Mr. Hernandez and do what you can  
12 because who knows, you may come before the BZA once again and if  
13 you don't actually do what you say, we might find out; right?  
14 And so you're going to reach out to Mr. Hernandez and do your  
15 best to help him with any tenants that you may have; correct?

16 MR. COHEN: Absolutely.

17 CHAIRPERSON HILL: Okay. All right. And as far as the  
18 rooftop decks, I mean that, Mr. Cross, sounds like that's just  
19 another thing that like, you know, is probably what the Board -  
20 - at least I'm not going to be voting (phonetic) for rooftop  
21 decks because I think that there is quite the room in these units.

22 So, okay, does the Board have any final questions oof  
23 anyone? Okay. Mr. Cross, do you have anything you'd like to  
24 add at the end?

25 MR. CROSS: I do not. Thank you.

1 CHAIRPERSON HILL: Okay. Great. All right. I know  
2 that there's a couple of things that we need to take care of, so  
3 Mr. Young, if you can please excuse everyone. Thank you. I'm  
4 going to close the hearing. Okay. Great. Okay.

5 We're going to take a quick break if we could, Chairman  
6 Hood and Mr. Smith, and let's come back in -- let's come back in  
7 15 minutes at 10:30. Okay? Thank you so much.

8 (Whereupon, there was a brief recess.)

9 CHAIRPERSON HILL: It's 11:02. So concerning this  
10 case, I received a text that there were some letters that were  
11 waiting to get into the record for this case and the letters were  
12 in opposition and might have some information in them. However,  
13 what the Office of Zoning has pointed out and requested is that  
14 in order to have letters that are filed late such as within the  
15 24 hour period which we have, they, whoever that is, needs to  
16 request for a waiver to file them into the record; right?

17 So that is what the Office of Zoning actually does  
18 articulate and it's something that did happen in this case; right?  
19 So it's something really that I want to bring up with, and  
20 Chairman Hood, thank you for being here, but really thinking  
21 about my fellow Board Members on a weekly basis and talk with  
22 the Secretary about how to articulate this particularly to  
23 laypeople.

24 So what I would like to do unless the Board has any  
25 issues is I'd like to go ahead and put those two letters into

1 the record, have an opportunity to look at them and then I think,  
2 Mr. Smith, you're with us for a little while longer; right? And  
3 so when do you think you're going to leave today? You're on  
4 mute, Mr. Smith.

5 (Pause.)

6 CHAIRPERSON HILL: Chairman Hood, while I'm waiting for  
7 Mr. Smith, do you follow with what I'm saying and think that that  
8 sounds like as good as a process as any?

9 ZC CHAIRPERSON HOOD: Yes, I do but I'm going to keep  
10 quiet since I'm not here to leave.

11 CHAIRPERSON HILL: Okay. Well I mean, again, they  
12 should have filed a request for leave, but then not being a  
13 regular member of this, you know, we just have to articulate that  
14 more clearly I think with the people. So, I mean, I don't think  
15 Mr. Smith is going to have any objection to what I'm doing. So  
16 if we, and I guess we'll just go ahead and plug along here. Might  
17 as well not try to put it off.

18 Ms. Rose, can you ask Staff to put that into the record,  
19 please?

20 MS. ROSE: Sure.

21 CHAIRPERSON HILL: And I'm just going to keep waiting  
22 here so I can see.

23 (Pause.)

24 CHAIRPERSON HILL: They were, I know, whoever was  
25 submitting the letter was notified that they are able to

1 participate in the hearing and they did not choose to participate  
2 in the hearing.

3 ZC CHAIRPERSON HOOD: Mr. Chairman, the letter I see  
4 so far is almost like a form letter. I guess the community got  
5 together, I don't know, with some of the issues that we've already  
6 discussed because this was in the other letter unless I'm not  
7 seeing the right letter.

8 CHAIRPERSON HILL: Yes. If that's the same one, and  
9 so it looks as though Mr. Smith is having a problem logging back  
10 on, technical (indiscernible). All right. We'll wait for Mr.  
11 Smith to rejoin us and you're correct. I guess it appears as  
12 though it is a form letter from the same one as we previously  
13 saw. So they're the same issues and concerns that were brought  
14 up during the hearing so that makes it -- it's a little bit  
15 different it looks like.

16 ZC CHAIRPERSON HOOD: It is? Okay. Did they want to  
17 -- yes, they're trying to figure out how to --

18 CHAIRPERSON HILL: No, no, no. They submitted the  
19 letter. They were made aware of the hearing that they were able  
20 to testify and they have chosen not to do so by just not showing  
21 up. So the letter is now in the record and we, the Board, can  
22 take a look at it and I'll wait for Mr. Smith to rejoin us, and  
23 I'm going to put myself on mute. Oh, got you. Mr.  
24 Smith, are you there?

25 MR. SMITH: I'm here.

1                   CHAIRPERSON HILL: Okay. Great. So I see the letter  
2 that is in the record and again, Ms. Rose, it's something that  
3 maybe we can talk about with Mr. Moy the next time.

4                   In terms of the deliberation, I was comfortable with  
5 the answers that the Applicant had given me concerning the project  
6 and how they are relating to the criteria in X 901.2 and the  
7 other areas of relief. I think that, again, the rear wall was  
8 something that I had concerns of and I voiced those opinions in  
9 terms of what, you know, now frankly I have a term for is the  
10 hop-back. But I am comfortable with the solar study that has  
11 been given. I'm comfortable with the fact that there is a side  
12 yard on one of the properties. I do think that in terms of the  
13 light and air, I do think, and the shadowing, I do think that  
14 the recommendation that the Office of Planning has given I am  
15 able to get behind in terms of their analysis.

16                  Also, I would agree with their conditions concerning  
17 the rooftop cornice and not allowing there to be the decks, so  
18 was it the (indiscernible). Right. There'll be no decks or  
19 terraces or recreation space on the roofs of the proposed units  
20 and the rooftop cornices above the second and third floor as  
21 shown on Sheet BZA01 and BZA05 which are now in Exhibit 35A,  
22 shall be built according to the Plan.

23                  I would agree with the condition that the Office of  
24 Planning is putting forward. And then I would also make note  
25 that the Applicant has been, and this is just purely again to

1 help mitigate -- well, I guess help mitigate any noise factors  
2 that might come from there being a rental unit there, but that's  
3 kind of outside of our purview which is whether these are rentals  
4 or are sold. But it's good to know that the Applicant has put  
5 forward good faith that they will be working with Mr. Hernandez  
6 concerning noise, if any, from the rental units, if they become  
7 rental units. If they become for sale, then those people then  
8 have to become "good neighbors" in order to help Mr. Hernandez  
9 and then they should try to work together in the neighborhood as  
10 we all have neighbors.

11 So I will agree with the Applicant and the Office of  
12 Planning and also the ANC and be voting in favor of this  
13 application given the conditions that the Office of Planning has  
14 put forth.

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

16 MR. SMITH: I don't have anything to add. I think  
17 everything that you stated encapsulates my opinion on this  
18 particular case. The, you know, the sun studies to me have shown  
19 that most of the shadowing will be on the Applicant's property  
20 and it would be no worse than was it seems would have occurred  
21 if it was -- if they constructed that was a matter-of-right. So  
22 I believe that there wouldn't be major undue impacts on adjacent  
23 properties for this particular case. I also believe that they  
24 have met their burden of proof for us to grant the relief from  
25 the other special exceptions as noted in the capture and so I

1 will support the application.

2 CHAIRPERSON HILL: thank you. Chairman Hood?

3 ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman. I would  
4 agree with Subtitle E 206.4 and 207, especially with the  
5 recommendations from the Office of Planning as well as Subtitle  
6 E 320.2 to allow the conversion of pre-1958. I think the design,  
7 at least from the state that I saw in the renderings I think is  
8 basically takes into consideration some of the issues that may  
9 or adverse impacts that may happen with the special exceptions.  
10 And I've toyed with Subtitle E 205.5. But this is like the first  
11 case, I've always had some issues there but I, you know, I have  
12 to weigh on the side that they be mitigated in the adverse  
13 impacts, especially the sun studies and the size of it. I think  
14 that has been mitigated so even though I -- because I want to  
15 finish with 205.5 and I'm still on the fence with the 205.5 I  
16 think now I'll probably decide to go ahead and approve it as my  
17 colleagues, both my colleagues have already mentioned, and I  
18 think as far as the letter in opposition and some of it is the  
19 DOB, Department of Buildings, but a number of it is especially  
20 preserving the trees. Those other forms the way I understand it  
21 the BZA and the Commission we'd taken into that consideration  
22 about some of the trees and the concerns and as you mentioned, I  
23 think you drilled down on the good neighbor policy with the  
24 Applicant to the point that if he does not do it, they've already  
25 said in the letter that they would be willing to take it further.

1                   So I think they've mitigated as far as our review and  
2 I will be voting in favor of this application on noting my always  
3 concerns of Subtitle E 205.5. Thank you, Mr. Chairman.

4                   CHAIRPERSON HILL: Thank you, Chairman Hood. Right,  
5 and I'm going to make a motion to approve application No. 20862  
6 as captioned and read by the Secretary including the two  
7 conditions that are proposed by the Office of Planning in Exhibit  
8 30 concerning the rooftop cornice above the second and third  
9 floor and no decks or terraces or recreational space on the roofs  
10 of the proposed unit. The design is in Exhibit 35A and ask for  
11 a second. Mr. Smith?

12                   MR. SMITH: Second.

13                   CHAIRPERSON HILL: Motion made and seconded, Ms. Rose.  
14 If you can take a roll call?

15                   MS. ROSE: Please respond with your vote. Chairman  
16 Hill?

17                   CHAIRPERSON HILL: Yes.

18                   MS. ROSE: Board Member Smith.

19                   MR. SMITH: Yes.

20                   MS. ROSE: Commissioner Hood?

21                   ZC CHAIRPERSON HOOD: Yes.

22                   MS. ROSE: Let Staff record the vote is three to zero  
23 to two to approve the application with conditions. This is on a  
24 motion by Mr. Hill, seconded by Mr. Smith with Mr. Hood in support  
25 of the motion. One, I'm sorry, Vice Chair John not participating

1 and one Board seat vacant.

2 CHAIRPERSON HILL: Okay. Great. Thank you. I know  
3 that we are going to be losing Mr. Smith, at noon, Mr. Smith or  
4 before noon?

5 MR. SMITH: At noon.

6 CHAIRPERSON HILL: All right.

7 MR. SMITH: (Indiscernible).

8 CHAIRPERSON HILL: At noon. Okay. So Ms. Rose, can  
9 you go ahead and call our next case, please?

10 MS. ROSE: Next is application No. 20883 of Aligned  
11 Development, LLC. This is a self-certified application pursuant  
12 to Subtitle X § 901.2 for a special exception under Subtitle E §  
13 205.5 to allow a rear wall to extend more than ten feet beyond  
14 the farthest rear wall of the principal residential building on  
15 an adjacent property to construct a third story and three story  
16 rear addition to an existing attached two story principal  
17 dwelling unit in the RF-1 zone at premises 1815 8th Street,  
18 Northwest, Square 417, Lot 806.

19 CHAIRPERSON HILL: Okay. Great. Mr. Kearley, can you  
20 hear me and if so, could you introduce yourself for the record?

21 MR. KEARLEY: My name is Gregory Kearley and I'm the  
22 architect for the project and also the agent representing the  
23 owner for the BZA case.

24 CHAIRPERSON HILL: Okay. Mr. Kearley, are you choosing  
25 not to use your camera? If so, that's fine. I just want to

1 know.

2 MR. KEARLEY: There I am.

3 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.  
4 Kearley.

5 MR. KEARLEY: Sure.

6 CHAIRPERSON HILL: All right, Mr. Kearley. If you want  
7 to go ahead and walk us through your client's application and why  
8 you believe they are meeting the criteria for us to grant the  
9 relief requested? I'm going to put 15 minutes on the clock so I  
10 know where we are, and you can begin whenever you like.

11 MR. KEARLEY: Okay. I just also want to note that Alex  
12 Lyles, the owner, is present today and he might need to speak  
13 about a couple of things when you have questions regarding  
14 neighbor notifications and reaching out to the community, et  
15 cetera. So just to note to your team that he is here and present.

16 CHAIRPERSON HILL: Great. Thank you.

17 MR. KEARLEY: All right. So can you bring up our BZA  
18 presentation, the drawings, and I can take you through the project  
19 quickly?

20 CHAIRPERSON HILL: Which way do you think your wanting  
21 us to bring --

22 MR. KEARLEY: Well, there's both the sun study and the  
23 onset design, the drawings.

24 CHAIRPERSON HILL: I see Exhibit 5 in the architectural  
25 plans. Is that --

1                   MR. KEARLEY: Yes. Architectural plans and then  
2 there's sun studies.

3                   CHAIRPERSON HILL: Sun studies. Mr. Young, maybe we'll  
4 start with the architectural plans and then -- I don't see the  
5 sun study that is labeled.

6                   MR. KEARLEY: I have those if I need to send them to  
7 someone or bring it up. I can show you that as well.

8                   CHAIRPERSON HILL: Are they at the end of your  
9 architectural plans? No.

10                  MR. KEARLEY: No. They were presented to the ANC as  
11 part of our presentation to the ANC as well. I can talk about  
12 it a narrative and then --

13                  CHAIRPERSON HILL: Why don't you talk about it while  
14 you're looking through your architectural plans.

15                  MR. KEARLEY: Yes, I will do that and I'll explain it  
16 because there's no impact on the building that we're extending  
17 past ten feet on. In the sun studies there's zero impact. There  
18 is an impact on the neighbors to the north, but that is not --  
19 that's a matter-of-right on the neighbor of the north.

20                  CHAIRPERSON HILL: Okay, Mr. Kearley. Why don't you  
21 go ahead and begin?

22                  MR. KEARLEY: All right. So we can move to the next  
23 page, please. This just gives the location of the project, so  
24 we're at 1815 8th Street, Northwest in Washington, D.C.

25                  Next slide. Next slide. These are views of the front

1 and back of the property so when you're looking at this at the  
2 image, the structure to the right which would be to the south,  
3 that is the particular property that we are asking relief from;  
4 right? We are extending more than the ten feet back from this  
5 particular property. The property to the left which would be to  
6 the north, it is a matter-of-right because we're not extending  
7 past that property more than ten feet.

8 Next slide. So this is the existing site plan. You  
9 can see the property to the north shaded above this, above our  
10 property how far it extends back and then you see the property  
11 to the south in the grey and how that aligns with the property  
12 that we have.

13 Next slide. These are again existing conditions.

14 Next slide. Elevations of existing conditions.

15 Next slide. And now here's the proposed site plan  
16 which shows the extension of our property more than ten feet past  
17 the neighbor's property to the south and less than ten feet on  
18 the neighbor's property to the north.

19 Next slide. This is a single family home in an RF-1  
20 zone district and it will continue to be a single family home.  
21 This is not -- they're not looking to convert this to a two unit  
22 flat. Mr. Lyles is looking to have this as a single family home.  
23 This, and Alex tell me if I'm wrong about this, this was a family  
24 home that he has purchased. So it has been in his family for  
25 decades that he has now purchased the home and is going to

1 continue using this as a single family home and making upgrades  
2 that are very necessary for this particular home. So I just  
3 wanted to note that it is not a conversion to a two unit, but  
4 it's a continued use of a single family home.

5 Next slide. The proposed elevations.

6 Next slide. This is a study showing that from across  
7 the street the proposed addition which is a matter-of-right, a  
8 third story addition, will not be able to be seen from the street.

9 Next slide. And that is the next slide.

10 CHAIRPERSON HILL: I think that's the last one.

11 MR. KEARLEY: Yes, it is the last one and I'm glad to  
12 talk to you about --

13 CHAIRPERSON HILL: So if you go back to the site plan,  
14 can you go back a couple of drawings in the proposed site plan?  
15 Okay.

16 MR. KEARLEY: Right here. Right here. The neighbor  
17 where we're extending more than ten feet, the sun studies show  
18 that this -- there's zero impact. Summer Solstice, Winter  
19 Solstice, all and Spring Equinox that there is zero additional  
20 shade being on the property to the south which is the property  
21 that we're asking relief on. On the north there is some slight,  
22 from the matter-of-right to the proposed there is some slight but  
23 minimal impact of additional shade, but that particular property  
24 is not the property in question, it's the property to the south  
25 that's in question because we're extending farther back from that

1 particular property than ten feet, and it's because of the  
2 orientation since that property is south of us that we're doing  
3 the way the sun moves around, it doesn't impact that. There was  
4 zero impact on that particular property, and we believe we're  
5 meeting the criteria that is needed for the special exception.  
6 That we are -- the light and air of the neighboring property  
7 should not be unduly affected. We are having zero impact on the  
8 property to the south, so we are not creating a negative impact  
9 with light and air to that particular property.

10           We believe that the privacy of use and enjoyment of the  
11 neighboring property shall not be unduly compromised. The  
12 privacy of use and enjoyment of any neighboring properties will  
13 not be compromised. There are no proposed windows on either side  
14 of the proposed addition.

15           CHAIRPERSON HILL: Mr. Kearley?

16           MR. KEARLEY: Yes.

17           CHAIRPERSON HILL: I think -- is it pronounced [Curly]?

18           MR. KEARLEY: Kearley, yes.

19           CHAIRPERSON HILL: Let me interrupt you one second. I  
20 have a little bit of a time crunch that I was unaware of terms  
21 of my Board and so let me kind of move through this a little bit  
22 --

23           MR. KEARLEY: I'm done. If I can answer questions  
24 right now if you're comfortable with that.

25           CHAIRPERSON HILL: Yes.

1                   MR. KEARLEY: We did go to the ANC and they unanimously  
2 approved this and we had sent that for your records that they  
3 did unanimously approve that. So just to do that, we have gone  
4 through that process in reaching out to the neighbors and the  
5 ANC.

6                   CHAIRPERSON HILL: Yes. No, I got you. Let me hear  
7 from the Office of Planning first, and I'll have my Board Members  
8 come in again.

9                   MS. THOMAS: Yes. Good morning, Mr. Chair and Members  
10 of the Board. Karen Thomas with the Office of Planning, and the  
11 Office of Planning is in support of this request for an addition  
12 where it would exceed -- go beyond the ten feet of the furthest  
13 rear wall, particularly of the property at 1813 to the south.  
14 However, we note that there's an existing court that would be  
15 effectively maintained as an open air deck, open air deck on the  
16 second level and the third story as well which would not be a  
17 deck but it would be open, and for these reasons we could support  
18 this application. Thank you.

19                   CHAIRPERSON HILL: Okay. Does the Board have any  
20 questions of the Office of Planning or the Applicant? Go ahead,  
21 Mr. Smith.

22                   MR. SMITH: All right. So I'm looking at the exhibit.

23                   CHAIRPERSON HILL: Ms. Thomas, you might want to mute  
24 yourself or somebody might want to mute themselves.

25                   MR. SMITH: The concept drawing elevations. So I'm

1 looking at elevation east, I'm assuming that's the front. That  
2 third floor addition looks like it's leaning (phonetic), like  
3 it's set back or that's this elevation. Is this elevation  
4 correct?

5 MR. KEARLEY: Yes. It's set back and it's set back  
6 significantly so it's not visible from the street. This is in a  
7 historic district so we're setting it back to meet the historic  
8 guidelines so that the third floor addition will not be viewable  
9 from the street.

10 MR. SMITH: Okay. So is the land space, the street  
11 section, is that incorrect because that's reading as one façade  
12 from the first floor to the third?

13 MR. KEARLEY: No. We can definitely go to that page  
14 and I can explain it.

15 CHAIRPERSON HILL: Mr. Young, the last page of the  
16 exhibit. Is that what you're trying to get to, Mr. Kearley?

17 MR. KEARLEY: Yes.

18 CHAIRPERSON HILL: Okay. You can see here at the front,  
19 that's the two story building and then we're setting back what  
20 is in the orange is set back significantly. What is angled is  
21 the stair going up to the third addition and then their addition  
22 is in the back. So it's just a small area for the stair enclosure  
23 but you can see that it's set back. What is the grey is the  
24 existing structure. What is the orange is the proposed addition.  
25 It got flipped, a mistake, so.

1 MR. SMITH: Okay. Thank you.

2 MR. KEARLEY: Uh-huh. And you can see the line of  
3 sight from across the street which is typically how you do that  
4 as you go across the street at the farthest point and then you  
5 show the line of sight.

6 MR. SMITH: Okay. Thank you. That was the whole  
7 question.

8 ZC CHAIRPERSON HOOD: Mr. Chairman, very quickly. I  
9 want to thank you, Mr. Kearley, for predicting my two questions  
10 because you answered, so thank you. Great job well done. Thank  
11 you, and I don't have any issues or any questions. Thanks.

12 CHAIRPERSON HILL: Okay. Thank you. Mr. Young, is  
13 there anyone here wishing to participate?

14 MR. YOUNG: We do not.

15 CHAIRPERSON HILL: Okay. Yes, Mr. Kearley, I don't  
16 have any further questions for you. Is there anything you want  
17 to add at the end? You're on mute, Mr. Kearley, but I see you  
18 shaking your head.

19 MR. KEARLEY: No questions. I'd like to answer any  
20 additional comments but I don't think you have those and I think  
21 it's -- we've presented clearly what we have done and we have  
22 the support of the ANC. So that's it right now.

23 CHAIRPERSON HILL: Okay. Great. All right. Okay.  
24 Mr. Young, go ahead and please close the hearing and the record.  
25 I'm going to excuse everyone. Thank you.

1                   Right. I actually didn't have any concerns with this.  
2 I was a little bit curious of, you know, again how far back they  
3 were going from the adjoining property. However, I'm more  
4 comfortable with it because they're really only going five feet  
5 farther back from where the existing building is now. So I don't  
6 see how that being a grand -- a big difference from what is there  
7 now with regard to the property that is set back 19 feet, I think  
8 it's something like that, yes, 19 feet six inches and so, but I  
9 do appreciate the argument that the Applicant has been making  
10 concerning any mitigating factors or any issues that might be  
11 coming up because of this project. I also would agree with the  
12 Office of Planning's recommendation and that of the ANC, and I  
13 will be voting in favor.

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

15                   MR. SMITH: I don't have anything to add. I agree with  
16 your assessment on this particular case because this is within  
17 the historic district. They did push it back so it would read,  
18 and continue to read as an historic building in essence from the  
19 street and would be in character with adjacent properties, and I  
20 do believe they have met the burden of proof as to bringing the  
21 special exception and will support the application.

22                   CHAIRPERSON HILL: Great. Thank you. Chairman Hood?

23                   ZC CHAIRPERSON HOOD: Yes, Mr. Chairman. For the sake  
24 of time, any deliberations I have had are I think in the record  
25 and I think the merits of this record warrants approval, so I'll

1 leave it at that. Thank you, Mr. Chairman.

2 CHAIRPERSON HILL: Thank you. All right. I'm going  
3 to go ahead and make a motion to approve the application No.  
4 20883 as captioned and read by the Secretary and ask for a second.  
5 Mr. Smith?

6 MR. SMITH: Second.

7 CHAIRPERSON HILL: The motion is made and seconded.  
8 Ms. Rose, if you can take a roll call, please?

9 MS. ROSE: When I call your name, please respond.  
10 Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MS. ROSE: Mr. Smith?

13 MR. SMITH: Yes.

14 MS. ROSE: Commissioner Hood?

15 ZC CHAIRPERSON HOOD: Yes.

16 MS. ROSE: Staff will record the vote as three to zero  
17 to two to approve the application. This is on a motion made by  
18 Chairman Hill, seconded by Mr. Smith, and Mr. Hood supported the  
19 motion, Ms. John not participating and one Board seat vacant.

20 CHAIRPERSON HILL: Thank you. All right. Let's see  
21 if we can get one more in before we lose Mr. Smith. Ms. Rose,  
22 if you could please go ahead and call our next case?

23 MS. ROSE: Next is application No. 20872 of The New  
24 Macedonia Baptist Church. This is a self-certified application  
25 pursuant to Subtitle X § 901.2 for a special exception under

1 Subtitle G §§ 409.1, 1200 and 1201 from the rear yard requirements  
2 of Subtitle G § 405.2 and pursuant to Subtitle X § 405.2 and  
3 pursuant to subtitle X § 1002 for an area variance from the rear  
4 yard special exception criteria of Subtitle G § 1201.1(a) to  
5 construct a new detached four story with cellar, penthouse, and  
6 roof deck, 31-unit mixed use building in the MU-4 zone at 2026  
7 Jackson Street, Northeast, Square 4220, Lot 802.

8 There is one preliminary matter for your consideration.  
9 We have a request for party status and support from ANC 5C and  
10 we also have some letters again in support that were filed within  
11 the 24-hour period and need a waiver.

12 CHAIRPERSON HILL: Okay. Thank you, Ms. Rose. Again,  
13 Ms. Rose, if you can bring up with Mr. Moy the next time about  
14 this whole waiver situation --

15 MS. ROSE: Sure.

16 CHAIRPERSON HILL: -- we find ourselves in. If you can  
17 please go ahead and allow the letters into the record that would  
18 be helpful and go ahead and do so.

19 Ms. Wilson, if you can hear me, if you could introduce  
20 yourself for the record?

21 MS. WILSON: Yes. My name is Alex Wilson from Sullivan  
22 & Barros on behalf of the Applicant in this case.

23 CHAIRPERSON HILL: Okay. Great. Thank you. Let's  
24 see. Is the Commissioner from ANC 5C with us?

25 ANC COMMISSIONER KAPUR: Yes, I'm here, Mr. Chairman.

1 CHAIRPERSON HILL: Great. Thank you. If you could  
2 introduce yourself for the record?

3 ANC COMMISSIONER KAPUR: My name is VJ Kapur and I am  
4 the ANC Commission representing Single Member District 5C07,  
5 Northern Langdon and I am also representing ANC 5C in this case  
6 as was noted.

7 CHAIRPERSON HILL: Okay. And you guys are adjacent;  
8 is that correct, Commissioner?

9 ANC COMMISSIONER KAPUR: We are adjacent and we were  
10 also the containing Commission at the opening of this BZA case  
11 and for the preceding Zoning Commission case.

12 CHAIRPERSON HILL: Okay. All right. I, and I'm going  
13 to -- and I'm talking about fellow Commissioners also, I'm sorry,  
14 my fellow Board Members. Sometimes when we have party status,  
15 even if it's an adjacent ANC we don't necessarily give them party  
16 status because of what it means to have party status, right? In  
17 this particular case since this was the previous ANC that, this  
18 is the redistricting; correct Commissioner?

19 ANC COMMISSIONER KAPUR: Correct.

20 CHAIRPERSON HILL: So considering this was the ANC that  
21 this case was originally in, I would go ahead and be in favor of  
22 allowing this ANC to have party status. But, again, it's not  
23 normally something -- it would be something that we in the future  
24 might deliberate upon a little bit more because just, actually  
25 it's not that they're adjacent. I thought, and Chairman Hood,

1 you can even clarify with this for me, I thought adjacent I  
2 thought even they had prior satisfied the regulations but now I  
3 can't recall. But in this particular, I'm going all through this  
4 --

5 ZC CHAIRPERSON HOOD: Yes, you're correct.

6 CHAIRPERSON HILL: Okay. Thank you. In this particular  
7 case I will be voting in favor of party status. Commissioner  
8 Smith, I'm sorry, Mr. Smith, do you have any thoughts?

9 MR. SMITH: Yes. Well, I agree with your assessment  
10 in this case and I support party status.

11 CHAIRPERSON HILL: Thank you. Chairman Hood?

12 ZC COMMISSIONER HOOD: Certainly, Mr. Chairman. In  
13 full disclosure 5C is the ANC I'm in now and was in previously.  
14 They came before us in the map amendment and they had party then  
15 and I definitely have no problems with what's presented in before  
16 us here today and moving forward with ANC 5C to continue their  
17 status.

18 CHAIRPERSON HILL: Okay. So Commissioner, we're going  
19 to go ahead and give you party status and unfortunately, I'm  
20 going to lose a Board Member at noon so I'm trying to kind of  
21 work through this hearing as best I can before I lose a Board  
22 Member and so if -- we're going to go ahead and let the Applicant  
23 give their presentation and we'll see how we move through this  
24 hearing and if we can make it in the time that we have available  
25 for us.

1                   Ms. Wilson, if you want to go ahead and please pull up  
2 your presentation and walk us through your presentation and you  
3 can begin whenever you like.

4                   MS. WILSON: Thank you so much for having us here today.  
5 I'll be presenting as well as Emilie Rottman, our architect. If  
6 Mr. Young could go to the next page, please.

7                   The property was formally zoned R-1-B and was  
8 previously improved with a church building. That building was  
9 damaged in a fire in the early 2000s and the property was  
10 subsequently used as a parking lot for the church next door at  
11 3200 22nd Street, and so the subject property is still a vacant  
12 lot.

13                  For some background, the Applicant obtained BZA use  
14 variance relief last year to convert the church next door to ten  
15 residential units and that process did obtain support from the  
16 neighborhood and the ANC as well as a recommendation of approval  
17 from OP. Similarly, the subject property was upzoned to MU-4 in  
18 our Zoning Commission case last year from map amendment.

19                  Chairman Hood may remember this one. We mentioned we  
20 would be back at the Board at some point for this particular  
21 relief and so this proposal is for a new 31 unit residential  
22 building, lower level retail and parking. Twenty percent of the  
23 units will be set aside for IZ and the height, FAR, and lot  
24 occupancy requirements are all met. We are seeking relief from  
25 the rear yard setback requirements as well as an area variance

1 for water with particular requirements under the rear and special  
2 exception. We have support from two ANCs, 5B and support from  
3 ANC 5C. OP is recommending approval and DDOT has no objection.

4 Next slide, please. I'm trying to speed this up as  
5 much as possible. In terms of the request for relief, we are  
6 seeking the special exception relief from the rear yard  
7 requirements and a variance from one of the special exception  
8 requirements. There are two building restriction rights impacting  
9 this property on both street frontages and we're effectively  
10 proposing to move what would otherwise be a by-right building 15  
11 feet further to the rear of the property due to the 15 foot  
12 restriction in the front along Jackson.

13 So the request is to have open space in the front where  
14 the BRL is as nothing can be built there rather than the rear 15  
15 feet. There will also be open space on the side of the lot on  
16 that 15 foot BRL to the east, maintaining plenty of open space  
17 and meeting the lot occupancy limitations of the lot. The rear  
18 yard relief would ordinarily be permitted as a straight special  
19 exception, except that one of the special exception conditions  
20 requires that no apartment window be located within 40 feet  
21 directly in front of another building.

22 There are 12 windows on the proposed north façade that  
23 face the church building to the north and it's not possible to  
24 provide a 40 foot distance, so we are seeking variance relief,  
25 area variance relief to locate those 12 windows on the north

1 façade approximately seven feet from the church and because the  
2 north façade is such a long façade, as we'll discuss today not  
3 locating windows in that façade creates practical difficulties  
4 related to building function, layout and construction.

5 Next slide, please. Thank you. The windows needing  
6 relief are identified in the red box. The windows on the second  
7 story actually face the roof portion of the church building, so  
8 the four windows on the cellar and first floor are really the  
9 only windows facing residential floors and those windows have  
10 been located in such a way compared to the Applicant's church  
11 project so that there will be no direct views into the church  
12 project. Those windows face a wall and this is one of the  
13 benefits of developing both projects. The Applicant is able to  
14 control this location and meet the (indiscernible) of the window  
15 regulation.

16 CHAIRPERSON HILL: Ms. Wilson?

17 MS. WILSON: Next slide, please.

18 CHAIRPERSON HILL: Ms. Wilson, the church project  
19 you're saying again is a new church project meaning those windows  
20 are new windows?

21 MS. WILSON: No, they are not new windows. Well,  
22 actually let me ask Emilie. Emilie, are you relocating any of  
23 the windows on that lower level?

24 MS. ROTTMAN: The windows on the church project are  
25 essentially being put back to where they used to be. A lot of

1 the areas were infilled with masonry and so we are putting in  
2 new windows into that church project. But as Ms. Wilson  
3 commented, the windows of those four units are facing a masonry  
4 portion of the existing building, not into a window --

5 CHAIRPERSON HILL: Okay. Okay. Ms. Rottman, can you  
6 introduce yourself into the record, please?

7 MS. ROTTMAN: Yes. Emilie Rottman, Square 134 Architects  
8 representing the architectural design team on this project.

9 CHAIRPERSON HILL: Okay. Thank you. Please continue,  
10 Ms. Wilson.

11 MS. WILSON: Thank you. This slide shows the  
12 relationship between the windows and the adjacent property and  
13 the red arrow shows the second floor windows relative to the  
14 church building. As you can see there aren't any views from the  
15 second story windows as those windows face the roof and any  
16 expansion of the church would require use variance and several  
17 area variances so there is not a future risk of any high rise  
18 development of the church building to the point that the upper  
19 windows would ever have any views, and again those four lower  
20 cellar and first floor windows are the only ones that face the  
21 residential floors. They face a wall, not another window and  
22 this goes to the degree of relief requested.

23 Next slide, please. Next slide, please. I'm going to  
24 just skip over these. These are general special exception  
25 requirements and the terms of the specific requirements, we are

1 seeking relief from A, and then B through C are not applicable,  
2 and we are providing the required parking.

3 Next slide, please. Thank you. In terms of the request  
4 for area variance relief for the windows, the subject property  
5 is unique due to a confluence of factors including the area of  
6 restricted space, unimproved status, size of location,  
7 topography, history and access to the rear alley. The confluence  
8 of factors uniquely impacts this subject property in a way that  
9 makes the removal of these windows for the retraction of the  
10 building from the north property line unnecessarily burdensome  
11 on the Applicant.

12 In terms of history and unimproved status, as I  
13 mentioned this subject property was previously improved as a  
14 building until 2002 and thus before the fire in the existing  
15 building wouldn't have already been on site. Based on a map of  
16 the previous building, it was less than 15 feet from the north  
17 property line so there could have been an option to adaptively  
18 reuse the building at one point but for the destruction of the  
19 building, it is the only vacant property in the square. It's  
20 been vacant for 20 years since its fire, mostly I think due to  
21 its restrictive R-1-B zoning size and proximity to Rhode Island  
22 Avenue.

23 The restrictive R-1-B zoning was addressed when the  
24 Applicant obtained approval of the map amendment but the change  
25 to the MU-4 zone increased, while it increased the potential for

1 the lot to be developed, it also amplified the impacts of this  
2 BRL restricted area which limits impact on 30 percent of the lot.  
3 The R-1-B zone has a maximum permitted lot occupancy of only 40  
4 percent whereas the subject property has a maximum lot occupancy  
5 of 75.

6 So, again, the upzoning while helpful in terms of  
7 development potential, amplifies the impacts of the BRL because  
8 there's a greater impact on MU-4 development compared to R-1-B  
9 development and so, for example, there are other properties in  
10 the immediate area also impacted by two BRLs, but those properties  
11 are already developed with single family homes zoned R-1-B and  
12 unlike the subject property they're designated low density  
13 residential on the future land use map whereas our property was  
14 zoned medium density commercial and residential leading to the  
15 map amendment.

16 And finally, the property has no alley access unlike  
17 the majority of the properties in the area and having an adjacent  
18 alley of 15 or even 20 feet could have provided opportunities for  
19 more distance between the relative windows and the presence of  
20 an alley would have naturally lowered the height of the building  
21 due to the adjacent grade allowing even the second floor windows  
22 to meet the special exception window condition and the shape and  
23 the size of the property dictates a need for the windows on all  
24 four sides for any appropriate design and internal floor plan  
25 configuration, and so this confluence of factors uniquely impacts

1 only the subject property.

2 Next slide, please. I think at this point I'll turn  
3 it over to Emilie to walk through the options if variance relief  
4 is not granted and highlight the difficulties and unnecessary  
5 burdens associated with each option.

6 MS. ROTTMAN: Thanks, Alex. I'll try to go through  
7 this very quickly as I know we are a bit pressed for time.  
8 Essentially we tried to look at three alternative options to  
9 either avoid asking for special exception relief or also asking  
10 for the variance relief but still ask for special exception  
11 relief. So we did look at a matter-of-right option, a special  
12 exception option that created very small courts and one that  
13 created slightly larger courts. Both the matter-of-right option  
14 as ZC noted would only allow 2.2 FAR which is even less than  
15 what's admitted for a MU-4 zone for non-IZ development and those  
16 special exception options, although they would allow us to avoid  
17 the variance relief for the 40 percent -- for the 40 foot setback,  
18 they created a whole host of other issues to then try to  
19 accommodate. So if we could just go through the floor plans  
20 quickly just to show the various options, I think that will be  
21 the best way and I'll highlight as we go through those key things.

22 So, next slide. And next slide. This is just a -- if  
23 we can just go through these floor plans as I'm talking, next  
24 slide, to just show this is what the matter-of-right option would  
25 look like with maintaining the 15 foot setback. It reduces the

1 amount of retail we have, next slide, and the available area  
2 towards the residences would only be able to accommodate six  
3 units per floor. They would be mostly one bedroom size units  
4 and it would be less available square footage unless  
5 (indiscernible).

6 Next slide. We see this floor to floor. The other  
7 thing with the matter-of-right option, is we would not be able  
8 to accommodate a penthouse with the one-to-one setback, so we  
9 would also lose that additional area.

10 Next slide. Next slide. And this is what we're  
11 proposing the building to look like. Next slide. And this goes  
12 into then the court-related options. If you go to the next slide  
13 and one more from there, and one more.

14 CHAIRPERSON HILL: Ms. Rottman?

15 MS. ROTTMAN: Yes.

16 CHAIRPERSON HILL: I'm going to interrupt you one  
17 second. I was able to flip through your slide deck.

18 MS. ROTTMAN: Yes.

19 CHAIRPERSON HILL: I think my colleagues can also do  
20 the same.

21 MS. ROTTMAN: Okay.

22 CHAIRPERSON HILL: Let me interrupt everyone and just  
23 see if they have any -- let me do the Office of Planning first.  
24 Let me go to the Office of Planning.

25 MS. ROTTMAN: Okay. Sure thing.

1 MS. MYERS: For the record, Crystal Myers with the  
2 Office of Planning. The Office of Planning is in support of this  
3 case with a condition stating that the window treatment -- that  
4 there is window treatment required for the cellar and first floor  
5 units to restrict visibility and with that I can stand on the  
6 record of the staff report or I can go through it further. Thank  
7 you.

8 CHAIRPERSON HILL: Ms. Wilson, I'm sorry, Ms. Myers.  
9 If you could go through just the area variance little bit for  
10 me.

11 MS. MYERS: Certainly. So the area variance is from  
12 the first criteria of the special exception relief and with the  
13 area, which is the one that says that the windows that are within  
14 the required rear yard cannot be directly facing another building  
15 within 40 feet and in this case we do have that situation.

16 So the Applicant -- so with the area variance we look  
17 at the exceptional situation. The Applicant owns the impacted  
18 adjacent property and attempts to maintain the existing church  
19 building and adaptively reuse it as a residential building. We  
20 also considered that two building restriction lines are on the  
21 property, two fifteen foot wide building restriction lines. And  
22 then we also considered that the zoning regulations themselves  
23 can never be considered an exceptional condition resulting in a  
24 practical difficulty but we did take into account that this type  
25 of variance relief request would not impact the intent of the

1 zone because it would not impact the use, height or bulk of the  
2 building and the proposed design minimizes the potential impacts  
3 of the neighboring property.

4                   And we also, for the practical difficulty, it would be  
5 four windows that are actually facing the building, the adjacent  
6 building. The majority of the windows on the rear of the property  
7 will be facing above the church building so we've considered that  
8 the difficulty of having to completely redesign the building in  
9 order to eliminate the variance relief would be pretty  
10 significant because there's essentially those four windows that  
11 are of the most concern and then also looking at the alternative  
12 scenarios would be significantly worse situations, the ones that  
13 would not need variance relief, so we considered that as well as  
14 practical difficulties.

15                   When it comes to the public good, the Applicant --

16                   CHAIRPERSON HILL: Mr. Smith has a question, Ms. Myers.

17                   MS. MYERS: Sure.

18                   MR. SMITH: Yes. Just while you're on it, can you  
19 speak to how those other two scenarios would be measurably  
20 negative along the (indiscernible)?

21                   MS. MYERS: Yes, yes.

22                   MR. SMITH: Could you focus on that a little bit?

23                   MS. MYERS: Sure. The special exception options both  
24 require what -- would be in a violation of the building code.  
25 They also would require special exception relief as well. I

1 believe the small court option had significant issues when it  
2 came to the windows. That would not be in compliance with the  
3 building code and then also would have significant impacts when  
4 it comes to the layout of the floor so for being a place to, or  
5 to being able to provide livable units would be challenged would  
6 be another aspect of it. But, I mean, we provide primarily --  
7 our issue with, our concern with it was the building code issues  
8 and the additional zoning relief that would be needed for that  
9 one, and the larger court one as well would also run into needing  
10 additional relief. So we've considered that. So that's why we  
11 looked at the alternative scenarios as being a challenge.

12 When it comes to the public good, like I said, the  
13 Applicant owns the adjacent property so they're able to comply  
14 with whatever the Department of Building requires when it comes  
15 to a situation like this where there are windows that are along  
16 the property line. That is something we had conversations with  
17 the Applicant about and our understanding is that that is allowed  
18 if there are perhaps covenants that are agreed to by the -- with  
19 the adjacent owner which is them so that would be taken care of.

20 When it comes to -- there is some level of a rear yard  
21 on the, I'm sorry, it was a side yard on the church property.  
22 And another big factor here is that the church property, the  
23 existing church will remain so the development on the property,  
24 the height difference between the two, that situation is a  
25 situation that is expected to continue and so the Office of

1 Planning looked into -- considered that as well.

2                   And then when it comes to no substantial impact on the  
3 zoning regulations, like I said earlier, the general intent of  
4 the zone is still being maintained. The relief being requested  
5 does not impact, you know, the bulk of the building height, the  
6 intent or the use of the zone and the development is still within  
7 the use criteria of that zone. So we considered this as being  
8 not a substantial impairment to the intent purpose integrity of  
9 the zoning regulations and it meets all of the criteria except  
10 for the first criteria of the special exception for a rear yard.  
11 So we specifically looked at this as rear yard relief and  
12 specifically a variance from that first criteria and that's how  
13 we were able to get to the conclusion that we could support it,  
14 but with the condition that I stated earlier.

15                   MR. SMITH: I think I had one more question. Maybe you  
16 can help me with this. What is the intent of the regulation when  
17 it speaks to no windows within 40 feet?

18                   MS. MYERS: It's concerning privacy and, but the way  
19 they laid this out the windows would not be directly facing each  
20 other for the church building. So there should be no privacy  
21 impacted and like I said, there is a little -- there is about, I  
22 think it's a 6.7 foot side yard on the residential property and  
23 I believe that the window treatment that we're recommending, that  
24 will leave any further, mitigate any potential privacy impacts.  
25 So it's more of a concern about privacy and as I mentioned, the

1 majority of the windows are facing above the church property so  
2 they're facing the sky.

3 MR. SMITH: Thank you.

4 CHAIRPERSON HILL: So, Ms. Myers, I have a question.  
5 If like the window tinting, so you mean kind of like a frosting-  
6 type thing?

7 MS. MYERS: Yes. I mean, we can leave it up to the  
8 Applicant on how it can be done, but that is something I was  
9 thinking as like a window frosting of some sort, just a way to  
10 reduce potential visual impacts.

11 CHAIRPERSON HILL: And if, and the reason I'm asking  
12 is if it's not directly in line with any windows, why do you  
13 think there would be an impact just because they can look at an  
14 angle into the other windows?

15 MS. MYERS: Potentially. It could even be curtains,  
16 by the way, but potentially and they're not lined up with each  
17 other. But to respect the intent of this particular criteria,  
18 we were thinking that some level of treatment may be appropriate.  
19 There shouldn't be any direct view. There shouldn't be any  
20 significant impact, but the window treatment would completely  
21 eliminate any possibility.

22 CHAIRPERSON HILL: Okay. And Ms. Wilson, is your client  
23 comfortable with that? I don't know what the Board's going to  
24 think, but your client's comfortable with that?

25 MS. WILSON: We weren't thinking curtains or blinds,

1 but along that line just given that those four windows do face a  
2 wall and there shouldn't be any issues with angled side lines.  
3 But, you know, we're okay with it.

4 CHAIRPERSON HILL: Okay. Okay. Let's keep on going.  
5 Anyone else for the Office of Planning? Okay. Mr. Moy, I'm  
6 sorry, Mr. Young, is there anyone here wishing to speak?

7 MR. YOUNG: No. Just the ANC Commissioners. There's  
8 another ANC Commissioner on as well.

9 CHAIRPERSON HILL: I got you. Thank you I do -- I  
10 see Commissioner Kapur. Let's see. Commissioner could you  
11 identify yourself please, of the -- not Commissioner Kapur,  
12 because he never got a chance to introduce himself?

13 ANC COMMISSIONER PIEKARA: Hi. I'm Commissioner Prita  
14 Piekara. I'm 5B06.

15 CHAIRPERSON HILL: Okay. Let's see. So, and I do  
16 apologize that we're -- I'm trying to be expeditious with this.

17 Commissioner, could you give us your testimony, please,  
18 and I'm going to butcher your last name.

19 ANC COMMISSIONER PIEKARA: Piekara.

20 CHAIRPERSON HILL: Piekara. Thank you. Could you give  
21 us your testimony, please.

22 ANC COMMISSIONER PIEKARA: I will. I'm going to do a  
23 quickly mini-version because I think we have three minutes.

24 I thank you to the Commission and the Members of the  
25 Board. I am in support and represent 5B on this matter, and ANC

1 5B is in support of this project. We voted on it at a properly  
2 noticed public meeting on March 15th and it received the unanimous  
3 approval from all Commissioners present.

4 As was already stated, this property has been vacant  
5 for about 20 years. The community is very excited at the prospect  
6 of having 31 additional new homes in the area as well as some  
7 much needed commercial real estate space. So we are in support  
8 and I'm happy to answer any questions or provide additional  
9 feedback that may be needed.

10 CHAIRPERSON HILL: Thank you. Commissioner, do you  
11 have any questions to ask anybody?

12 ANC COMMISSIONER PIEKARA: None on my end.

13 CHAIRPERSON HILL: Okay. Commissioner Kapur, could you  
14 please give us your testimony?

15 COMMISSIONER KAPUR: Sure, and I will also make it  
16 quick. We, ANC 5C has been deliberating on this for nearly two  
17 years. We have received -- I am a constituent in 5C07 which was  
18 the Containing Single Member District and now since January as  
19 the Adjacent Commissioners have been the subject of outreach by  
20 the Applicant and the representatives, so I feel pretty committed  
21 to the project.

22 We did vote, like 5E did, on March 15th in favor and  
23 so like Commissioner Piekara said, we are very enthusiastic about  
24 the retail component. We have a lot of housing come online along  
25 the MU-4 corridor from 13th Street, Northeast to 24th Street,

1 Northeast that is residential only and it's really important that  
2 those folks have places to shop along the corridor that they're  
3 not going to necessarily have to rely on a car to get to and this  
4 project uniquely among a lot of zoning cases and a lot of  
5 construction projects along the corridor present that opportunity  
6 and for that reason I think while the general concerns related  
7 to parking and trash management were certainly discussed  
8 throughout this process, I think that the benefits strongly  
9 outweigh the good and that was the position of ANC 5C. Thank  
10 you.

11 CHAIRPERSON HILL: Thank you. Commissioner Kapur, do  
12 you have any questions or comments for anyone?

13 ANC COMMISSIONER KAPUR: I guess I'll just go ahead and  
14 state that when you were deliberating party status, you said that  
15 adjacent ANCs get automatic party status. And I did go back and  
16 forth with Mr. Reed (phonetic) at OZ about this. If the address  
17 of the property is the bounding roadway then the adjacent ANC  
18 gets automatic party status, but if the address is different as  
19 it is in this case because it's not a Rhode Island Avenue address,  
20 it's a Jackson Street address, then we have to seek party status.

21 CHAIRPERSON HILL: That's fine. That's --

22 ANC COMMISSIONER KAPUR: A clarifying comment, sorry.

23 CHAIRPERSON HILL: No, that's great, Commissioner.  
24 That's helpful and that helps me when I am going to end up having  
25 to talk about maybe at another time as to why some ANCs are not

1 given automatic party status. So, thank you.

2 All right. Does the Board have any questions of the  
3 Commissioners?

4 ZC CHAIRPERSON HOOD: Mr. Chairman, I'm just going to  
5 make a comment. I want to thank everybody for all the work and  
6 engagement they did on this case because with the map amendment  
7 I did not expect this BZA hearing to go like this. So I'll leave  
8 it at that. So, thank you, Mr. Chairman.

9 CHAIRPERSON HILL: Okay. Thank you, Commissioner Hood  
10 -- Chairman Hood. All right.

11 Let's see. Is there anyone wishing to speak, Mr. Young?

12 (Pause.)

13 CHAIRPERSON HILL: Mr. Young?

14 MR. YOUNG: Sorry. There's no one signed up to testify.

15 CHAIRPERSON HILL: Okay. Great. Thank you. Okay.  
16 I'm trying to be a little expeditious, as I said, and I know that  
17 Mr. Smith has a little bit more time.

18 Do you guys have any more questions of anybody? Okay.  
19 All right. Let's see. I guess my only, what I'm trying to figure  
20 out is the condition. And Ms. Wilson, what is it that -- I know  
21 that your client has heard about this condition from the Office  
22 of Planning -- what is it that your client thinks might be what  
23 they were thinking of that might help in terms of the condition?

24 MS. WILSON: We were thinking some sort of blind  
25 treatment, like window treatment, like a set of blinds or

1 something to that effect.

2 CHAIRPERSON HILL: Okay. And I hate to, so now I'm  
3 looking at Mr. Smith also like I don't know if we've ever done  
4 blinds. Like we've done, and I don't -- I guess I've got a couple  
5 of minutes to talk it through -- like we've done tinting, right,  
6 window tinting. I don't recall blinds, right, Mr. Smith, or what  
7 have you. But my hesitation with even the -- my hesitation with  
8 the tinting is that the windows aren't lining up with each other.  
9 So it seems kind of like a waste of light also if they're tinted,  
10 but I guess maybe if it's a light tinting, I don't know. Before  
11 I lose people here, Mr. Smith, do you have any thoughts?

12 MR. SMITH: Some type of glazing. It doesn't have to  
13 be the entire window, but some glazing that provides some level  
14 of privacy and does permit light because it looks like, based on  
15 the floor plans these are the two windows for -- the windows will  
16 be the only windows in some of these units. So that's my  
17 position. You don't necessarily have to tint and to me blinds  
18 are, they're temporary treatments. They don't really fix the  
19 problem. But they can be removed or, you know, dependent on  
20 whether you continue ownership of this building or if you have a  
21 different management company that manages these units, those  
22 window treatments may go away. So --

23 CHAIRPERSON HILL: Ms. Myers?

24 MR. SMITH: -- it needs more permanent treatment.

25 CHAIRPERSON HILL: I'm sorry. Ms. Myers, can you hear

1 me? Can you hear me, Ms. Myers?

2 MS. MYERS: Just hearing the discussion at the Board,  
3 we're okay with just removing that recommendation with the  
4 condition and just leaving it at just a recommendation of approval  
5 with no conditions.

6 CHAIRPERSON HILL: And, Ms. Myers, my discomfort or  
7 discomfort with is that the windows don't line up to the other  
8 windows and you're now taking away light -- you're now taking  
9 away light from a place that doesn't have a whole lot of light  
10 to begin with; right? And so, I mean, that's my discomfort with  
11 it but you would kind of agree with that it sounds like, Ms.  
12 Myers?

13 MS. MYERS: That's fair. I mean, we just wanted to  
14 eliminate any potential or any perception of privacy or visual  
15 impact. But the windows are not lined up, you are correct and  
16 something like curtains or blinds, that's something people do  
17 just on their own anyway and all, like they won't do that for  
18 themselves. So that is probably just sufficient to do that.

19 CHAIRPERSON HILL: Okay. Does my fellow Board Members  
20 have any issue with the direction I'm taking this in?

21 ZC CHAIRPERSON HOOD: Mr. Chairman, I would just say  
22 and I'm not sure, I don't necessarily know if I agree with you  
23 or Ms. Myers discussion, but I do agree with Board Member Smith  
24 more of a permanent fixture and I understand it's not lining up.  
25 But things can change and I think from our process would even be

1 more permanent if we're going to continue to go down that line.  
2 I'm just in line more with Board Member Smith.

3 CHAIRPERSON HILL: Okay. I don't whether Board Member  
4 Smith, all right. But we can deliberate on this one then.

5 MR. SMITH: Yes. That was my intention that there  
6 needs to be some type of treatment where we're granting relief  
7 from the variance that needs to be, I mean, with from the setback  
8 requirements. So a lot of windows within the setback, within the  
9 40 feet, I do think there needs to be some type of permanent  
10 treatment. I mean, I'll be honest with you. These are two  
11 different, yes, they're owned jointly now but they could be  
12 potentially in the future if one or both, one or the other is  
13 sold and it could be a situation where, you know, the church  
14 could be expanded, the church property residences will be  
15 expanded for -- there'll be a redevelopment there that maybe  
16 impact a lot of these windows being located within 40 feet and  
17 we can't require a covenant on the adjacent property as that's  
18 not a subject in this application.

19 CHAIRPERSON HILL: Okay. I'm not going to hold this  
20 up for a minor disagreement, but I'll go ahead and let Ms. Wilson,  
21 we can discuss this. We don't need to -- it seems like the  
22 Applicant's going to get whatever the Applicant gets. Ms. Wilson,  
23 if you --

24 MR. SMITH: I would (indiscernible) a recommendation  
25 for the condition just to keep this moving, that they would be

1 required to put in some form of glazing for 50 percent of the  
2 area of the window.

3 CHAIRPERSON HILL: Okay. Ms. Wilson, do you understand  
4 that possible proposed condition?

5 MS. WILSON: I do, yes.

6 CHAIRPERSON HILL: Okay. All right. Do you have  
7 anything to add, Ms. Wilson?

8 MS. WILSON: No. Thank you all for your time today.

9 CHAIRPERSON HILL: Okay. I'm going to close the hearing  
10 and the record. Will you please excuse everyone, Mr. Young?

11 Mr. Smith, since I'm going to lose you and you're going  
12 to get a break, would you mind starting the discussion?

13 MR. SMITH: Sure. Based on information within the  
14 record and the presentation of the Applicant, I do believe that  
15 the Applicant has met the burden of proof for us to grant the  
16 special exceptions from the rear yard requirements. I do believe  
17 they have met the standards as specified in the general special  
18 exception criteria as well as Subtitle G 1201.

19 Given that the proposed windows were not, well I'll get  
20 into that, I do believe that they have met the burden of proof  
21 for us to grant the area variance for the rear yard special  
22 exceptions to allow windows within 40 feet of the adjacent  
23 building with the condition.

24 I acknowledge the fact that the windows in question  
25 would not have -- would not be as impactful to the converted

1 church because of the height of the church, but I do believe  
2 because the Applicant is amenable to the provision to glaze 50  
3 percent of the area of the windows that are impacted that would  
4 be subject to this variance for -- as since I will be comfortable  
5 with the area variance request. So with that I give OP's staff  
6 report great weight. I also recognize that the ANCs are in  
7 support of these requests. DDOT has no objection and we support  
8 the application.

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

10 Chairman --

11 MR. SMITH: With that additional condition.

12 CHAIRPERSON HILL: Yes, thank you.

13 ZC CHAIRPERSON HOOD: Yes, Mr. Chairman. I will say I  
14 think that they met the test for special exception area variance  
15 as stated by Board Member Smith. And also, I'm not sure where  
16 we were with the window treatments when we talked about that. I  
17 think some type of window treatment should be required, as stated  
18 and I appreciate all the work of ANC 5B and 5C and I just wanted  
19 to note that Commission Piekara said she only had three minutes.  
20 As far as I know Commissioners representing the Commission get  
21 more than three minutes so I wanted to make sure that was right,  
22 and I appreciate Commissioner Kapur's clarification on the  
23 adjacency issue. I know sometimes it can be very confusing for  
24 all of us and that's pretty much it.

25 Again, the record I think in this case warrants our

1 approval and I just will do my deliberations off the completed  
2 record that's in front of us.

3 CHAIRPERSON HILL: Thank you, Chairman Hood. I think  
4 the Commissioner was speaking to the fact that I thought Mr.  
5 Smith was going to have to leave in three minutes. But, yes,  
6 they have as much time as they --

7 ZC CHAIRPERSON HOOD: I thought she said she had three  
8 minutes.

9 CHAIRPERSON HILL: No, no. She was saying Mr. Smith  
10 was going to leave in three minutes but --

11 ZC CHAIRPERSON HOOD: That's a long three minutes  
12 you've been leaving; right?

13 CHAIRPERSON HILL: He's about to leave. Okay. I will  
14 agree with all of the comments that my fellow Board Members have  
15 made. Mr. Smith, if I could ask you to repeat your condition  
16 for me when I'm making this motion, if you wouldn't mind, and  
17 I'm going to make a motion to approve application No. 20872 as  
18 captioned and read by the Secretary including the condition that  
19 Mr. Smith is about to mention.

20 MR. SMITH: The windows are subject to the area variance  
21 be required to have permanent glazing on 50 percent of the window  
22 surface.

23 CHAIRPERSON HILL: That would be in the cellar and  
24 first floor?

25 MR. SMITH: Yes.

1 CHAIRPERSON HILL: Okay. And ask for a second.  
2 Chairman Hood?

3 ZC CHAIRPERSON HOOD: Oh, I've never been asked to  
4 second. I'm honored.

5 CHAIRPERSON HILL: Mr. Smith was speaking so we  
6 included everybody.

7 ZC CHAIRPERSON HOOD: (Indiscernible).

8 CHAIRPERSON HILL: The motion was made and seconded.  
9 Ms. Rose, if you could take a roll call, please?

10 MS. ROSE: Yes. When I call your name, please respond.  
11 Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MS. ROSE: Commissioner Hood?

14 ZC CHAIRPERSON HOOD: Yes.

15 MS. ROSE: Board Member Smith?

16 MR. SMITH: Yes.

17 MS. ROSE: The staff will record the vote as three to  
18 zero to two to approve the application with one condition as  
19 stated. This is on a motion by Chairman Hill, seconded by  
20 Commissioner Hood with Board Member Smith in support of the  
21 motion. Vice Chair John not present, not participating, and one  
22 Board seat vacant.

23 CHAIRPERSON HILL: Okay. Great. Thank you, Ms. Rose.  
24 All right. Mr. Smith, you have a good day. We will see you next  
25 week and then we'll be back here with Vice Chair John and let's

1 come back, I don't know, let's shoot for 11, or I'm sorry, 12:45  
2 and I know Chairman Hood, gives me -- likes to harass me  
3 sometimes. We're going to try for 11:45. Let's see what happens.

4 ZC CHAIRPERSON HOOD: 12:45, Mr. Chairman.

5 CHAIRPERSON HILL: Oh, sorry, 12:45. I don't know  
6 what's going on with me today. Thank you.

7 ZC CHAIRPERSON HOOD: (Indiscernible) come back. Okay,  
8 thanks.

9 CHAIRPERSON HILL: Thank you. Bye bye.

10 (Whereupon, there was a brief recess.)

11 CHAIRPERSON HILL: Good afternoon, Mr. Moy.

12 MR. MOY: Good afternoon, Mr. Chairman.

13 CHAIRPERSON HILL: If you wouldn't mind calling us back  
14 in and also our next case.

15 MS. MOY: Yes, with pleasure. The Board is back in its  
16 public hearing section after a quick lunch recess and the time  
17 is at or about 12:52 p.m.

18 The next case before the Board is Application No. 20867  
19 of Stephanie Ajello. This application is an amended self-  
20 certified application pursuant to Subtitle X § 901.2 for special  
21 exceptions. Subtitle U § 253.4 which would allow an accessory  
22 apartment in the R-20 zone under Subtitle D § 5201 from the loft  
23 occupancy requirements Subtitle D § 1204.1 and rear yard  
24 requirements Subtitle D § 1206.2.

25 If you recall, Mr. Chairman, the Board last heard this

1 at its public hearing on March 15th after which the Board set  
2 for decision-making for March 22nd and the Board again reopened  
3 the record to allow additional materials into the record for a  
4 public hearing for today, May 3rd and with that, I think that's  
5 all I have unless you need the Applicant to -- for more  
6 clarification on this record. Thank you.

7 CHAIRPERSON HILL: Okay, thanks. Ms. Wilson, if you  
8 can hear me and if you could introduce yourself for the record?

9 MS. WILSON: Hi. Alex Wilson from Sullivan & Barros  
10 on behalf of the Applicant in this case.

11 CHAIRPERSON HILL: Okay. Great. Thank you. Ms.  
12 Wilson, I guess, you know, this has been around with us for a  
13 while now and it's kind of outside the process that I think we  
14 might end up doing in the future because it just happened to go  
15 this way. So I hope your client is appreciative and also your  
16 understanding of how the Board is working with you in this  
17 particular way.

18 If you could go ahead and walk us through the new or  
19 revised application, I know that you were listening the last time  
20 we kind of debated and deliberated this and tell us where you  
21 are with everything. I've pulled up your most recent PowerPoint,  
22 I think, and you can begin whenever you like.

23 MS. WILSON: Thank you so much, and we are very  
24 appreciative of another opportunity to walk through this. I know  
25 Ms. Ajello is on and is also very appreciative, so thank you very

1 much.

2           If Mr. Young could please pull up the presentation;  
3 I'll walk through the changes. If you recall, the property is  
4 currently improved with an existing non-conforming flat.

5           Mr. Young, could you please pull up the presentation  
6 when you have a chance?

7           The owner, Ms. Ajello, has been needing some additional  
8 space in her unit.

9           If you could go to the next slide, please. So  
10 originally we requested area variance relief and use variance  
11 relief to expand the building because it's an existing non-  
12 conforming flat and so that would have allowed for the  
13 construction of the proposed third story deck and rear deck, I'm  
14 sorry, the third story addition and then a deck and stair  
15 replacement on the rear.

16           We are still proposing to do that same third story  
17 addition and deck replacement, so the proposed plans themselves  
18 have not changed since the initial filing. However, we are  
19 changing the proposed use from a non-conforming flat to a single  
20 family dwelling and as part of this request, we are seeking relief  
21 to keep that existing second unit, but instead of a second  
22 principal dwelling unit, it would be an accessory apartment and  
23 so that is permitted via special exception in the R-20 zone  
24 subject to the general special exception requirements and of  
25 course subject to U 253 requirements which we safely meet. And

1 then, in addition to that, we benefit from not having to seek  
2 area variance relief for the rear deck and stair and now we can  
3 seek special exception relief for that as well.

4 So effectively we've changed the application from a use  
5 variance and two area variances to special exception, but the  
6 project itself has remained the same, so it's the use that's  
7 triggering this change.

8 Next slide, please. Thank you. And so, and now the  
9 physical addition of that changed and we've had neighbor support  
10 and ANC support since the beginning of the case for the higher  
11 threshold for the use variances and the proposal again is  
12 effectively the same but a different categorization of the lower  
13 unit. The same density is being maintained.

14 Next slide, please. Thank you. You've seen these  
15 plans before but the proposed third story addition and renovation  
16 will be consistent with the adjacent properties. This building  
17 is a corner unit so it really stands out along these properties  
18 here.

19 Next slide, please. The deck and stair replacement  
20 will bring the egress in the rear up to code and be located in  
21 the same place as the existing deck and stair.

22 Next slide, please. Again, these sheets are the same  
23 as we've walked through before, but just as a refresher, it's  
24 been a while. This first sheet shows the existing first and  
25 second floor plan on the unit as proposed to be expanded. The

1 principal unit is on the second floor.

2 Next slide, please. This shows the proposed second  
3 floor changes effectively taking out that bedroom space and  
4 creating more living space for the upper unit.

5 Next slide, please. Thank you. This shows the proposed  
6 third floor plan. The bedroom is being moved upstairs. Another  
7 bedroom and bath are being added and then there will be access  
8 to the roof from the third floor just like the adjacent properties  
9 have.

10 Next slide. So in terms of the special exception  
11 requirements, the existing density on the lot is not changing and  
12 the proposed third story will have a smaller footprint than the  
13 existing building and will be consistent with the third stories  
14 on the adjacent properties. It is also within the height limits  
15 of the zone and the request for the stair placement and rear  
16 yard relief are directly tied to the need to bring the stairs up  
17 to code and they will be located in the same place as the existing  
18 deck and stairs.

19 Next slide, please. With respect to the requirements  
20 for an accessory apartment in the R-20 zone, it is reviewed under  
21 the general special exception requirements, but just to walk  
22 through the other requirements, it is permitted in the principal  
23 structure via special exception and the proposal safely meets the  
24 other requirements of the principal dwelling and it will be owner  
25 occupied. The number of persons in both units will not exceed

1 six. The accessory apartment will not occupy more than 35 percent  
2 of the GFA of the house and no additional entrances are being  
3 created.

4 Next slide, please. Thank you. In terms of the lot  
5 occupancy and rear yard relief, the increase of lot occupancy is  
6 negligible only 0.2 percent and the rear yard is being reduced  
7 to accommodate the code requirements. The replacement will be  
8 in the same location. So the deck and stairs shall not impact  
9 light and air nor privacy available to the neighboring  
10 properties, nor shall it substantially visually intrude upon the  
11 scale, pattern, and houses along the alley. In fact, the proposal  
12 will arguably make the building more compatible and in character  
13 with those adjacent properties given this location on the corner  
14 and the fact that the properties next door have already been  
15 renovated.

16 Next slide, please. That concludes my portion of the  
17 presentation and I am happy to answer any questions.

18 CHAIRPERSON HILL: Okay. Thank you, Ms. Wilson. Let's  
19 see. Let me turn to the Office of Planning but first I'll come  
20 back to my Board. Can I hear from the Office of Planning, please?

21 MR. COCHRAN: Many thanks, Mr. Chair. Steve Cochran  
22 representing OP for case 20867. OP is recommending approval of  
23 the three special exceptions. The special exceptions and the use  
24 requirements of U 253.4 to permit the building to become a single  
25 household residence with an accessory apartment with special

1 exception from the lot occupancy requirements of D 1204.1 and the  
2 special exception from the rear yard requirements of D 1206.2.  
3 Beyond that, we would stand on the record and of course we're  
4 happy to answer any questions.

5 CHAIRPERSON HILL: Okay. Thanks, Mr. Cochran. But  
6 they amended, right, so they no longer are asking for the use  
7 variance. You guys just were in agreement with that one when  
8 they were asking for it, correct?

9 MR. COCHRAN: That's correct.

10 CHAIRPERSON HILL: Okay. All right. Does the Board  
11 have any questions for the Office of Planning or the Applicant?

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

13 MR. YOUNG: No, we do not.

14 CHAIRPERSON HILL: Okay. Ms. Wilson, is there anything  
15 you'd like to add at the end?

16 MS. WILSON: Thank you again for your time.

17 CHAIRPERSON HILL: Okay. Great. Thank you. All right.  
18 I'm going to go ahead and close the hearing and the record. Thank  
19 you. Thanks, Mr. Cochran. I'm allowed because now I remember,  
20 I think I was the only one who was agreeing with the first thing,  
21 but I thought I was agreeing with the first thing. But upon  
22 further reflection and further discussion with my Board, I would  
23 agree that it is better that they are here before us in the way  
24 that they're here before us as I would also have been voting  
25 against the use variance.

1           In this particular case now that they're back before  
2 us with the special exception for the accessory apartment,  
3 meaning one of the -- the owner will be living in the building.  
4 It's going to just be an accessory apartment and so to allow the  
5 accessory apartment, then also the lot occupancy requirements of  
6 D 1204.2 as well as the rear yard requirements in Subtitle D  
7 1206.2, I would agree with the Applicant's argument as it is a  
8 much smaller lift to bear. I think that the building itself is  
9 the same or the size as the next door neighbor and also the  
10 community there.

11           I also note that Commissioner Putta and Commissioner  
12 Miller had been the representatives for this as their ANC is  
13 actually quite active and they were in also support of this  
14 application as it was even before then it was a use variance,  
15 but it now being a much lesser burden as the design not changing,  
16 they still I would imagine are in favor as they're in favor again  
17 of the higher burden.

18           I think that they are meeting the requirements for me  
19 to be able to get behind it and I would agree with the Office of  
20 Planning and the ANC and the Applicants gave argument for that  
21 special exception, and I will be voting in favor.

22           Vice Chair John, do you have anything you'd like to  
23 add?

24           VICE CHAIR JOHN: I agree substantially with what you  
25 just said, and I will be voting in favor of the application and

1 I also give great weight to the Office of Planning's amended  
2 report.

3 CHAIRPERSON MILL: Thank you, Vice Chair John.  
4 Chairman Hood?

5 ZC CHAIRPERSON HOOD: I would agree, Mr. Chairman. I  
6 don't think I need to add anything other than I would agree with  
7 you for all of the use variance. I thought we kind of deliberated  
8 on this before, I can't remember. But either way I'm fine with  
9 it and I'm ready to move forward. Thank you.

10 CHAIRPERSON HILL: Okay. Great. Thank you, Chairman  
11 Hood. I'm going to make the motion to approve Application No.  
12 20867 as captioned and read by the Secretary and ask for a second.  
13 Ms. John?

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: The motion is made and seconded.  
16 Mr. Moy, would you take a roll call, please?

17 MR. MOY: When I call your name can you please respond  
18 to the motion made by Chairman Hill to approve the application  
19 for the relief or the amended relief requested, the motion to  
20 approve second by Vice Chair John.

21 Zoning Commission Chair Anthony Hood?

22 ZC CHAIRPERSON HOOD: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff records the vote as three to zero to  
3 two, the two is no longer Members who are participating and this  
4 is to the motion to approve the application made by Chairman  
5 Hill. Motion to approve was second by Vice Chair John who is  
6 also in support of the application as well as support to approve  
7 from Zoning Commission Chair Anthony Hood and of course Vice  
8 Chair John and Chairman Hill, no other Board Members. The motion  
9 carries, sir, on a vote of three to zero to two.

10 CHAIRPERSON HILL: Thank you, Mr. Moy. Welcome back  
11 Vice Chair John, I didn't say so. Nice to have you with us.

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

13 CHAIRPERSON HILL: And Mr. Moy, if you can call our  
14 last case, please?

15 VICE CHAIR JOHN: I'm here, Mr. Chairman. I'll be back  
16 in a couple of minutes. Please go ahead.

17 CHAIRPERSON HILL: Thank you, Vice Chair John.

18 MR. MOY: The next case before the Board is Application  
19 No. 20880 of 1000-1016 H Street, Northeast or NE LLC and 5522  
20 Rhode Island Avenue LLC. This is as advertised a self-certified  
21 application pursuant to Subtitle X § 901.2 for special exceptions  
22 under Subtitle H § 910.1 which would allow new construction on a  
23 lot at least 6,000 square feet of planned area and under Subtitle  
24 C § 703 minimum vehicle parking requirements Subtitle C § 701.5  
25 and under Subtitle C § 909.2 from the loading access requirement

1 of Subtitle C § 904.5 and as said earlier, this is what has been  
2 advertised in the record.

3 Mr. Chairman, there with regards to preliminary  
4 matters, the Applicant filed a motion to waive its 21 day filing  
5 deadline to allow internal record updated architectural plans  
6 primarily and as a reminder also let's see, yes, there's a witness  
7 in opposition that will be testifying in this case record. And  
8 going backwards a step, this was last heard by the Board, I  
9 can't recall if I had said this, at the Board's hearing on March  
10 15th where the Board granted the ANC's request for a motion for  
11 continuance and that brings us to today. Thank you, sir.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Ms.  
13 Moldenhauer, if you can hear me if you could introduce yourself  
14 for the record?

15 MS. MOLDENHAUER: Chairman Hill, Members of the Board,  
16 my name is Meridith Moldenhauer from the law firm of Cozen  
17 O'Connor here on behalf of the Applicant. Here with me today is  
18 the property architect, Gozde Tanyeri.

19 CHAIRPERSON HILL: Okay. Ms. Tanyeri, you want to  
20 introduce yourself for the record?

21 MS. TANYERI: Yes, hi. I'm Gozde Tanyeri. I'm the  
22 architect of the record for 1001 H Street NE.

23 CHAIRPERSON HILL: Okay. And you, Ms. Moldenhauer, are  
24 asking Ms. Tanyeri to be admitted as an expert in architecture,  
25 correct? Ms. Moldenhauer, was that -- I didn't hear you say

1 correct?

2 MS. MOLDENHAUER: Sorry. I went on mute. Can you hear  
3 me now?

4 CHAIRPERSON HILL: Yes, yes.

5 MS. MOLDENHAUER: Yes, correct.

6 CHAIRPERSON HILL: Okay. Great. As I'm looking at Ms.  
7 Tanyeri's CV, I didn't have any issues with her being admitted  
8 as an expert in architecture. Does the Board have any issues?  
9 All right. Hearing none, we'll go ahead and admit you as an  
10 expert in architecture. Thank you, Ms. Tanyeri.

11 Ms. Moldenhauer, if you want to go ahead and walk us  
12 through your client's application as to why you believe they're  
13 meeting the criteria to grant the relief requested. I'm going  
14 to put 15 minutes on the clock just so I know where we are and  
15 you can begin whenever you like.

16 MS. MOLDENHAUER: Thank you very much. If Mr. Young  
17 could bring up our PowerPoint presentation as filed in the record.  
18 Mr. Young?

19 CHAIRPERSON HILL: I think he's pulling that up now.

20 MS. MOLDENHAUER: Okay. Next slide. We are here today  
21 regarding a project that has nine separate lots in assemblage.  
22 Six of those lots have existing facades and there are additional  
23 lots that make up a vacant property there that are currently  
24 vacant, currently. The properties are located along H Street at  
25 the corner of H and 10th.

1                   Next slide. The properties are located in the NC-16  
2 zone as you can see here.

3                   Next slide. The proposal is for a five story 56 unit  
4 residential apartment building with ground floor retail. The  
5 project will have a diverse number of one bedroom, two bedrooms,  
6 and two story penthouse units. It will also have 3,261 square  
7 feet of retail along with amenities for the residents including  
8 a gym, a lobby, and a clubroom. The project will incorporate  
9 the, as I said, six existing facades and will provide eight  
10 parking spaces including two EV spaces on site. The FAR for the  
11 side is compliant with the permitted zone at 3.38 where 3.5 is  
12 permitted and is also being built to the by right height.

13                  Next slide. At this point I'm going to turn it over  
14 to our project architect to walk through the design and then I'll  
15 conclude with the relief.

16                  MS. TANYERI: Yes. The project site is on H Street  
17 with D.C. street car passing in front of it, 10th Street corner  
18 with H Street, Northeast. To our east side there's the Douglas  
19 Memorial Methodist Church and to our north is single family  
20 residential, rowhouse residential neighborhood. There's a public  
21 alley that is ten foot We have a private easement filed for  
22 increasing it to a 15 feet access point.

23                  The project's mass is five story plus cellar and a  
24 penthouse. The penthouse is set back from all sides and the  
25 project building sits at the building restriction lines on the

1 property lines on 10th Street and on H Street. The project is  
2 compliant with H Street design guidelines. We have entrances at  
3 every 40 feet and the 14 feet per story ceiling height as well  
4 as the 55 feet building height.

5 Next slide, please. Yes. So this is the first floor  
6 layout. As you can see the building is cornered with a retail  
7 store, a retail space and another additional retail space was  
8 added later on which we will talk in a minute. The lobby to the  
9 residential multi-family building is through the, you know,  
10 somewhat at the center of H Street and to the east side of this  
11 lobby is residential units. To the rear side, north side of the  
12 property are eight parking spaces accessed from the public space  
13 and a trash room, elevators, and a staircase.

14 Buildings on H Street side is designed to comply with  
15 the design guidelines for retail and also on to the east side  
16 for residential spaces we have some green buffer and some unit  
17 entrances that will likely liven up the pedestrian walkway  
18 experience.

19 Next slide, please. And here you see the cellar level.  
20 As you see it's utility space, gym, and rec room, clubroom, and  
21 some units on the cellar level.

22 Next slide. We have 76 units total. One bedroom, two  
23 bedroom, some three bedroom units with various sizes and shapes.

24 Next slide. This is second floor plan. The third  
25 floor and up we have some balconies, some outdoor spaces that

1 we're offering and the following slide.

2 Next slide. This is the penthouse level. We have some  
3 larger units and smaller units with private terraces here with  
4 some green roof and above this would be the building's roof.

5 Next slide. We have bike storage compliant with the  
6 new DDOT guidelines that has just come into play with tandem wide  
7 spaces with cargo access for that and also the five percent  
8 electric charger, bike charger spaces. We have various bike  
9 charging -- bike parking spaces that we meet with wall hanging,  
10 double decker and floor space.

11 Next slide. Twenty six parking spaces. This is the  
12 retail expansion slide that I believe Meridith wanted to discuss  
13 in detail. In the beginning of the project we had no retail  
14 space in the corner in our original proposal. Then we met with  
15 the ANC in March and proposed the 1,223 square foot of retail in  
16 the corner space. Following that we have revised our proposal  
17 to include more ground floor retail space to include 3,261 square  
18 foot retail space on the ground floor that spans from the 10th  
19 Street, Northeast towards the east side.

20 Next slide. In this slide you see the street frontage  
21 of what I just mentioned. This is the increased street  
22 activation. The original proposal was all residential building  
23 on the street frontage. Following that we have met with ANC on  
24 proposed corner retail entrance and corner retail space.  
25 Following that we have increased our street to almost larger than

1 half the size of the building with building's lobby, including  
2 building's lobby. To the east side we still have some residential  
3 spaces that have activated with green space and building  
4 entrances.

5 Next slide, please. Here in these renderings you see  
6 the street sidewalk pathway with the street car space. These are  
7 the additional, on the left side you see retail spaces.

8 Next slide. This is the existing T-nail (phonetic) of  
9 the buildings that are on site versus the new structure marrying  
10 (phonetic) each other are building entrance lobby -- multi-family  
11 building entrances designed to be in one of those large entrance  
12 spaces and then to the west side of that is the retail space and  
13 from this lobby east side is the residential space.

14 Next slide, please. Here you see an overall elevation  
15 view of the building's frontage from H Street. The old versus  
16 new and the bay windows and new materials versus old materials  
17 and the marriage of that.

18 Next slide. This is a perspective view from the street  
19 again showing the same idea of the old versus new and the bay  
20 windows and oriel.

21 I believe that is my portion. I will turn it back to  
22 Meridith after this.

23 MS. MOLDENHAUER: Thank you very much.

24 Next slide, please. We're here seeking three different  
25 areas of special exception relief. First, a special exception

1 relief pursuant to Subtitle H 910.1 which is relief for any new  
2 construction on lots with at least 6,000 square feet. The nine  
3 lots total 15,538 square feet, so we're seeking relief in that  
4 regard. We are seeking vehicle parking relief. Thirteen spaces  
5 are required and we are providing eight spaces along with  
6 amplified parking. We are seeking loading relief as confirmed  
7 by the Office of Zoning Administrator for special exception  
8 relief to provide zero loading provided.

9 Next slide. Pursuant to a meeting that we had with the  
10 Zoning Administrator on 4/6, he confirmed in an email on 4/13  
11 that special exception relief was appropriate for the project so  
12 long as we were showing no loading occurring on the site and that  
13 if any non-compliant loading did occur, that the Board could  
14 condition a five foot area to comply with the fifteen foot access  
15 requirement. Here you can see in the orange that is your public  
16 alley which is ten feet wide.

17 Pursuant to the Zoning Administrator's recommendation  
18 ahead of discussion, we are offering for the Board to review in  
19 that red hash area a five foot private easement to be left open  
20 and not constructed on and open to the air for purposes of access  
21 if non-compliant loading were to occur on the rear of the site,  
22 and we're happy to answer questions about that. To continue.

23 Next slide.

24 CHAIRPERSON HILL: Yes, Ms. Moldenhauer. Where is the  
25 loading dock then?

1 MS. MOLDENHAUER: Pursuant to the Zoning regulations,  
2 we're asking for no loading. So we are showing zero loading. If  
3 you go to the prior slide, sorry, Mr. Young. So we're showing  
4 no loading pursuant to the Zoning Administrator. If you go the  
5 other direction, back. No, we're still going in the wrong  
6 direction. Right.

7 CHAIRPERSON HILL: Yes. I'm zoomed in there. There's  
8 no loading -- so, okay.

9 MS. MOLDENHAUER: So we're asking for 100 percent  
10 loading relief. We are showing zero loading and asking for relief  
11 for go to zero loading.

12 CHAIRPERSON HILL: All right. But like, and I see that  
13 the proposed easement. Is there a loading dock there somewhere?  
14 Like, what is there?

15 MS. MOLDENHAUER: Non-compliant loading could occur on  
16 site. And as we had shown previously and as part of the record,  
17 there is area both for a loading truck as well as a loading berth.  
18 Supposed to be non-compliant loading.

19 CHAIRPERSON HILL: Okay.

20 MS. MOLDENHAUER: There is ample space to service the  
21 76 units and the retail; however it's a more -- the ZA and I had  
22 a similar conversation. It's similar to where the ZA says, you  
23 know, you're providing parking but the parking, you know, is not  
24 maybe nine by nineteen or isn't compliant. We consider that non-  
25 zoning parking, right? So this is non-zoning loading. So we're

1 asking for 100 percent relieve but we are saying that if we  
2 provide private easement we have enough access for that loading.

3 CHAIRPERSON HILL: Okay. All right. Please --

4 MS. MOLDENHAUER: Next slide.

5 CHAIRPERSON HILL: Yes. Please continue. I guess it  
6 was the next slide, Mr. Young. Thank you.

7 MS. MOLDENHAUER: At the last hearing the ANC requested  
8 a postponement. The Applicant had consented to that  
9 postponement. Since that time the Office of Planning has issued  
10 a letter of support. DDOT has issued a letter of support and so  
11 has the ANC. We have engaged with their Economic and Development  
12 Zoning Committee on multiple occasions, on three occasion. I've  
13 written to their full ANC twice. We have also, in connection  
14 with ANC, met with abutting neighbors and communicated with them  
15 via email exchange on multiple occasions as you can see here.

16 Next slide. In some of those communications there was  
17 a concern that the project before you could potentially have a  
18 negative impact on a private pedestrian pathway. Our project  
19 architect went and surveyed that pathway. As you can see in this  
20 image starting at A which is, identification A, off of I Street,  
21 it continues down to B and then through that area, I'll call it  
22 D where that tree obstructs it, there's a large distance where  
23 our property does not touch and that pathway does not continue.  
24 So we were simply confirming with the neighbors that our project  
25 would not have any access to this pedestrian pathway.

1                   Next slide. Showing the same thing in the full  
2 (phonetic) image.

3                   Next slide. Next slide. The neighbors did encourage  
4 and I know it's part of the conditions of the ANC support, they  
5 requested that we enter into a Construction Management Agreement.  
6 We have provided a Construction Management Agreement in the  
7 record as well as to the neighbors that did include having delayed  
8 start from 7 a.m., on Saturdays to 9 a.m., on Saturdays, hiring  
9 a rodent control company, removing the no objection clause. We  
10 also included information regarding communications with a project  
11 representative and we have gone back and forth on this  
12 Construction Management Agreement three times over the last seven  
13 weeks with the neighbors.

14                  I believe that concludes our presentation, and we  
15 satisfy the special exception conditions for both the new  
16 construction on H Street standards as well as the parking standard  
17 and the loading standards.

18                  I will be available to answer any Board questions.

19                  CHAIRPERSON HILL: All right. Great. Thank you, Ms.  
20 Moldenhauer. Before I turn to my fellow Board Members, if I  
21 could just hear from the Office of Planning.

22                  MS. THOMAS: Yes. Good afternoon, Mr. Chair, Members  
23 of the Board.

24                  Karen Thomas with the Office of Planning, and we are  
25 in support of the application including for special exception

1 relief from the development standards of Subtitle H 901 and 1200  
2 and we believe, as stated in our report, that it is consistent  
3 with the design guidelines prescribed by the H Street Notice  
4 Strategic Development Plan.

5 With respect to the relief from the minimum parking  
6 requirement, we concur with DDOT's recommendation that this is  
7 on a transit corridor and impacts as such would be mitigated by  
8 easy access to transportation options.

9 The loading would be non-compliant as determined by the  
10 Zoning Administrator due to the existing ten feet wide curb cut  
11 and DDOT was not in support of the Applicant widening the curb  
12 cut. So to that end the Applicant is willing to provide five  
13 feet as a private easement to be recorded and is a condition of  
14 this approval should the Board decide to approve it and to  
15 mitigate it with requirement, and effectively accommodate an  
16 alleyway for truck movement.

17 So with that, we are in support of this application.  
18 It has met the extensive guidelines for the H Street corridor.  
19 We just want to note that we met several times with the Applicant  
20 to really work on the design of this project several times,  
21 sending them back to make the necessary adjustments to where it  
22 is today.

23 So with that, we are satisfied that it has met the  
24 design guidelines and we support the relief as requested.

25 Thank you.

1 CHAIRPERSON HILL: Okay. So, Ms. Thomas, to be clear  
2 the five feet private easement, that would be a condition?

3 MS. THOMAS: Yes. I believe that the ANC is asking it  
4 as a condition to be recorded as a private easement. Ms.  
5 Moldenhauer can jump in.

6 CHAIRPERSON HILL: I think that's, Ms. -- I didn't know  
7 it was the ANC that had spoken about it. I mean, you were trying  
8 to figure out how to give this enough room for the proper alley  
9 width, correct?

10 MS. MOLDENHAUER: Yes. This is pursuant to our Exhibit  
11 43B which was a determination from the Zoning Administrator. The  
12 Zoning Administrator in his review commented that under 40,  
13 sorry, C 904.5, if we wanted to provide any non-compliant loading  
14 on site that we would need to have a private easement in order  
15 to comply with that section and that the Board in order to  
16 mitigate issues in the future to allow for loading on the site,  
17 that the Board could allow for the Applicant to proffer a five  
18 foot private easement, and so we are now consistent with that  
19 determination proffering that five foot wide easement.

20 CHAIRPERSON HILL: Okay. I know my Board may or may  
21 not have questions for you, I don't know. Let's see. Does my  
22 Board have any questions for the Applicant or the Office of  
23 Planning?

24 VICE CHAIR JOHN: So I'm not sure why the loading would  
25 be non-compliant and if you could just walk through the steps

1 through that for me and tell me what provision would make the  
2 loading non-compliant. I'm fine with special exception for not  
3 providing any loading but I don't know what provision says that  
4 if you were to include a loading berth, it would be non-compliant.  
5 That's the part I'm having difficulty with, aside from what the  
6 ZA said.

7 MS. MOLDENHAUER: Okay. This is not my interpretation.  
8 This was the ZA's interpretation and I can direct you specifically  
9 to Subtitle C 904.5, and this section says all loading berths and  
10 service areas shall be located off and shall be accessed, I'm now  
11 summarizing, as located to be access from a public al ley where  
12 it is open and 15 foot wide access and so because we would like  
13 to, using half the room, to potentially provide non-compliant  
14 loading on site, the Zoning Administrator said well because the  
15 language says all loading, in his mind we would have to provide  
16 a five foot easement in order for that non-compliant loading to  
17 occur and so, you know, we were following again what the Zoning  
18 Administrator was telling us and so he agreed that we could  
19 provide zero loading but if we ever wanted to have a loading  
20 truck back there and not be in violation of the zoning  
21 regulations, that we should proffer a five foot wide easement.  
22 That way the ten foot public alley plus the five foot private  
23 easement creates a fifteen foot wide open area pursuant to C  
24 904.5. So it's C 904.5 that requires us to proffer this five  
25 foot wide easement.

1                   Does that answer your question Board Member John?

2                   VICE CHAIR JOHN: Yes and no because I've read this  
3 provision many times and if I rearrange the sentence and I say  
4 where there is a 15 foot alley, all loading must take place there,  
5 then the requirement only exists if there is a fifteen foot alley.

6 So I --

7                   MS. MOLDENHAUER: I raised that argument to the Zoning  
8 Administrator and he did not agree.

9                   VICE CHAIR JOHN: Okay. I hear you and I understand,  
10 and so I don't see a provision for you to get a special exception  
11 from. However, I can see where you could proffer the easement  
12 to create a fifteen foot wide alley which is not the same as a  
13 requirement, it's like a preference and I could understand that  
14 argument.

15                  But I am uncomfortable with a situation that says there  
16 has to be a ten foot wide alley in order to have parking at the  
17 rear of the building. So that's sort of where I'm going. I  
18 don't know what the other Board members say. I'm comfortable  
19 with having no loading berth, but the rest of the argument I'm  
20 having difficulty with, but I'm not opposed to having no loading  
21 berth back there and I'm not opposed to the Applicant expressing  
22 a preference for including this fifteen foot -- including the  
23 five foot permanent easement which is a way to make it work.

24                  CHAIRPERSON HILL: (Indiscernible).

25                  VICE CHAIR JOHN: Mr. Chairman.

1 CHAIRPERSON HILL: Yes. I don't know if Ms. Moldenhauer  
2 was about to say this or not. I don't know, Ms. John, I'm a tad  
3 bit confused myself. I mean I'm not sure whether or not I guess  
4 what seemed to be a conflict was whether or not they need relief  
5 from the loading access requirements is what I think we're  
6 speaking of; correct, Ms. John? I'm asking --

7 VICE CHAIR JOHN: Yes, yes.

8 CHAIRPERSON HILL: And so I mean I understand if they're  
9 giving a five foot easement, you know, then they meet the  
10 requirements is what I think we're speaking to; correct, Ms.  
11 John?

12 VICE CHAIR JOHN: I think only if it is a requirement.  
13 But it seems to me it says if I read the word "where" as meaning  
14 if and I rephrase the sentence it says if there is a fifteen foot  
15 wide alley, then all loading should take place in the alley and  
16 I don't know how this provision has been interpreted in the past,  
17 but since it's presented today, I have a hard time saying that  
18 there is a requirement for a fifteen foot alley. Maybe fifteen  
19 foot wide alley, maybe that's the better option. But in order  
20 to make this work, I can accept the Applicant's proffer of the  
21 permanent easement in order to have a fifteen foot wide alley.  
22 So in a sense there is a fifteen foot wide alley created by  
23 easement and so I could probably get there that way.

24 CHAIRPERSON HILL: Okay. Well, maybe you can help me  
25 with the deliberation.

1 VICE CHAIR JOHN: So, but I don't believe it's a  
2 requirement. I have to say that.

3 CHAIRPERSON HILL: Okay. Well, you can help me get  
4 through the deliberations then because I'm just not -- I haven't  
5 been exactly sure what it is we're proposing for Item No. 3 and  
6 so we'll figure this out.

7 VICE CHAIR JOHN: Thank you.

8 CHAIRPERSON HILL: Okay. So anyone else have any  
9 questions of the Applicant or the Office of Planning?

10 ZC CHAIRPERSON HOOD: Well, Mr. Chairman, let me just  
11 opine. I'm trying to think this through. I think -- I know what  
12 we're trying to get to and I hear what Ms. Moldenhauer is saying  
13 and I hear what Vice Chair John is saying, but for me it's trying  
14 to get there and when I look at this non-compliant it means more  
15 than likely it's non-compliant zoning and I believe, Ms.  
16 Moldenhauer, and you can correct me because you had the  
17 conversation with the ZA, not me. But it has to be more like a  
18 grandfathering, it's just more like grandfathering. Is that a  
19 correct statement? That's how the term is usually used but in  
20 this case I don't understand how it's being used here and there's  
21 nothing to grandfather.

22 MS. MOLDENHAUER: So here we are asking for 100 percent  
23 loading relief, right, as if no loading would ever occur on the  
24 site and, yes, supportive of that, the ANC is supportive of that  
25 but the reality is that the site could accommodate loading and

1 if that loading were to occur because it's not going to be needed  
2 or it's not zoning required loading -- how about that, non-zoning  
3 required -- if you were to grant, if, you know, if you were to  
4 grant special exception relief to provide zero loading, but we  
5 said may mitigate neighbors and we want to be able to still do  
6 loading on site because you physically can do it, it would be  
7 non-zoning required loading.

8 So maybe not non, not grandfathered, Chairman Hood,  
9 but non-zoning required loading. Then we get to the question of  
10 904.5 and there are mixed interpretations, I agree with Board  
11 Member John, and said if you were to read it in one way it would  
12 not even apply. But if the Zoning Administrator says that it  
13 does apply, we are proffering to provide that five feet in order  
14 to assure that there's ample access.

15 Does that answer your question?

16 ZC CHAIRPERSON HOOD: Yes. I understand and you know  
17 what, I just want us to get there but I see what the ZA, and I  
18 know he has a hard job trying to interpret and I believe he has  
19 a hard time trying to understand it and I kind of agree with the  
20 Chairman. I'm trying to figure out how we're trying to get there  
21 and I understand what Board Member John is saying. But again,  
22 for me, where I'm stuck is this non-compliant zoning and when  
23 that term is normally used, it's used because there's a  
24 grandfathering of something and in this case I don't think there's  
25 a grandfathering. But anyway, that's a moot point and either

1 way, Mr. Chairman, I'll just leave it at that. I'm not going  
2 to muddy the waters anymore. I know this is the last case of  
3 the day, but anyway I'll just leave it at that. I got to think  
4 too much.

5 CHAIRPERSON HILL: Yes. I don't know, and we may want  
6 to talk to legal just to clarify our thoughts, but I'll leave  
7 that until I get through the hearing. Let's see.

8 Mr. Young, is there anyone who wishes to speak?

9 MR. YOUNG: Yes. We have one witness signed up.

10 CHAIRPERSON HILL: Okay. Could you please tell me the  
11 person's name?

12 MR. YOUNG: Emily Price.

13 CHAIRPERSON HILL: Okay. Ms. Price, can you hear me?

14 MS. PRICE: I can.

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

17 MS. PRICE: Sure. My name is Emily Price. I am a  
18 resident of 6801.

19 CHAIRPERSON HILL: Okay. Well, Ms. Price, thanks for  
20 joining us. Thanks for hanging out here until the end. If you  
21 want to go ahead, you'll have three minutes to give your testimony  
22 and you can begin whenever you like.

23 MS. PRICE: Wonderful. Thank you. Good afternoon,  
24 Board Members. As I said my name is Emily Price and I have been  
25 a 21 year resident of the District of Columbia and 15 years in

1 the home that I'm in right now which is directly behind the  
2 proposed project.

3 I'm here today to oppose two of the three special  
4 exceptions requested. I urge the Board to deny the request for  
5 special exception to the development standards and the minimum  
6 vehicle parking requirements.

7 I would like to thank Ms. Moldenhauer as she has spent  
8 quite a bit of time working with myself and the neighbors on a  
9 Construction Management Agreement. I have been her primary  
10 contact, however within our immediate (audio interference)  
11 residents and to my knowledge only one has signed an agreement  
12 of the Construction Management Agreement.

13 The unit lot of the proposed development as you may  
14 have seen on the map does not have a vehicular through alley and  
15 therefore all of the neighbors that have properties between 10th  
16 and 11th on H, excuse me, on 10th and 11th between H and I and  
17 on I Street between 10th and 11th all share backyard properties  
18 that would -- those which that do abut up to the project, most  
19 of whom have opposed this project.

20 Regarding the special exception to development  
21 standards, I remind the Board of the 2004 adopted H Street  
22 Neighborhood Development Plan for the 1.5 miles of the H Street  
23 neighborhood and challenge the Applicant's claim that the  
24 exceptions are in harmony with the purpose and intent of the  
25 zoning regulations is incorrect. The NC-16 zone, or the shops

1 as it's referred to in the development plan, is designated as a  
2 retail zone with recommendations for development of mixed use  
3 housing. The shops zone where this project is located recommended  
4 100 units of housing and to date 419 have been created.  
5 Additionally, there is a 200 unit proposed development one block  
6 away from this project at the AutoZone location. If you add the  
7 200 units from the AutoZone to the 76 units from this application,  
8 the shop zone or retail zone will rise to 695 units of housing.  
9 This is far beyond the recommendation of 100 units.

10 The shop zone is intended for retail development and  
11 this project will reduce retail, not increase it. It is not  
12 harmonious with the purpose and intent of the zoning regulations  
13 and maps and it will not substantially advance the stated purposes  
14 of the NC zones as required for special exception outlined in the  
15 regulation subtitles.

16 The proposed project will combine nine lots  
17 representing six businesses into one 15,538 square foot building,  
18 far more than the 6,000 square foot limitation outlined to the  
19 subtitles. As a neighbor I would lose -- I have lost a  
20 restaurant, an ice cream shop, a barber shop, a hair supply store,  
21 and a clothing store, all directly behind my house. I will only  
22 potentially gain from this project two new businesses. Those  
23 businesses were only after a request from the ANC and the  
24 neighbors to include retail which originally was not agreeable  
25 by the Applicant.

1           Secondly, I oppose the minimum vehicle parking  
2 requirement. The required parking for a property this size is  
3 25. Because of the access to public transport (audio  
4 interference), this drops to 13 spots and the Applicant is  
5 requesting an additional exception down to eight. Two of the  
6 eight spots are slotted as electric charging stations and one to  
7 two must be ADA parking, handicapped parking, leaving only four  
8 to five parking locations for tenants, visitors delivery services  
9 and building service workers of a 76 unit building.

10           This is woefully inadequate given the limitations of H  
11 Street parking. The Applicant claims they do not provide  
12 additional parking; however, if the plans were revised to a  
13 smaller footprint, parking could be absorbed. The plans as  
14 submitted do not meet the regulatory requirements as they will  
15 adversely affect the adjacent and nearby residents.

16           I realize my time is up. I do want to thank you for  
17 the opportunity to testify and I'm happy to answer any questions.

18           CHAIRPERSON HILL: Okay. Thanks, Ms. Price.

19           Does the Board have any questions of the witness?

20           VICE CHAIR JOHN: No, Mr. Chairman.

21           CHAIRPERSON HILL: Chairman Hood?

22           ZC CHAIRPERSON HOOD: Yes, Ms. Price. Thank you for  
23 your testimony. Did you work along with your ANC as well?

24           MS. PRICE: I did. I attended two of the three ANC  
25 meetings and as a result the original motion to approve this

1 project was actually tabled, hence the reason we pushed back the  
2 original hearing date and that was upon the Applicant's agreement  
3 to restrict gas usage to only the elevator and to increase retail.  
4 They then came back at the next and said that upon Construction  
5 Management Agreement with residents, they would support this.  
6 However, they did require, well to remove the objection clause.  
7 There was a clause in this that said that if we signed we would  
8 not be allowed to testify today or sue in any form going forward.  
9 They did remove that clause and it was circulated. And I am  
10 aware of only one neighbor who signed the Agreement so I don't  
11 know how that is viewed as from this Board as far as the ANC  
12 support or the neighborhood agreement. But that is sort of the  
13 accounting of what's happened.

14 ZC CHAIRPERSON HOOD: So the way I read the ANC report,  
15 unless I'm looking at some different report, it says our support  
16 is conditional on the developer not including natural gas in the  
17 building. So that's not a thing I saw that really glared out  
18 because it looks like they voted six zero to zero to support the  
19 request for special exception reliefs. I don't know, maybe, I  
20 don't know.

21 MS. PRICE: Yes, and as it was passed at the hearing  
22 or at the meeting it should have said they would sign if the  
23 Construction Management Agreement is found -- if they complete  
24 the Construction Management Agreement with the neighbors. So I  
25 don't know if they considered that successful because one

1 neighbor signed it and that could be why it's not in there, but  
2 that was certainly part of the motion and it's in the minutes  
3 from the ANC meeting.

4 ZC CHAIRPERSON HOOD: Okay. Well, thank you, Ms. Price.  
5 I appreciate it.

6 MS. PRICE: Uh-huh. Thank you.

7 CHAIRPERSON HILL: Okay. Thanks, Ms. Price. Ms. Price,  
8 I'm just curious. What is it that you personally would like to  
9 see happen?

10 CHAIRPERSON HILL: Well, personally I would like to see  
11 that we do not have another large multi-use building built on H  
12 Street in particularly the zone that's designated as retail. H  
13 Street has already had more than eight large units developed. In  
14 the past ten years they have had more than 1,560 units developed  
15 on H Street and having been a tenant (phonetic) resident that  
16 entire time, I can tell you that the neighborhood is exhausted  
17 by all of the construction and this particular block has six  
18 independent units that is part of the character of the block and  
19 does cater more to retail. This would dramatically change the  
20 footprint and the --

21 CHAIRPERSON HILL: I see. You'd like to see it stay  
22 in those kind of like retail/condo kind of things?

23 MS. PRICE: Correct.

24 CHAIRPERSON HILL: Okay. All right. Okay. Go ahead,  
25 Chairman Hood.

1                   ZC CHAIRPERSON HOOD: Ms. Price, I'm just trying to  
2 reflect back, remembering back. When the H Street overlay and  
3 all that stuff was born into play, did you participate in that -  
4 - were you there? I guess you were there then; right?

5                   MS. PRICE: I was not there in 2004. I came to the  
6 neighborhood in 2007 and prior to that I was up in the Shaw  
7 neighborhood.

8                   ZC CHAIRPERSON HOOD: Okay.

9                   MS. PRICE: But I was -- in my work in the city I had  
10 followed all of the affordable housing redevelopment plans so I  
11 was familiar with what had happened.

12                  ZC CHAIRPERSON HOOD: Okay. Because that was a very  
13 exhaustive process.

14                  MS. PRICE: Yes, it was.

15                  ZC CHAIRPERSON HOOD: Okay.

16                  MS. PRICE: Hence the reason I pushed for  
17 reconsideration as to whether this is compliant with the special  
18 exceptions.

19                  ZC CHAIRPERSON HOOD: Okay. All right. Thank you.  
20 Thank you, Mr. Chairman.

21                  CHAIRPERSON HILL: Okay. Thank you, Chairman Hood.  
22 Okay. Thank you.

23                  Ms. Moldenhauer, do you have any question of the  
24 Applicant, I mean the witness?

25                  MS. MOLDENHAUER: No questions of the witness. I'll

1 answer any questions the Board has though.

2 CHAIRPERSON HILL: Okay. Thank you. All right, Ms.  
3 Price. Thank you so much for taking the time.

4 MS. PRICE: Thank you.

5 CHAIRPERSON HILL: Bye bye. Okay. All right.

6 Does the Board need to or want to talk to legal about  
7 the loading issue? Ms. John? Chairman Hood?

8 ZC CHAIRPERSON HOOD: I (indiscernible) with Ms. John,  
9 but I can go either way on that issue. My issue is more being  
10 consistent and I'm not sure how the Board handles this about what  
11 Ms. Price said the area plan, and I'm more concerned about that  
12 even though that might not be an appropriate report but that's  
13 just where I am. I'll just -- let me hear from others, let me  
14 hear what Ms. John has to say.

15 CHAIRPERSON HILL: Okay, Ms. Moldenhauer. Give me a  
16 second. Ms. John, do you want to talk to legal? I wouldn't  
17 mind. I don't really, I guess --

18 VICE CHAIR JOHN: I mean, if you'd like to take -- have  
19 a short meeting with legal that's fine.

20 CHAIRPERSON HILL: (Indiscernible).

21 VICE CHAIR JOHN: I think Ms. Moldenhauer --

22 CHAIRPERSON HILL: (Indiscernible) Ms. Moldenhauer.

23 VICE CHAIR JOHN: -- has her hand up.

24 CHAIRPERSON HILL: Yes. Give me one second while I  
25 pull up all the stuff I have to read. Ms. Moldenhauer, what is

1 it that you had your hand up for?

2 MS. MOLDENHAUER: I was going to provide a brief closing  
3 and address some of the issues that Ms. Price raised and that  
4 Mr. Hood identified. I don't have to. I can wait until after  
5 you've talked to legal and then conclude at that time if you have  
6 any further questions from legal.

7 CHAIRPERSON HILL: Why don't you go ahead and do it now  
8 because then that will just add to any questions that we may or  
9 may not have.

10 MS. MOLDENHAUER: All right. So Ms. Price is correct.  
11 The exhibit from the ANC does reference the Construction  
12 Management Agreement not restrict the right to protest or hold  
13 the developer accountable. We did, as Ms. Price indicates, revise  
14 that language and that is what we filed in the record for the  
15 Board and is what we had presented back to the neighbors. The  
16 ANC did also indicate that we had to provide good faith efforts  
17 to sign an agreement, that they could not condition their approval  
18 on us entering into an agreement because even if we did make that  
19 change, that they obviously can't always control whether or not  
20 the neighbors would execute it. And we obviously have engaged  
21 in multiple meetings with them and would be open to continuing  
22 that dialogue and discussion as this goes more into the  
23 construction process rather than the entitlement zoning process.

24 In regards to the H Street overlay and guidelines, we  
25 have worked extensively with the Office of Planning as we met

1 with the Office of Planning before we even filed this application  
2 to address and modify a lot of the design requirements to be  
3 consistent with those in the H Street guideline requirements.  
4 Our project architect did discuss how we are bringing the street  
5 guidelines into compliance with the current DDOT sidewalk  
6 requirements as well as providing the connection and the nexus  
7 between the existing facades with the new construction as well  
8 as the setback in order to enhance those retail spaces. And so  
9 we do believe that based on all these iterations as well as  
10 comments from the ANC which have improved this project, as we  
11 showed in that one image, increasing the retail space along the  
12 corner here to a project that is compliant with the H Street  
13 guidelines pursuant to the special exception requirements.

14 I will conclude there and be available for any  
15 questions the Board may have in regards to the special exception  
16 relief for loading following your discussion with legal.

17 CHAIRPERSON HILL: Okay. Great. Thank you. All right.  
18 As Chairperson of the Board of Zoning Adjustment in the District  
19 of Columbia in accordance with 407 of the District of Columbia  
20 Procedure Act, I make a motion that the Board of Zoning Adjustment  
21 hold a closed meeting today on May 3rd, 2023, to seek legal advice  
22 from counsel on case 20880, deliberate and ponder (phonetic) but  
23 not vote on case 20880. Is there a second? Ms. John?

24 VICE CHAIR JOHN: Second.

25 CHAIRPERSON HILL: Mr. Moy, there's been a motion and

1 a second. Would you take a roll call?

2 MR. MOY: Yes. Thank you, sir. When I call your name,  
3 if you'll please respond to a motion made by Chairman Hill for  
4 an emergency closed meeting.

5 Zoning Commission Chair Anthony Hood?

6 ZC CHAIRPERSON HOOD: Yes.

7 MR. MOY: Vice Chair John?

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: Chairman Hill?

10 CHAIRPERSON HILL: Yes.

11 MR. MOY: The Staff records the vote as three to zero  
12 to two with two -- records the vote as three, three to zero to  
13 two on the motion made by Chairman Hill for an emergency closed  
14 meeting. The motion was second by Vice Chair John with no other  
15 Members participating. The motion carries three to zero to two.

16 CHAIRPERSON HILL: Okay. Since this motion is passed  
17 I hereby give notice that the Board of Zoning Adjustment will  
18 recess in this proceeding on 5/3/2023 at 1:54 p.m., to hold a  
19 closed emergency meeting pursuant to the District of Columbia  
20 Administrative Procedure Act. A written copy of this notice will  
21 be posted in the Jerrily R. Kress Memorial Hearing Room at this  
22 time.

23 Okay. You guys, we will come right back as soon we're  
24 done talking with legal. Thank you. Bye bye.

25 (Whereupon, there was a brief recess.)

1                   MR. MOY: Yes, I am.

2                   CHAIRPERSON HILL: Could you call us back in please?

3                   MR. MOY: Yes, sir. After a quick emergency session  
4 the Board has returned to its public hearing session and the time  
5 is entered at 2:12 p.m.

6                   CHAIRPERSON HILL: Okay. All right. I don't have any  
7 further questions for the Applicant. Does the Board have any  
8 further questions for the Applicant or the Office of Planning?  
9 Okay.

10                  Ms. Moldenhauer, is there anything you'd like to add  
11 at the end?

12                  MS. MOLDENHAUER: No. Thank you all of you for your  
13 time today and we believe that we satisfy the special exceptions  
14 and appreciate your time. Thank you.

15                  CHAIRPERSON HILL: Okay. Thank you. Okay. Mr. Young,  
16 can you please close the hearing and the record? Please excuse  
17 everyone.

18                  Okay. Let me go down to what I think a little. So,  
19 going a little bit backwards I think that with, and concerning  
20 with the ANC and their order and the CMA Agreement, I think that  
21 the CMA usually is not something that we get involved in. It's  
22 really something that at times the Board has used as a tool, but  
23 oftentimes it's something where the Applicant and the ANC or  
24 neighbors work together to come up with some kind of an agreement.  
25 It seems as though there has been an agreement that they have

1 come up with that the community is working through to address  
2 certain issues and the ANC seem comfortable enough to sign off  
3 on that order. So I'm comfortable with the CMA the way it is,  
4 but not including as part of the record, I'm sorry, including as  
5 part of the condition because it's not something that we normally  
6 do.

7 The natural gas discussion I think again that's  
8 something that the Applicant and the ANC seems to have worked out  
9 on their own and so I also don't really think actually that is  
10 what's before the Board in terms of anything within the  
11 regulations as far as the use of natural gas. That's not  
12 something definitely is within our purview, but I'm glad to see  
13 that the Applicant seems to be working with the ANC in some  
14 capacity.

15 The item that one of the members of the public in  
16 opposition brought up concerning the NC-16 shops zone. I don't  
17 think that that necessarily applies to what we're speaking to  
18 because this is a mixed use project that does include retail. So  
19 I think that actually does work within the overlay, but the  
20 overlay is not something that we actually have purview under  
21 either. We're here for the special exceptions for the new  
22 construction, the minimum vehicle parking and then a discussion  
23 about the loading access requirements.

24 As far as the special exceptions for the new  
25 construction, I'm comfortable with what the Applicant has put

1 forward in terms of meeting those requirements. I also am  
2 comfortable with the eight parking spaces proposed due to the  
3 fact that they are so close to the transit that they are on H  
4 Street, including the streetcar that's right there and the four  
5 less spaces that they would be required to provide, I am  
6 comfortable removing those four spaces due to the fact that  
7 they're so close to the public transit that they are.

8 The loading requirements, I think that if they were to  
9 proffer the easement that they have done for the five foot that  
10 would in essence create a fifteen foot alley, I could get behind  
11 that as a condition. In addition to that, what I would be  
12 proposing because we had been talking about this for some time  
13 looking at the regulations, I would propose that it's relief from  
14 Subtitle C 909.2 from the loading layout requirements of C 905  
15 and that I think would then be something that the Board would  
16 have the ability to opine upon and also then provide the Applicant  
17 with what it needs when speaking with the Zoning Administrator.

18 So that is where I am, and if I missed anything, please  
19 do let me know. And I'm going to ask Ms. John to help with  
20 anything I might have missed.

21 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree  
22 substantially with what you have said except I would just add  
23 with respect to compliance with the H Street corridor  
24 requirements that the regulations speak to a mixed use type of a  
25 development. So the Applicant, and that's under Subtitle H 900,

1 so with respect to what the witness said, I believe the Applicant  
2 is in compliance because it's a mixed use development and it's  
3 not a requirement to provide only retail use. And I think that  
4 meeting with the ANC and working with the ANC, I think that the  
5 Applicant has provided acceptable retail space. And in terms of  
6 the loading berth requirements, I'm willing to accept the  
7 suggestion because, in essence, by providing the five foot  
8 permanent easement which is recorded, the Applicant -- there  
9 would then be a fifteen foot wide alley so I'm willing to go  
10 along with the Applicant's proffer. And that's all I have, Mr.  
11 Chairman.

12                   Oh, I'll give great weight to the Office of Planning's  
13 report as well as the ANC's report. Thank you.

14                   CHAIRPERSON HILL: Thank you. Chairman Hood.

15                   ZC CHAIRPERSON HOOD: Thank you to both my colleagues.  
16 Some of the things that you mentioned, Mr. Chairman, your  
17 statement that it's not within the purview of the BZA which is  
18 actually almost like me being a light switch because I'm off and  
19 on. Unlike really much of the stuff that we do on the Zoning  
20 Commission, sometimes it's always still kind of difficult when  
21 you come to the BZA turning stuff off that you're not supposed  
22 to be dealing with when I'm in this realm and stuff that I deal  
23 with in that realm. That's no excuse. That's real life  
24 situations.

25                   But I want to say I agree with both my colleagues. I

1 don't want to muddy the waters; however, I agree with everything  
2 you say and especially agree with what you say about the natural  
3 gas and also Vice Chair, what she mentioned about the use, the  
4 retail uses and the residential uses. But I think that Ms. Price  
5 is I believe her name, to me it's all still a matter of  
6 interpretation and I appreciate the work that she has done as  
7 well in following, living in Shaw and following what's going on  
8 in H Street. So, Mr. Chairman, I think the record has been  
9 formulated and also the process of giving the extra feet that's  
10 needed for loading in the alleyway I think is a good fix.

11 So I'm going to be supporting this application.  
12 There's a lot of different pieces going in different directions  
13 but I'll be supporting this application as stated. So thank you,  
14 Mr. Chairman.

15 CHAIRPERSON HILL: Thank you, Chairman Hill. All  
16 right. I'm going to make a motion to approve Application No.  
17 20880 pursuant to Subtitle X 901.2 for special exceptions under  
18 Subtitle H 910.1 to allow new construction along with at least  
19 6,000 square feet of land area under Subtitle C 703 from the  
20 minimum vehicular parking requirements under Subtitle C 701.5,  
21 13 parking spaces required, eight spaces provided, and under  
22 Subtitle C 909.2 from the layout requirements of C 905 and that  
23 in the -- there will be an easement recorded to provide an  
24 additional five feet to provide that 15 foot wide alley, and I  
25 ask for a second. Ms. John?

1                   ZC CHAIRPERSON HOOD: I'll second it.

2                   CHAIRPERSON HILL: Oh, I asked for a second. Chairman  
3 Hood. Very good. Chairman Hood, a second. And again, the  
4 condition was that they provide five feet easement to provide the  
5 fifteen foot alley and that's been seconded. The motion is made.  
6 Mr. Moy, can you take a roll call?

7                   MR. MOY: When I call your name, if you'll please  
8 respond to the motion made by Chairman Hill to approve the  
9 application for the relief that's now being requested along with  
10 the condition as cited by the Chair and the zoning relief that  
11 he had cited in his motion. Motion second by Zoning Commission  
12 Chair Anthony Hood.

13                   Vice Chair John?

14                   VICE CHAIR JOHN: Yes.

15                   MR. MOY: Zoning Commission Chair Hood?

16                   ZC CHAIRPERSON HOOD: Yes.

17                   MR. MOY: Chairman Hill?

18                   CHAIRPERSON HILL: Yes.

19                   MR. MOY: We have no other Members participating in  
20 this case. Staff would record the vote as three to zero to two.  
21 And again, this is on the motion made by Chairman Hill with the  
22 one condition as cited, was second by Zoning Commission Chair  
23 Anthony Hood who is in support of the motion to approve as well  
24 as Vice Chair John and of course, Chairman Hill. Motion carries  
25 on the vote of three to zero to two.

1 CHAIRPERSON HILL: Okay. All right. Thanks everybody.  
2 It was a longer day than I had anticipated, but I hope you all  
3 have a good one.

4 Chairman Hood, we'll see you next time.

5 Ms. John, we'll see you when we see you.

6 VICE CHAIR JOHN: Thank you. Thank you, Chairman.

7 CHAIRPERSON HILL: Bye.

8 ZC CHAIRPERSON HOOD: Bye bye. Take care.

9 VICE CHAIR JOHN: Bye.

10 (Whereupon the above-entitled hearing was adjourned.)

11

12

13 C E R T I F I C A T I O N

14

15 This is to certify that the foregoing transcript

16

17 In the matter of: Public Hearing

18

19 Before: BZA

20

21 Date: 05-03-2023

22

23 Place: Teleconference

24

25 was duly recorded and accurately transcribed under my

direction; further, that said transcript is a true and accurate record of the proceedings.

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JULIE SOUZA