

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 24, 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, Board Member
- ANTHONY J. HOOD, Zoning Commission Chairperson
- ROBERT MILLER, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF COUNSEL:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL DIVISION:

- MARY NAGELHOUT, ESQUIRE

The transcript constitutes the minutes from the Regular Public Hearing held on May 24, 2023.

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

2 (9:30 a.m.)

3 CHAIRMAN HILLCHAIRPERSON HILL: Good morning, ladies
4 and gentlemen and the Board of Zoning Adjustment. Today's date
5 is 05/24/2023. This public meeting and hearing will please come
6 to order. My name is Fred Hill, Chairperson of the District of
7 Columbia Board of Zoning Adjustment. Joining me today is Lorna
8 John, Vice Chair, Board Member Chrishaun Smith, and Zoning
9 Commissioners Rob Miller and Anthony Hood.

10 Today's meeting and hearing agenda are available on the
11 Office of Zoning's website. Please be advised that this
12 proceeding is being recorded by a court reporter and is also
13 webcast live via Webex and YouTube live. The video of the webcast
14 will be available on the Office of Zoning's website after today's
15 hearing. Accordingly, everyone who is listening on Webex or by
16 telephone will be muted during the hearing. Also please be
17 advised that we do not take any public testimony at our decision
18 meeting sessions. If you're experiencing difficulty accessing
19 Webex, please call our hotline number at 202-727-5471. Once
20 again, 202-727-5471. And it's also listed on your screen to call
21 in with any kind of help you may need.

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

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

6 In today's hearing session, everyone who is listening
7 on Webex or by telephone will be muted during the hearing and
8 only persons who have planned to testify or have signed up to
9 testify will be muted at the appropriate time. Please state your
10 name and home address before providing oral testimony or your
11 presentation. Oral presentations should be limited to a summary
12 of your most important points. When you're finished speaking,
13 please mute your audio so that your microphone is no longer
14 picking up sound or background noise. All persons planning to
15 testify either in favor or in opposition should have signed up
16 in advance. They'll be called by name to testify. If this is
17 an appeal, only parties are allowed to testify. By signing up
18 to testify, all participants completed the oath or affirmation
19 required by Subtitle Y 408.7.

20 Requests to enter evidence at the time of virtual
21 online hearing, such as testimony or additional supporting
22 documents, other than live video, which may not be presented as
23 part of the testimony, may be allowed pursuant to Subtitle Y
24 103.13, provided that the person making the request to enter an
25 exhibit explain, A, how the proposed exhibit is relevant; B, the

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

7 At the conclusion of each case, an 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 and 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
16 additional specific information to complete the record. The
17 Board and staff will specify at the end of the hearing exactly
18 what is expected and the date when persons must submit the
19 evidence to the Office of Zoning. No other information shall be
20 accepted by the Board.

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

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

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

7 MR. MOY: Good morning, Mr. Chairman and members of the
8 Board. Well, I do have a quick announcement regarding today's
9 docket. First, Application No. 20542 of Hossein Barekatin and
10 Fardin Foroujan has been withdrawn by the applicant. Second,
11 Case Application No. 20894 of Cornell Stone was granted a
12 continuance and rescheduled to September 27, 2023.

13 Other than that, Mr. Chairman, there are some
14 preliminary matters, but I think it's more efficient that I bring
15 that to your attention when I call the case.

16 CHAIRPERSON HILL: Okay. Oh -- okay. Okay. So would
17 you like to call 20643? And I know that Vice Chair John is not
18 on this one.

19 And Mr. Smith, are you with us?

20 COMMISSIONER SMITH: I'm with you. I'm working on my
21 video right now, but I'm here.

22 CHAIRPERSON HILL: Okay. That's fine, as long as you
23 can hear us and we can hear you.

24 COMMISSIONER SMITH: Uh-huh.

25 VICE CHAIR JOHN: Thank you, Mr. Chairman, I'll --

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1 CHAIRPERSON HILL: Thank you, Vice Chair John. All
2 right. Vice Chair John is off of this one.

3 Mr. Moy, you want to go ahead and call this application
4 and what kind of seems to be before us.

5 MR. MOY: Yes, sir, thank you. The Board is doing its
6 meeting session and -- for two cases. The first one is
7 Application No. 20643 of the Maret School, and if I might, Mr.
8 Chairman, I'd like to read the caption of the underlying case.
9 This --

10 CHAIRPERSON HILL: That's fine.

11 MR. MOY: -- was a -- was or is a self-certified
12 application pursuant to Subtitle X, Section 901.2 for special
13 exceptions under Subtitle U, Section 203.1(m) and Subtitle X,
14 Section 104.1, and finally, also from the parking location
15 restrictions of Subtitle C, Section 710.2. Property's located
16 in the R-1B zone at part of 5901 Utah Avenue, N.W., Square 2319,
17 Lot 832. As the Board is aware, the decision and the order was
18 published on April 12th, 2023, and subsequent to the issuing of
19 the order, the Applicant had submitted a motion to reopen the
20 record and along with that motion is a waiver of Subtitle Y,
21 Section 700.9. And other than that from me, Mr. Chairman, I
22 think that's it with the understanding that participating on this
23 motion is yourself, Chairman Hill, Mr. Smith, and Zoning
24 Commission Chair, Anthony Hood. Thank you.

25 CHAIRPERSON HILL: Okay, great. All right. So let's

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1 see. So I think I know everyone has read everything, and this
2 is my proposal: I would like to have an opportunity to look at
3 everything concerning this application and come back when
4 Chairman Hood is with us and actually decide on some of the
5 motions. The one motion that is before us right now is whether
6 or not to grant a waiver per Y 700.9 to allow Maret to file what
7 I think is a response to the parties in opposition's motion for
8 reconsideration.

9 So if we did do this, then I would say that we'd go
10 ahead and schedule a decision meeting for when I think Chairman
11 Hood is back before us on June 14th, and then we could go ahead
12 and do the different issues that are before us still in terms of
13 the motions. And then I believe, if I am correct, that if we
14 did -- and this is where I guess legal can help me. If we did
15 allow this into the record per the waiver that the Applicant is
16 asking us, then the parties in opposition I think would have an
17 opportunity to respond to whatever is put into the record, but
18 I'm a little unclear on that, but regardless, I would like to
19 have everything into the record and then decide what we think
20 about the motions on June 14th. As we all are aware, this is
21 currently under appeal at the Court of Appeals, so -- this order
22 that is. And I'm going to ask, I think it's Ms. Nagelhout, did
23 I miss anything, does that sound relatively correct?

24 MS. NAGELHOUT: You did not miss anything. It does
25 sound correct and the parties will have seven days to respond to

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1 the Applicant's motion to reopen the record.

2 CHAIRPERSON HILL: Okay. So I will go ahead and make
3 a motion then to -- and does anybody have any comment before I
4 make a motion? Okay.

5 I'm going to go ahead and make a motion then to approve
6 the waiver request under Y 700.9 to allow Maret to file what I
7 believe again is a response to the friends' opposition -- I'm
8 sorry, the parties in opposition's motion for reconsideration,
9 and ask for a second, Chairman Hood?

10 ZC CHAIRMAN HOOD: Thank you, Mr. Chairman. I'll second
11 that motion.

12 CHAIRPERSON HILL: Motion's been made and seconded, Mr.
13 Moy, if you could take a roll call?

14 MR. MOY: Thank you, Mr. Chairman. When I call your
15 name, if you'll please respond to the motion made by Chairman
16 Hill to grant the motion as cited by the Chair. The motion to
17 grant was second by Zoning Commission Chair Anthony Hood.

18 Mr. Smith?

19 COMMISSIONER SMITH: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Zoning Commission Chair Anthony Hood?

23 ZC CHAIRMAN HOOD: Yes.

24 MR. MOY: We have another -- no other members
25 participating. Staff would record the vote as three to zero to

1 two. This is on the motion of Chairman Hill to grant. The motion
2 to grant was second by Zoning Commissioner Anthony Hood. Also
3 in support of the motion to grant is Mr. Smith. No others
4 participating. Motion carried, sir, on the vote of three to zero
5 to two.

6 CHAIRPERSON HILL: Thank you.

7 Chairman Hood, is that it for you today?

8 ZC CHAIRMAN HOOD: -- for me. Thank you. Y'all have
9 a great day.

10 CHAIRPERSON HILL: Enjoy your day.

11 ZC CHAIRMAN HOOD: Thank you. You too.

12 (Pause.)

13 CHAIRPERSON HILL: Okay. Vice Chair Miller, nice to
14 see you.

15 ZC VICE CHAIR MILLER: Good morning.

16 CHAIRPERSON HILL: I'm glad to see it's sunny up there
17 in the north.

18 ZC VICE CHAIR MILLER: With a little Canadian wildfire
19 haze.

20 CHAIRPERSON HILL: All right. Vice Chair John, nice
21 to see you also.

22 Mr. Moy, if you could call our next meeting case please?

23 And Mr. Young, you don't need to allow anybody in yet
24 on this one. We'll see what happens first please.

25 Mr. Moy, if you'd call the case.

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1 MR. MOY: Yes, sir. Thank you. So the second and last
2 case in the Board's meeting session this morning is Application
3 No. 17944B of the Lab School of Washington. And I'm going to
4 read into the record, sir, the Applicant's request for relief,
5 and it is pursuant to Subtitle Y, Section 703 for a modification
6 of consequence to change a condition adopted in Order No. 17944A
7 to extend for an additional 15 years to September 1st 2038, if
8 my math is correct. The property's located in the R-1B zone at
9 4470 Q Street, N.W., Square 1363, Lot 980.

10 And other than that, Mr. Chairman, the Board is aware
11 that this was last before the Board last week, May 17th, and at
12 that time the Board continued its deliberation to today, May the
13 24th. Thank you, sir.

14 CHAIRPERSON HILL: Okay, great. Thank you, everybody.
15 So I know that we talked about this last week and what seemed to
16 be consensus of the Board was that this was not a modification
17 of consequence, but more perhaps either a modification of
18 significance or a new application. And upon further reflection
19 from my standpoint, I would think that it is something that we
20 could take up as a modification of significance, which means that
21 we would be able to have a hearing in which to ask the Applicant
22 questions, which is something that we can't do at a meeting
23 session and -- or that we don't have as much of an opportunity,
24 and the public would be given notice, and then the ANC would be
25 able to give us feedback. And that is what I'm proposing. I

1 mean, I don't know, I know that we do have the Applicant's agent
2 as well as the ANC commissioner with us. I guess I'm just not
3 sure whether we need to take up their time in order to bring them
4 on because now the -- if we were to agree that it's a modification
5 of significance, then we could set a hearing date for this and
6 then there would be an opportunity for, again, the Applicant to
7 present to the ANC, or the ANC would have an opportunity to give
8 feedback to the Board and we would have a public hearing.

9 Does anyone have any comments or thoughts on what I've
10 said and/or if we need to hear -- and/or if you need to hear from
11 anybody? I'll start with Vice Chair John, if you don't mind.

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

13 As to your last question, I don't think we need to hear
14 from anyone. As you know, any member of the Board may request
15 that a matter be placed -- heard as a matter of significance, so
16 I would -- my preference would be that we should not have any
17 questions at the moment, but set the matter down for a hearing
18 maybe in another couple of weeks or so.

19 CHAIRPERSON HILL: Yeah. As soon as -- I mean, Mr. Moy
20 I guess could tell us when we are able to do it, but I agree with
21 you, Vice Chair John.

22 VICE CHAIR JOHN: Thank you.

23 CHAIRMAN SMITH: Mr. Smith?

24 COMMISSIONER SMITH: I don't have anything to add. I
25 by and large agree with your approach on this particular case.

1 CHAIRPERSON HILL: Thank you.

2 Commissioner Miller?

3 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I
4 agree that this -- the Applicant should file a modification of
5 significance so that we can have a public hearing on this
6 essentially renewal of a special exception that's been in effect
7 for a while without any apparent adverse impacts and apparently
8 compliance with the conditions of the BZA's previous order. I
9 do note that the Applicant yesterday submitted a letter. I don't
10 have the exhibit number, but the Applicant's representative asked
11 that if the Commission -- if the BZA were inclined to request
12 that this be a modification, that the Applicant file a new
13 modification of significance so that we can have a public hearing.
14 The Applicant requested that we proceed with a modification of
15 consequence today for one year, for a one-year renewal, so in
16 order to prevent the current special exception from expiring
17 before the modification of significance is heard and decided.
18 They said a one year -- the one year would give them time to file
19 the modification of significance, for us to schedule the public
20 hearing, and meanwhile the current special exception with all of
21 its other conditions, other than the term limit would be in effect
22 and there wouldn't be any issue about that.

23 So I would be -- I'm in favor of the Applicant filing
24 a modification of significance so there could be a public hearing
25 to air whatever legally relevant issues the public may have,

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1 including the ANC, although I would note that the ANC's concerns
2 are really not the subject of this Board's jurisdiction. Their
3 concerns about the -- that the school be available for public
4 school location or -- either co-location or instead of the lab
5 school at some point, but that's a matter that the Mayor and
6 Council have decided there's a 15-year lease that goes to 2038,
7 which is what the Applicant wanted this renewal to go to, to
8 conform with that. So bottom line, I'm in favor of the
9 modification of significance, the Applicant filing a modification
10 of significance so there can be a public hearing, although the
11 issues really should be focused on the adverse impacts of this
12 current use and compliance with the conditions that are in effect
13 now with that special exception.

14 But I would be supportive of us proceeding today with
15 a modification of consequence for a one-year renewal, so that the
16 special -- current special exception does not expire prior to the
17 time that we can schedule for the -- that the Applicant could
18 file a modification of significance and that we could have a
19 hearing and make a decision.

20 So that's -- if there's a -- if we can do that -- if
21 the special -- if there's no issue with the special exception,
22 if we can get it all done before it expiring, which I think is
23 happening in August. I think that's the end of the term, and I
24 don't know if we can make -- if everything could be done before
25 our August recess in terms of the Applicant filing a new

1 modification of significance, us having a public hearing, and us
2 making a decision, and an order being issued. So I would be in
3 favor of a modification of consequence for a one-year renewal,
4 so that there isn't any time concerns with the current special
5 exception being in effect while we proceed with the modification
6 of a significance public hearing.

7 CHAIRPERSON HILL: Okay. All right. Thanks, Vice
8 Chair Miller.

9 I don't see the letter. Do you guys see the letter?
10 Am I -- is it not coming up? Is it coming up in your -- if it
11 was yesterday, I don't know -- I mean, I appreciate it, Vice
12 Chair Miller, that you got that. I don't -- let me see where -
13 -

14 VICE CHAIR JOHN: Mr. Chairman, it might not be in the
15 record if it's not timely. But I guess I would ask Mr. Moy while
16 we're trying to find the letter, if the case can be heard before
17 the August recess assuming a new modification of significance
18 application is filed?

19 ZC VICE CHAIR MILLER: Heard and decided and order
20 issued.

21 VICE CHAIR JOHN: I don't know if the order has to be
22 issued.

23 ZC VICE CHAIR MILLER: Okay. I don't know.

24 VICE CHAIR JOHN: I believe the decision -- the Board
25 has to make a decision.

1 CHAIRPERSON HILL: What I understood -- by the way,
2 Vice Chair Miller, I think everything that you said makes perfect
3 sense and we can see where we are with everything, and I think
4 that Vice Chair John and my fellow Board members are happy to -
5 - and maybe we have the little emergency meeting now and talk to
6 legal because this is something new. But what I understood is
7 that while an application is pending, DOB, Department of
8 Buildings, doesn't do anything with their current certificate of
9 occupancy or relief, and so that's what I understood. But if
10 it's more tidy to do it one way or the other, maybe we can just
11 -- do you all want to talk to legal real quick and we can do the
12 little thing?

13 VICE CHAIR JOHN: I think maybe we could hear from
14 legal as to whether the order has to be issued in order for the
15 Applicant to continue to operate.

16 CHAIRPERSON HILL: Okay.

17 VICE CHAIR JOHN: I don't think so. I mean, I don't
18 recall that as our practice.

19 CHAIRPERSON HILL: If -- let me just make one statement
20 again. If -- like I haven't seen the letter, so I would need at
21 least a minute to kind of like figure out about the one year, so
22 even if we did do this, I'd have to like think about it and do
23 it at the end of the day or think about it and do it next week.

24 VICE CHAIR JOHN: That's fine.

25 CHAIRPERSON HILL: And do it next week, because I still

1 haven't even seen the letter, so. But I guess, Mr. Moy, when
2 could you -- if the Board were interested in getting this back
3 before us as quickly as possible -- and I even appreciate what
4 Vice Chair Miller said again about rushing/not rushing, meaning
5 this issue, that how could they get back, like when could they
6 get back before us in terms of the regulations as a modification
7 of significance?

8 MR. MOY: All right, Mr. Chairman. There's a couple
9 questions here. The first one I want to turn to that was raised
10 by Vice Chair Miller, that letter is in the case record under
11 Exhibit 16, under Exhibit 16 and 16A, number one.

12 Number two, the public notice requirements for a
13 modification of significance is similar to what we follow for
14 regular applications, so that would take us out -- let's say if
15 the Applicant were to file today or tomorrow, that would take me
16 'til August, and of course there's an August recess unless the
17 Board wants to work. So I would suggest that we could tee this
18 up at the Board's first hearing in September, which would be
19 September the -- September the 13th, okay?

20 So I believe those were the two questions you were
21 asking me.

22 CHAIRPERSON HILL: Okay. I'm asking -- I don't want
23 to -- I want to be able to have a discussion. So if y'all don't
24 mind, can we just talk to legal real quick in the other -- in
25 the emergency closed meeting? Let me look for my paperwork

1 please.

2 (Pause.)

3 CHAIRPERSON HILL: Okay. As Chairperson of the Board
4 of Zoning Adjustment District of Columbia, in accordance with
5 Section 407 of the District of Columbia Administrative Procedures
6 Act, I move that the Board of Zoning Adjustment hold a closed
7 emergency meeting on 05/24/2023, today's date, for the purposes
8 of seeking legal advice on counsel and/or deliberating upon, but
9 not vote on, Case No. 17944B as in boy. Is there a second, Vice
10 Chair John?

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: Mr. Secretary, could you take a roll
13 call please.

14 MR. MOY: When I call your name, if you'll please
15 respond to the motion made by Chairman Hill to conduct a closed
16 emergency meeting and the motion was second by Vice Chair John.

17 Mr. Smith?

18 COMMISSIONER SMITH: Yes.

19 MR. MOY: Vice Chair -- Zoning Commission Vice Chair
20 Mr. Miller?

21 ZC VICE CHAIR MILLER: Yes.

22 MR. MOY: Vice Chair John?

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Chairman Hill?

25 CHAIRPERSON HILL: Yes.

1 MR. MOY: Staff would record the vote as four to zero
2 to one. And this is on the motion by Chairman Hill to conduct
3 an emergency closed meeting. The motion was second by Vice Chair
4 John also voting to close -- for a closed meeting, and also in
5 support of that motion or voting with that motion is Mr. Smith
6 and Zoning Commission Vice Chair Miller, and of course Vice Chair
7 John and Chairman Hill. Motion carries, sir.

8 CHAIRPERSON HILL: Thank you. Okay, guys, I'll see you
9 in the other meeting room. Thank you.

10 (Whereupon, there was a brief recess.)

11 CHAIRPERSON HILL: Okay. Paul, can you hear me?

12 MR. YOUNG: Yes, I can.

13 CHAIRPERSON HILL: I think you need to let Commissioner
14 Miller back in.

15 (Pause.)

16 CHAIRPERSON HILL: Okay. All right. I got everybody.
17 Mr. Moy, can you call us back?

18 MR. MOY: After a quick emergency closed meeting, the
19 Board has returned to its meeting session and the time now is at
20 or about 10:34 a.m.

21 CHAIRPERSON HILL: Okay. So what it appears to be, and
22 I'll kind of summarize, that we had gone -- and we were talking
23 about how the Applicant -- this is an application of a
24 modification of significance and not a modification of
25 consequence, and so that's what at least I know a few Board

1 members feel, and it only takes one in order for us to move it
2 from consequence -- sorry, consequence to significance or
3 significance to a hearing. I mean, a full, a new application,
4 but it's neither. So there seems to be enough interest in
5 treating this -- and I don't disagree -- interest as a
6 modification of significance. So I think that we are going to
7 need to do it that way and then we are going to need to give the
8 adequate and proper notice, and therefore, it wouldn't happen
9 until after our August recess. I want to do it as quickly as
10 possible.

11 While this is pending, as I understand it, the normal
12 way that the Department of Buildings has looked at this is that
13 the status quo remains the same while an application is pending
14 before the Board, so nothing will happen with this Applicant
15 concerning this -- the way they've been running the school until
16 this hearing is held. And the reason also why we're doing that
17 is we haven't changed -- you know, this is a new -- we've never
18 done this before that at this, you know, moment the modification
19 of consequence has been changed from 15 years to one year, because
20 of X. Right? I mean, it's not something that we've done before,
21 and it would be something that we would be outside of our norm
22 to do, and so the Board is not comfortable doing it that way.
23 And so we are going to ask legal to look into how in the future,
24 if there's a way that, I guess, you know, time limits can be
25 changed. That might be something that even gets taken up with

1 | the Zoning Commission, under a different mechanism other than -
2 | - or even last minute time extensions.

3 | So that being the case, Mr. Moy -- and I'm sure the
4 | Applicant's watching as well as the commissioner from the ANC,
5 | and I do appreciate them being available. However, in our meeting
6 | sessions, we don't take public testimony. It has been the
7 | practice of the Board that at times asking questions of the
8 | applicant or different party status people, such as the ANC, if
9 | the Board had, you know, real pressing questions or issues asking
10 | them in a meeting session, but I'm hesitant to ask questions in
11 | a meeting session because it again goes outside of our norms,
12 | which is that the meeting session is the meeting session and the
13 | hearing session is the hearing session.

14 | So that all being the case, unless somebody has some
15 | other things to say, I would go -- and I don't even know if it's
16 | -- it's not even necessarily -- it's something that I could have
17 | done I guess on my own on the side beforehand, meaning it's
18 | something that's not a vote. We're going to go ahead and move
19 | this to -- I guess I'll take a vote. Why not? I'll go ahead
20 | and make a motion to move this to a modification of significance
21 | and ask for a second, Ms. John?

22 | VICE CHAIR JOHN: Second.

23 | CHAIRPERSON HILL: Okay. Mr. Moy, you want to just
24 | take a vote on that?

25 | MR. MOY: Yes, sir. When I call your name, if you'll

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1 | please respond to the motion made by Chairman Hill to -- on the
2 | Board's motion to reschedule this meeting session application to
3 | a public -- to a -- to move it from a modification of significance
4 | to a modification of significance and --

5 | CHAIRPERSON HILL: Modification of consequence to a
6 | modification of significance.

7 | MR. MOY: Yes, thank you. And this was second by Vice
8 | Chair John.

9 | Zoning Commissioner Rob Miller?

10 | ZC VICE CHAIR MILLER: Yes.

11 | MR. MOY: Mr. Smith?

12 | COMMISSIONER SMITH: Yes.

13 | MR. MOY: Vice Chair John?

14 | VICE CHAIR JOHN: Yes.

15 | MR. MOY: Chairman Hill?

16 | CHAIRPERSON HILL: Yes.

17 | MR. MOY: Staff would record the vote as four to zero
18 | to one. This is on the motion made by Chairman Hill to set this
19 | as a modification of significance. The motion was second by Vice
20 | Chair John who is in support of the motion. Also in support of
21 | the motion is Zoning Commissioner Rob Miller, Mr. Smith, of course
22 | Vice Chair John and Chairman Hill. We have no other Board members
23 | participating. The motion carries, sir, four to zero to one.

24 | CHAIRPERSON HILL: Great. So Mr. Moy, the soonest we
25 | can get this here is September 13th; is that correct?

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

2 CHAIRPERSON HILL: Okay. All right. So we're going
3 to be back here September 13th. And Chairman Miller, why don't
4 you join us for that one? Why not? You're already to go.

5 MR. MOY: I would, if the Board desires, if there are
6 any -- if there were any subsequent filings into the record, Mr.
7 Chairman, I'd suggest that the Applicant and parties I suppose
8 would make their filings into the record at least two weeks prior
9 to September 13th, which would be August the -- August the 30th.

10 CHAIRPERSON HILL: Okay. Let's see. Yeah, I mean, I'm
11 sure they're going to go around now and meet with the ANC and
12 have a hearing, and so we'd be hearing from the ANC and any other
13 parties that haven't been notified yet in terms of the 200 feet,
14 et cetera. Correct, Mr. Moy?

15 MR. MOY: Yes, sir. And this --

16 CHAIRPERSON HILL: Okay.

17 MR. MOY: -- once again would be a public hearing.

18 CHAIRPERSON HILL: Okay. Do you guys want to -- I mean
19 there's just a postponement issue and do we need a break? Do
20 you want to take -- let's do the postponement issue and then see
21 where we are, okay?

22 Mr. Moy, if you can take our next case, call it when
23 you're ready.

24 MR. MOY: Okay. The Board is now in its public hearing
25 session. The first case is Application No. 20897 of 3905 Kansas,

1 LLC. And this is an amended self-certified application pursuant
2 to Subtitle X, Section 901.2 for the following special exception
3 request: Subtitle U, Section 320.2 for the conversion of a
4 residential building to an apartment house, three units, Subtitle
5 C, Section 703.2 from minimum vehicle parking requirements,
6 Subtitle -- excuse me, Subtitle C, Section 701, Subtitle E,
7 Section 206.4, Subtitle E, Section 5207 from the rooftop and
8 upper floor requirements of Subtitle E, Section 206.1, and
9 Subtitle E, Section 5201 from the side yard requirements,
10 Subtitle E, Section 207.3. And this -- the property is located
11 in the RF-1 zone at 3905 Kansas Avenue, N.W., Square 2906, Lot
12 830.

13 And I was going to follow up with the Chairman that
14 there is a -- I believe there's a request from -- I was
15 anticipating a request for a postponement from the ANC, but I
16 have to double check that in the case record. Thank you, sir.

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

18 Could the Applicant, if the Applicant is here, please
19 introduce themselves for the record?

20 MR. SAWANT: Hi, I'm Kuldeep Sawant. I'm the owner of
21 the property at 3905 Kansas Avenue, N.W., and I would like to
22 present the case before the BZA.

23 This case was already approved by the BZA earlier under
24 a different order, but when I had -- during the application
25 process with the DCRA, when I applied for the permit, during the

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1 application process the order actually expired, so the DCRA
2 permit is on hold until the order is extended and which is why
3 I'm presenting the case again to the BZA.

4 CHAIRPERSON HILL: Okay. I was under the -- so Mr.
5 [Suh-wat], [Suh-want], [Suh-want]?

6 MR. SAWANT: Yes.

7 CHAIRPERSON HILL: Mr. Sawant, you're not asking for a
8 postponement?

9 MR. SAWANT: No. No, I'm not. I would like to present
10 the case please.

11 CHAIRPERSON HILL: Okay. And then the -- have you
12 presented before the ANC?

13 MR. SAWANT: Yes, I've presented before the ANC
14 multiple times. Like the ANC -- the ANC also changed, right.
15 Like earlier I had presented to the ANC, and the full ANC, all
16 eight members had voted in support of the project, and at that
17 time it was approved, and even with the second ANC, I've been
18 working with Commissioner Kirby who's on the call. We have met
19 with all the neighbors. I made additional changes that the
20 neighbor requested, and I also presented to the ANC.

21 CHAIRPERSON HILL: Okay.

22 MR. SAWANT: I have (indiscernible) ANC meetings.

23 CHAIRPERSON HILL: Okay. Okay, I understand. All
24 right. Then -- and then -- oh, it's Commissioner Kirby.
25 Commissioner Kirby, can you hear me, and can you introduce

1 yourself for the record please?

2 ANC COMMISSIONER KIRBY: Yes, greetings. My name is
3 Commissioner Kirby. I'm at 936 Shepherd Street, N.W. I serve
4 as commissioner for SMD 4C02.

5 CHAIRPERSON HILL: So Mr. Sawant, he presented to your
6 previous ANC. Are you aware of that?

7 ANC COMMISSIONER KIRBY: Yes. Actually, it was two
8 commissions prior. The case started in 2020. That was the first
9 commission to hear it. There was a commission after that. I
10 don't believe that they heard anything. And now we're at another
11 commission here that started in January.

12 CHAIRPERSON HILL: Right. When you say another
13 commission, then your borders did not change; is that correct?

14 ANC COMMISSIONER KIRBY: Technically, the borders
15 changed with the 2020 redistricting. I am now -- so the
16 commission that was prior was 4C07 for 3905. The commission
17 currently is listed as 4C02.

18 CHAIRPERSON HILL: Okay. So are you guys asking for a
19 postponement? I'm confused.

20 ANC COMMISSIONER KIRBY: Yeah. It's from the ANC. We
21 were asking for the postponement.

22 CHAIRPERSON HILL: So why do you want a postponement?

23 ANC COMMISSIONER KIRBY: Okay. So the week that the
24 owner came to present, the presentation happened on Wednesday.
25 Right? On Sunday of that same week, the concerned neighbors had

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1 a meeting, it was about four hours long, at the adjoining
2 property. The very next day on Monday, during some sort of
3 construction situation, the building began to collapse. I
4 actually was the one that had to call -- I called the DOB, I
5 called the fire department, the police. Luckily, no one was
6 injured. And so with that happening on the Monday, then Wednesday
7 comes and we have the case, and as we're asking questions about
8 the case, it just seemed as though they were not prepared to go
9 forward. There's an emergency demo permit that has to happen.
10 The only relief that was asked was about existing parts of the
11 structure, but with the collapse that happened the week of the
12 presentation, we just have additional questions.

13 CHAIRPERSON HILL: When is your next ANC meeting?

14 ANC COMMISSIONER KIRBY: The next ANC meeting is June
15 the 9th -- no, no, no, no, 13th.

16 CHAIRPERSON HILL: Okay. I'm going to look at my fellow
17 Board members. I'm torn. I love that saying, I'm torn. I don't
18 know what to do. We can hear the case and leave the record open
19 for the ANC's report, or we can wait until after the -- I mean,
20 you know, we can try to get it back here right after the ANC
21 meeting. You started to say, Commissioner, sure, is that what
22 you said?

23 ANC COMMISSIONER KIRBY: Oh, no, so no, I was just
24 saying sure in response to what you were saying. And I guess
25 really for the commission, the larger question is right now

1 they're trying to get an emergency demolition permit to finish
2 taking down the parts of the structure that didn't fall last --
3 or week prior and we wanted to make sure that the emergency demo
4 permit was secured, that the structure was made safe for those
5 in the adjacent properties.

6 CHAIRPERSON HILL: Yeah, Commissioner, that won't have
7 anything to do with us.

8 ANC COMMISSIONER KIRBY: Sure.

9 CHAIRPERSON HILL: No. I'm just saying, like that --

10 MR. SAWANT: And if I would like to join, that's exactly
11 like the -- I also discussed with Commissioner Kirby, right.
12 Like the things that they're asking for a demolition permit, the
13 part of the building that fell was already scheduled to be
14 demolished as part of the DCRA drawings, which I had already
15 submitted to DCRA. They've been already -- they've been with
16 DCRA, and were already supported by the earlier BZA order, so the
17 demolition permit that the --

18 CHAIRPERSON HILL: Okay, Mr. Sawant, Mr. Sawant, give
19 me a second.

20 MR. SAWANT: -- ANC is asking for --

21 CHAIRPERSON HILL: Mr. Sawant, give me a second. All
22 right. I'll see what you guys want to do. I'm leaning towards
23 just going ahead and hearing the hearing and then leave the record
24 open for any input from the ANC. And then after hearing the
25 input from the ANC, if we want to come back and re-hear from the

1 ANC, or hear the hearing, depending upon what their issues are
2 related to zoning, then we could go ahead and do that.

3 Vice Chair John, what do you think?

4 VICE CHAIR JOHN: So Mr. Chairman, is there any report
5 from the ANC now in the record? I don't see one from the prior
6 ANC. I guess I could ask Mr. Kirby.

7 ANC COMMISSIONER KIRBY: So there is -- the prior ANC
8 did the report. There are three separate documents from the
9 prior ANC. There was a letter of conditional support, there was
10 a full report, and there was one other -- there's a solar contract
11 that's part of the concession for the adjoining neighbor that
12 also was produced July 8th, 2020.

13 VICE CHAIR JOHN: Okay. So that was the previous design
14 before the Applicant made changes to accommodate the neighbors?

15 MR. SAWANT: No. The -- that was for the same design.
16 The reason for the re-application is because the order expired
17 before the DCRA could approve the permit. So the order expired
18 in August and the review was completed in November, so the order
19 had expired, so they asked us to actually get the order re-
20 extended.

21 VICE CHAIR JOHN: Okay. Is that ANC report in the
22 record?

23 MR. SAWANT: That ANC report is in the record for the
24 previous order, but I can like download it from there and upload
25 it to this one too. And all -- all the eight members of the ANC

1 have supported and voted in favor of the project.

2 VICE CHAIR JOHN: And did the design change after they
3 voted in support on the previous order?

4 MR. SAWANT: There were a few minor design changes,
5 which were actually made based on my discussion with Mr. Kirby
6 and the neighbors. What they wanted to do was they wanted the
7 front of the building and the third floor had a little parapet
8 and the neighbors wanted me to remove that parapet. So based on
9 the inputs from the neighbors and Mr. Kirby, we changed the design
10 so that we absolved the parapet and we changed the stairs, so
11 that we absolved the parapet so it doesn't popout at the third
12 level, so that was the design change made and that was at the
13 request of the neighbors and Mr. Kirby.

14 VICE CHAIR JOHN: Okay. Mr. Chairman, I don't have
15 any objection to going ahead today, considering how long this
16 application has been, you know, in process, but I would prefer
17 to hear from other Board members as well.

18 CHAIRPERSON HILL: Okay. Yeah, I mean, we would still
19 keep the record open for the ANC, and again then at that time,
20 you know, prior -- like in other words, we're just trying to be
21 expeditious and because everyone's here, and so he would still
22 have to go before the ANC on June 13th, and then we wouldn't have
23 a decision until June 21st, let's say, and giving time for the
24 ANC to give us their feedback, and based upon that feedback, if
25 it was related to zoning and if we had concerns, we would then

1 reopen the hearing and have, you know, more -- a limited scope
2 hearing.

3 Anyway, that's my thoughts, but I mean, it seems to be
4 where Vice Chair John was leaning.

5 But Mr. Smith?

6 COMMISSIONER SMITH: Oh, that's where I'm leaning as
7 well based on the conversation we've heard today from the
8 Applicant and the ANC. You know, it seems like a fair amount of
9 the concerns from the ANC aren't primarily zoning, sounding like.

10 ANC COMMISSIONER KIRBY: The question about --

11

12 CHAIRPERSON HILL: One second, Commissioner, I'll get
13 to you.

14 Go ahead, Mr. Smith.

15 COMMISSIONER SMITH: So you know, we can leave it --
16 we can, you know, go ahead and hear this hearing for the primary
17 reason of efficiency and keep this open until, you know, the
18 Applicant's had a opportunity to go back to the ANC, so we can
19 do a limited scope hearing. And if we need to change, then, you
20 know, we can change that, but I'm fine with this approach right
21 now.

22 CHAIRPERSON HILL: Vice Chair Miller?

23 I'll come back to you, Commissioner.

24 Vice Chair Miller?

25 ZC VICE CHAIR MILLER: I have nothing to add to this

1 discussion so far. I have no problem with proceeding or
2 postponing, so whatever you wanted to do.

3 CHAIRPERSON HILL: Commissioner Kirby?

4 ANC COMMISSIONER KIRBY: My apologies. The only zoning
5 question the commission had was during the presentation -- and
6 our owner of the property wasn't able to make it in person, he
7 sent the contractor -- and during the presentation of the case,
8 we asked about the number of units and the hesitation from the
9 commission was based on the contractor saying, four times, we are
10 going to build four units, and I asked twice are you sure it's
11 four units 'cause it says three, it was always three units, and
12 the contractor kept saying no, no, no, I can build four units.
13 And at that point, the commission looked at me, and I said well,
14 let's slow down and figure this thing out. So there was sort of
15 -- I guess that would be the zoning question, in addition to the
16 other things that were happening that fall under a different
17 agency.

18 CHAIRPERSON HILL: Okay. So Commissioner, that'll come
19 out during this presentation, and so let's go ahead. And again,
20 we're not going to close the record and we're not going to make
21 a decision today. We're going to have it and leave the record
22 open. We're going to allow Mr. Sawant another opportunity to
23 present before your ANC on the 13th. And the soonest we could
24 come back here for a decision is on the 21st of June. And so
25 let me go ahead and turn this back over now. What I thought was

1 going to be a fast thing is not.

2 So Mr. Sawant, you want to go ahead and give us your
3 presentation? I see your PowerPoint. I'm going to let you
4 explain to us why you believe you're meeting the criteria for us
5 to grant the relief requested, and I'm going to put 15 minutes
6 on the clock just so I know where we are, and you can begin
7 whenever you like.

8 MR. SAWANT: Is someone going to put up the presentation
9 on the screen for everyone to see?

10 CHAIRPERSON HILL: Yes. Mr. Young, will do that.

11 MR. SAWANT: Thank you.

12 Yeah, so hi, I'm Kuldeep Sawant, I am the owner of the
13 property at 3905 Kansas Avenue, N.W., and like I mentioned, this
14 application was previously approved by the BZA and the ANC under
15 a different order, 20256, so I can -- if you could please go to
16 the next slide and I can talk through the request. So this --

17 CHAIRPERSON HILL: Just real quick again, Mr. Sawant,
18 that previous order, there was some -- if you want to talk about
19 the differences between the previous order and what you're trying
20 to do as you're going through this?

21 MR. SAWANT: Yes, I will do that. Yeah.

22 CHAIRPERSON HILL: Thank you.

23 MR. SAWANT: So yeah, the zoning relief that is
24 requested for is conversion of the existing rowhouse to an
25 apartment building and two units are permitted by-right, and we

1 are proposing three units, so that's why the special exception,
2 and there is no change from what I'd asked earlier. It's the
3 same as what was there in the previous order. And the minimum
4 parking requirement is another exception that I had asked for
5 earlier and continue to ask it even now.

6 The side yard requirement, I had before -- I had not
7 asked for that exception earlier. It's a new addition to this
8 time, and the reason for that change is the -- so the building -
9 - the proposal hasn't changed, like the design, nothing changed.
10 Even at that time, there was a part of the building that was in
11 the side yard, and at that time the reason I felt that -- so the
12 classification of this house, it's zoned as a row dwelling, so
13 the side yard requirement is zero feet, so at that time, I felt
14 that we don't need it because there is no exception needed, but
15 when we spoke to the DCRA, after presenting to the DCRA, they
16 said that yeah, if it's -- it's still classified as a row house
17 and the side yard requirement is 0 feet, but since your existing
18 side yard is already 13 feet, if you maintain it and keep it to
19 at least a minimum 5 feet because you already have an existing
20 side yard. If you didn't have a side yard, then it was okay to
21 have zero feet, but since you have a side yard, you need to get
22 an exception, so which is why -- the design has not changed, but
23 we added that -- because a part of the building does encroach
24 into the side yard, so that is the new request I provided.

25 The third request was the -- fourth relief as to the

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1 rooftop or upper floor addition and this was also in the previous
2 order. The only difference is that in the previous order the
3 rooftop requirement was part of the special exception needed for
4 the three units and the zoning laws have changed. And now instead
5 of it being a part of that, it has become its own special
6 exception. So we had the relief in the last order, but right
7 now it's just getting pulled out and it's rough getting classified
8 under the Subtitle 320. It's become its own requirement, so
9 that's the fourth zoning requirement.

10 Now, I'll talk about the -- last as I mentioned in the
11 previous order DDOT had no objection to the approval of this
12 application. Office of Planning had also recommended approval.
13 ANC, I had met with them at different times, I met with my two
14 neighbors, and all eight members of the ANC had voted in favor
15 of the project. And even at the BZA hearing, I think one seat
16 was vacant, but all the remaining four members of the BZA had
17 voted in favor and approved the case.

18 So once I received the approval for the project, like
19 because of the COVID pandemic, I was unable to immediately apply
20 for the building permit for the project because it was like the
21 peak time of COVID and the lender with whom I had gotten the
22 construction loan did not want to take any more like risks during
23 the COVID period, so they had put it on hold. So I had to let
24 them change the lender once the COVID peak went down, and I got
25 a new lender and then I could start the application. So I started

1 the application in June of 2022 with DCRA, and that was well
2 within the two-year timeline that was allowed with my previous
3 BZA order that expired in August 2022. And in parallel, I also
4 like started the applications with the DCRA sister organizations,
5 like D.C. Water and DOEE and DDOT, and those three were also
6 approved, but my main building permit, by the time the review
7 completed in November, the BZA order had actually expired, and
8 they asked me to get the BZA order extended. And so I applied
9 for the new BZA order, and that's this presentation that I'm
10 doing. And at the same time to make things shorter, I continued
11 the project. I pulled out parts of like the partial demolition
12 and underpinning, I pulled it out of the main building permit and
13 applied for a separate building permit so that at least I could
14 start those parts and DCRA was okay with that. They said okay,
15 you can do this partial demolition and underpinning, but the main
16 -- and I got that approved under a different permit, but they
17 said that the main building permit will remain on hold until the
18 order is extended. So if you could go to the next slide please?

19 Just to summarize, like I've met with the neighbors and
20 the ANC members more than ten times to review plans with them.
21 I've made extensive changes based on their suggestion, and none
22 of the neighbors are in opposition, like everyone wants the
23 project to move forward and complete. So if you look at my
24 neighbors, there's only one neighbor with whom I share a party
25 wall at 3907 Kansas Avenue, and they are in support of the

1 project. We have signed an agreement with the ANC and that
2 neighbor to provide \$8,000 in financial support for building a
3 platform to raise their solar panel system. As per that
4 agreement, I've already paid the \$8,000 to the neighbors and the
5 receipts have been uploaded to the IZIS system.

6 Then as per the DDOT, DDOT has submitted the report.
7 As for the report, they have no objection to the approval of this
8 application. I had just proposed a transportation demand
9 management plan because I was asking for the parking exception,
10 but the DDOT, the report mentions that a TDM plan is not required
11 for a project this small, and they are in -- they have no
12 objection to the approval of the application.

13 The Office of Planning has also recommended approval
14 of the requested relief. And as I mentioned before, the DCRA
15 permit is already filed. I have already paid the fees for the
16 last like under the last people so they can review it and approve
17 it in a day once they have the BZA order. Whatever comments they
18 had, we already addressed all those comments, but that will
19 obviously remain on hold until the BZA order is approved.

20 Now, the ANC had a question that they wanted me to get
21 the demolition permit before and like take down parts of the
22 building that remain to be taken down, but I've already -- like
23 the permit has already been applied for since like November of
24 last year and it is on hold for this DCRA -- for this BZA order
25 to be extended. So it kind of becomes a gridlock, because now

1 | if the ANC wants me to get the demolition permit, the demolition
2 | permit is already with DCRA, but they are saying they won't give
3 | it until the BZA order is extended. And now if the BZA says
4 | okay, we can't go ahead without the ANC supporting it, then it
5 | kind of becomes a gridlock between the ANC wanting the demo
6 | permit, DCRA wanting the demo -- the BZA order, or the demo permit
7 | to be approved, and BZA wanting the ANC report. So like I hope
8 | we can just move forward. If you'd go to the next slide please?

9 | And also like the demolition permit that is needed has
10 | nothing to do with like the zoning request that I have, so it's
11 | not like directly connected to any of the zoning issues because
12 | the part of the wall of the building that fell actually was
13 | already planned to be taken down in the demolition permit and it
14 | doesn't change any of the relief that I'm requesting for and
15 | nothing really changes about my zoning application.

16 | CHAIRPERSON HILL: Okay. Mr. Sawant, let me interrupt
17 | you one second. So again, what's going to happen is -- and I'm
18 | going to move you forward here because I want you to get to a
19 | certain point of this. But Commissioner, you'll have a chance
20 | to respond to anything and ask questions and give us whatever
21 | questions you have. I mean, I've always kind of gotten a little
22 | confused also as to where the demolition permit stuff happens.
23 | I mean, I'm a little surprised that they're not -- or I'm not
24 | surprised. It makes -- I can understand, but you're kind of
25 | stuck because this is getting -- you know, this could -- this is

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1 a new order, Mr. Sawant, just to let you know, it's not an
2 extension. So in other words, it's going to take us time to also
3 process that order. In addition, if the ANC is in opposition to
4 this order, then it's even going to take longer for us to process
5 the order. Right? So I don't know how DOB works and I'd be kind
6 of curious, at another time, I'll ask Mr. Moy if he can let me
7 know because I'm curious as to whether or not that doesn't make
8 any sense. I guess it makes sense to me and it doesn't make any
9 sense to me, that if they have to tear something down, they should
10 be able to, if nothing else, for safety. But let me move you,
11 Mr. Sawant --

12 MR. SAWANT: Yeah, I will keep going, sorry, yeah.

13 CHAIRPERSON HILL: No, no, no, I I want to move you to
14 a different slide. I want to take you all the way to -- I want
15 to take you all the way to Slide 9.

16 MR. SAWANT: Okay.

17 CHAIRPERSON HILL: Okay? And then I'll let my fellow
18 Board members ask questions, but I just -- I think the
19 PowerPoint's very nice, meaning I think it's helpful, and so I
20 think that --

21 MR. SAWANT: Yeah.

22 CHAIRPERSON HILL: -- the record's pretty full in order
23 for us to read through stuff. So go ahead from here, Mr. Sawant.

24 MR. SAWANT. Sure. Sure. Yeah. So the parking relief
25 I requested was because the lot is a triangular-shaped lot and

1 | it doesn't have access in the back of the rear alley. So the
2 | only way to add parking was to add it in the front through a curb
3 | cut on Kansas Avenue and that is what I had previously proposed.
4 | So I had previously proposed to have three parking in the front
5 | through a curb cut, but at that time the neighbors were opposed
6 | to that and the ANC was opposed to that. So the ANC had actually
7 | requested DDOT to not support the curb cut. And since the lot
8 | is triangular-shaped with no access in the back through the rear
9 | alley, it makes the lot eligible for the zoning relief. So at
10 | that time the ANC wanted me to go and ask for this parking relief
11 | instead of putting the three -- instead of the curb cut and the
12 | three parkings in the front. And DDOT also was supportive of
13 | the ANC's suggestion of getting the parking relief instead of the
14 | curb cut, and the reason for that was because the lot is a wide
15 | lot, there's almost like 64 feet of curb space in front of the
16 | property, which is enough for three cars. The property has a
17 | Walkscore of 96 out of 100, and it's like daily errands and all
18 | do not need a car. It's a five-minute walk from the Metro line.
19 | So the Department of Transportation did not have any objection
20 | to the approval of this application. And I had proposed a
21 | transportation demand plan, but DDOT mentioned that it's not
22 | actually needed because this is a small project, and given that
23 | the (indiscernible) they're okay to grant the parking relief even
24 | without the TDM plan. If you could go to the next slide please?

25 | Yeah. So the side lot yard relief that is requested

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1 now, so this relief is relief for like a small portion of the
2 building. It's basically the -- because it's a triangular lot,
3 as it goes back, it starts tapering down and it becomes smaller
4 in the back. So in the back that you have the portion, the part
5 of that building actually will go into the side yard and that's
6 the exception we wanted. And the thing is this is -- and the
7 part that extend the portion of the building that extends into
8 the side yard is about 15 feet away from the buildings, 15, it
9 faces the right side apartment -- the rear of the right side
10 apartment buildings and those buildings are 15 feet away from the
11 portion that is going into the side yard and the portion's only
12 about 20 feet and the property line is about 110 feet, so it's
13 like less than 20 percent of the entire property line. Therefore,
14 the light and air available to the neighbors will not be unduly
15 affected. Also the portion that goes into the side yard, there
16 are no windows or openings on that part of the building, so there
17 is no view into the adjacent apartments, so there's no pri- --
18 so the privacy and use of the neighboring property is not unduly
19 affected. Also because it is at the back of the building, it is
20 almost like setback significantly about 40 feet away from Kansas
21 Avenue and also at an angle, so when you look at it from the
22 front, it's not that visible. It will not detract from the
23 pattern of houses along Kansas Avenue. So that's why I request
24 for this exception. Move to the next slide please?

25 Yeah. For the rooftop and architectural element relief

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1 requested, now in the front what I'm doing is I'm extending --
2 I'm having an addition to the side of the building, so I'm
3 maintaining the current mansard roof, but to maintain the look
4 and feel of the existing building, I have to extend that mansard
5 roof into the side addition. Since I'm extending it into the
6 side addition, it would be classified as alteration of the rooftop
7 elements. And since I'm extending it, and I'm adding the new
8 dormer so that it matches and looks and feels like all the other
9 buildings and the existing building, it would be an alteration
10 and I would request that exception. Like this is obviously the
11 extension of the mansard roof and adding of a new dormer in the
12 front of the building, so it does not like affect the light and
13 air available to the neighboring properties or the privacy of the
14 neighboring properties are not impacted in any way because it's
15 in the front of the property. And if you'd like to see, I have
16 like some pictures that I've added on the previous slides of --

17 CHAIRPERSON HILL: Yeah, Mr. Sawant, let me -- I gotcha.
18 I'm going to go ahead and -- I mean, I've gone through your slide
19 deck. I think the Board might have some questions.

20 Go to the next slide please, Mr. Young. Right. And
21 we've seen these. And then, Mr. Young, the next slide?

22 MR. SAWANT: This is just a summary of the whole thing.
23 But the thing is like if you look at the properties all around,
24 I don't know if it's maybe Slide 6 or 7, there's a picture, so
25 there are like several other developments like even opposite, but

1 both the buildings right in front of my building have the third-
2 story unit built and like both of them are apartment buildings.

3 CHAIRPERSON HILL: Yeah, Mr. Young. You can go ahead
4 and put up Slide 6 and 7 if you want to, just for a second.

5 MR. SAWANT: Yes.

6 CHAIRPERSON HILL: Thank you. There's 6.

7 MR. SAWANT: Yeah, there's 6. So if you see like --
8 so the first building is obviously 3905, the one we're talking
9 about. If you leave out the next-door neighbor, then the 3909
10 is also a third story building with the addition on the top. The
11 building next to it, the 3911, also has the third-story addition
12 with -- and that's an apartment building of two units and they
13 have -- and if you go to the next slide?

14

15 CHAIRPERSON HILL: I'm sorry, go ahead.

16 MR. SAWANT: So yeah, so 3900 is the building directly
17 opposite my property and that's also an apartment building of
18 three stories. The one next to it, 3904, also has the third-
19 story addition. So like if you look at the immediate neighbors,
20 there are like more than 50 percent of them, like the immediate
21 neighbors, like both the houses in front, the houses beside, all
22 of them have a third-story addition and some of them are apartment
23 buildings. So the proposed development at my property will not
24 significantly alter the character of the neighborhood.

25 CHAIRPERSON HILL: Okay. Thank you, Mr. Sawant.

1 Mr. Young, can you drop that slide deck please? Okay.

2 Does the Board have any questions of the Applicant at
3 this time? Okay.

4 Commissioner, do you have any questions and/or would
5 you like to give a presentation of some kind?

6 ANC COMMISSIONER KIRBY: I just had a question or two.

7 CHAIRPERSON HILL: Sure. Go ahead.

8 ANC COMMISSIONER KIRBY: I know that in the writing -
9 - this is my first BZA case, first time in ANC, but we talk a
10 lot -- there are a lot of mention of existing roof and existing
11 porch. I don't know if we have a picture of how that looks today,
12 but if part of the current existing structure comes down during
13 demo, does that not make some reliefs moot? Like if you're
14 proposing to add on and there's nothing left to add onto, like
15 does it change the nature of the relief? Because the front --
16 that front roof, it's -- since the part fell down, there's still
17 pieces falling down, there are probably bricks falling off of it
18 because it's -- it's, you know, of the damage, but if the damage
19 begins to happen to the roof -- now I'm not trained in any of
20 this stuff, no construction science, no architecture, but there
21 is some what seems like extensive damage now to the front facing
22 wall.

23 CHAIRPERSON HILL: Yeah. So, Commissioner, they're
24 here asking for a certain type of relief. The fact that something
25 gets torn down doesn't change the relief that's being requested,

1 and if they were to have this relief denied, they would have to
2 rebuild it the way it was. Like it's, you know, it's not supposed
3 to -- you know, they -- just because something is torn down,
4 doesn't now give them the opportunity to do something different.

5 ANC COMMISSIONER KIRBY: Got you. That was the
6 question. The question was if the structure wasn't there, could
7 you build a completely different thing now?

8 CHAIRPERSON HILL: Well, now you're getting into a
9 different area actually. If something did -- there's some
10 technicalities to that that I'm not -- in certain cases -- anyway,
11 I think I'm answering your question which is that what they're
12 applying for is the relief that they're requesting and also what
13 they're proposing to build is what we're analyzing against the
14 relief being requested, so they would have to build what they're
15 asking for.

16 ANC COMMISSIONER KIRBY: Got you. Thank you.

17 CHAIRPERSON HILL: Do you have any other questions
18 however? We're going to turn to the Office of Planning and let's
19 see if you got anything with their -- can I turn to the Office
20 of Planning, please? You're on mute, Ms. Brown-Roberts.

21 MS. BROWN-ROBERTS: Sorry about that. Again, good
22 morning, Mr. Chairman and members of the BZA. I'm Maxine Brown-
23 Roberts from the Office of Planning on BZA 20874, and I'm going
24 to summarize some of the relief that the Applicant is asking for.
25 He's gone into much detail, but the proposal meets the requirement

1 of Subtitle U, 320.2 for conversion, as the building is currently
2 a single-family residential building to be converted to three
3 units, as stated in the application, and each unit would meet the
4 minimum 900 square feet. In fact, they'd have 954 square feet
5 of land area.

6 Regarding the side yard, which is to be the portion
7 which is to be reduced to zero feet, and that portion of the
8 building, to meet the requirements of Subtitle E, 5201, in fact
9 the light and air would be encompassed in the remainder of the
10 building and would not affect the adjacent apartment building,
11 as there are no windows on that portion of the building. The
12 lack of windows on that portion should also suffice for the
13 privacy. The extended portion of the addition would be visible
14 from Kansas Avenue, but it is set back, and it is also at an
15 angle from the front of the building, and therefore it should not
16 intrude on the character of buildings on the street.

17 The side and rear addition would result in changes to
18 the architectural elements, including an enlarged porch, extended
19 mansard roof, porch deck, and in enlarged dormers. These
20 additions will not affect the light and air and privacy of the
21 adjacent neighbors. The changes would be visible from Kansas
22 Avenue, but they're in keeping with the existing buildings and
23 those along the street.

24 Regarding the special exception requirement under
25 Subtitle X, 901.2. The proposal meets the requirements of all

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1 the relevant sections allowed in the RF-1 zone, and it's also
2 demonstrated that the impact on the adjacent neighbors and on
3 Kansas Avenue would not be undue.

4 Regarding the special exception for parking. There is
5 not a rear alley and the property is served by public
6 transportation, and therefore should not impact traffic in that
7 area. The Office of Planning, therefore, recommends approval of
8 the requested special exceptions.

9 Thank you, Mr. Chairman, and I'm available for
10 questions.

11 CHAIRPERSON HILL: Okay. Does anybody have any
12 questions for the Office of Planning from my Board members first?

13 All right. Commissioner, do you have any questions of
14 the Office of Planning?

15 ANC COMMISSIONER KIRBY: I do not.

16 CHAIRPERSON HILL: Mr. Sawant, do you have any
17 questions of the Office of Planning?

18 MR. SAWANT: I do not.

19 CHAIRPERSON HILL: Ms. Brown-Roberts, do you know, are
20 they -- he's not allowed to get a demolition permit until after
21 the order, even if something fell down?

22 MS. BROWN-ROBERTS: I don't --

23 CHAIRPERSON HILL: You don't know?

24 MS. BROWN-ROBERTS: I don't know.

25 CHAIRPERSON HILL: Who does know? Who does know?

1 MS. BROWN-ROBERTS: The Department of Building.

2 CHAIRPERSON HILL: Okay. So Department of Buildings?

3 MS. BROWN-ROBERTS: Yes. So I'd have to ask.

4 CHAIRPERSON HILL: So it is possible that he can't do
5 any -- if there's something that's fallen down, he can't deal
6 with that until this order is resolved one way or the other, you
7 don't know?

8 MS. BROWN-ROBERTS: I don't, I'm not sure.

9 CHAIRPERSON HILL: Can you find out and let me know?

10 MS. BROWN-ROBERTS: Okay. Will do.

11 CHAIRPERSON HILL: Just because I'm curious.

12 MS. BROWN-ROBERTS: Yes.

13 CHAIRPERSON HILL: All right. And I guess you can let
14 the commissioner know also, because I guess he's curious, right?

15 MS. BROWN-ROBERTS: Okay.

16 CHAIRPERSON HILL: Okay. That'd be wonderful. Thank
17 you.

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

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

21 CHAIRPERSON HILL: Okay, great. Let's see, could you
22 go ahead and introduce themself- -- I'm sorry, could you let me
23 know who they are as you bring them in?

24 MR. YOUNG: Yes. The first one is Camilla Do, and the
25 second is John Zubiller.

1 CHAIRPERSON HILL: Okay, great.

2 Ms. Do, can you hear me?

3 MS. DO: Yes.

4 CHAIRPERSON HILL: Good morning. Could you introduce
5 yourself for the record and also where you live?

6 MS. DO: Good morning, Mr. Chairman and BZA Board. My
7 name is Camila Do. I am the owner of 3907 Kansas, which is the
8 adjacent neighbor of 3905.

9 CHAIRPERSON HILL: Okay, great, Ms. Do. Well, Ms. Do,
10 welcome. You'll get three minutes to give your testimony and you
11 can begin whenever you like.

12 MS. DO: Yes. Firstly, I would like to correct the
13 Applicant in a few points that he said regarding the case.
14 Firstly, it's in regard to the solar panel agreement. The time
15 has changed and our solar panel has already been installed, so
16 we have the right to ask Applicant to go through the process of
17 helping us to raise the solar panel. And right now, as of this
18 moment when I talked to the contractor in contact with the zoning
19 and building permit, I am not quite entirely sure if we can raise
20 it to 8 to 9 feet above our current roof. So my current objection
21 to the case that -- the, okay, has not been throughout, you know,
22 coordinated with us and the ANC, and since a few point on the
23 plan during the coordination, such as the green area or the open
24 area has not been validated to 20 percent based on the new plan,
25 which the copious area cannot, you know, accommodate the 20

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1 percent of the open and the green area on the plan. So there
2 has been request to the owner of 3905 to coordinate with us, but
3 nothing has been clarified in writing.

4 Personally, my house, we have three damage throughout
5 doing his partial collapse of the demolition, due to some of the
6 negligence, probably because some of the load-bearing wall is
7 being demolished. We are not quite sure of how the damage is
8 going to be compensated and how, you know, everything got to be
9 negotiated in writing to move on with his construction. We don't
10 have the faith that we used to have with the Applicant.

11 CHAIRPERSON HILL: Okay.

12 MS. DO: Yeah.

13 CHAIRPERSON HILL: Okay.

14 Let's see, does the Board have any questions of the
15 witness, Mrs. John, Vice Chair John?

16 VICE CHAIR JOHN: Just a clarification, Ms. Do, so I
17 understand. Did the load-bearing wall that you share collapse?

18 MS. DO: It does not. The Applicant has applied for
19 the underpinning, so there has not been any immediate sign of
20 cracks or such. However, when I spoke to the inspector of --
21 BOD inspector, Mr. Cooper, he said we still have to keep an eye
22 on it. We don't have any vibration gauge installed on the party
23 wall, so we don't know if, you know, is there any -- going to be
24 any consequence to go with it and we're in a position that we're
25 not sure what's come next. We need to have something concrete,

1 | you know, in writing to make sure that our house is safe and
2 | sound. The damage on the three doors that's being forced entry
3 | during the incident is being taken care of, and our solar panel
4 | is not going to be impacted by the pops out he proposed to the
5 | Board.

6 | VICE CHAIR JOHN: Okay. So there is an agreement on
7 | the solar panel. Are you saying that that's no longer valid?

8 | MS. DO: It's no longer valid because at that time when
9 | he applied for the prior application, our solar panel has not
10 | been installed. Now, the solar panel has been installed and this
11 | is a new application, give or take, so we have to take into
12 | account that we have the right to object to the pop-up because
13 | this going to impact on our solar right.

14 | VICE CHAIR JOHN: Just -- okay. So you already signed
15 | an agreement under which the Applicant paid you \$8,000 to raise
16 | the panel, and the panel has been raised, right?

17 | MS. DO: It has not. It has not been raised, no.

18 | VICE CHAIR JOHN: Okay.

19 | MS. DO: Yeah.

20 | VICE CHAIR JOHN: So there's no change in -- is there
21 | any change in that portion of the building?

22 | MS. DO: In our --

23 | VICE CHAIR JOHN: Yes.

24 | MS. DO: I apologize. In our building?

25 | VICE CHAIR JOHN: Right.

1 MS. DO: There's no changes.

2 VICE CHAIR JOHN: Okay. So the roof hasn't changed or
3 anything?

4 MS. DO: Yeah.

5 VICE CHAIR JOHN: Okay. All right. That helps me.

6 MS. DO: Yep.

7 VICE CHAIR JOHN: Okay. Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Did you already get the \$8,000 or
9 that hasn't happened yet, correct?

10 MS. DO: He's transferred the amount of \$8,000, which
11 is coming to our account. However, now it has been three or four
12 years, the situation has changed, the market has changed, we
13 don't know how much it's going to cost to raise the panel, and I
14 believe by the requirement of the zoning, he is responsible to
15 raise our panel.

16 CHAIRPERSON HILL: But you took the \$8,000, correct?

17 MS. DO: Yes, which we can return, under which \$3,000
18 is actually in (indiscernible). At that time the ANC recommend
19 us he took to contribute \$3,000 to us prior as a relief to the
20 contribution to the housing trust, Affordable Housing Trust, as
21 a concession during the ANC meeting. Yeah.

22 CHAIRPERSON HILL: Okay. Okay. All right, Ms. Do.

23 MS. DO: Okay.

24 CHAIRPERSON HILL: All right. Just hang out there for
25 a second, Ms. Do.

1 MS. DO: Yep, sure.

2 CHAIRPERSON HILL: If you can mute, Ms. Do.

3 MS. DO: Yep.

4 CHAIRPERSON HILL: Mr. Moy, just -- I mean, not Mr. -
5 - Mr. Young, just because of the feedback a little bit.

6 Mr. Zuberry can you hear me or Zubiller?

7 MR. ZUBILLER: I'm sorry. I was having some headphone
8 issues. I just switched over.

9 CHAIRPERSON HILL: Sure. Can you go ahead and introduce
10 yourself for the record, including your address?

11 MR. ZUBILLER: Yes. I am John Zubiller of 3918 Kansas
12 Avenue.

13 CHAIRPERSON HILL: Okay. You want to go ahead and give
14 us your testimony, sir? You'll have three minutes to give your
15 testimony.

16 MR. ZUBILLER: Yes. And do I have the ability to share
17 a screen during this?

18 CHAIRPERSON HILL: No. You can't share the screen
19 unfortunately, sorry.

20 MR. ZUBILLER: Okay. All right. So thank you,
21 Chairman, and thank you Board members. I spoke at the BZA hearing
22 I guess over two years ago and noted my concerns at that time of
23 the drawings and the concepts provided to the BZA for this
24 project, that the drawings were insufficient for the building to
25 actually be built from and that the -- that there was a number

1 of conditions, both inconsistencies, sorry, with the existing
2 conditions as well as the proposed that were not buildable. The
3 submitted drawings that we've seen that were for the permit had
4 little additional effort added to them in those two years since
5 then, and is my opinion that little was done by the Applicant in
6 those two years for which he is seeking an extension of the BZA.
7 (Indiscernible) at the ANC meetings --

8 CHAIRPERSON HILL: Mr. Zubiller, are you speaking?
9 Hello? Mr. Zubiller, can you hear me? Can you all hear me?
10 Okay. Mr. Zubiller, can you hear me?

11 MR. ZUBILLER: Yes. Yes, I can.

12 CHAIRPERSON HILL: I'm sorry. You kind of cut out
13 there. I heard you say you didn't see the plans or something.
14 I mean, have you seen the plans in the record?

15 MR. ZUBILLER: Sorry. I don't know at what point I cut
16 out there. Can you hear me now?

17 CHAIRPERSON HILL: Yeah. You were saying that like
18 they haven't shown enough of what's being -- going to be built
19 there.

20 MR. ZUBILLER: Yeah. At the time that the BZA hearing
21 was two years ago, the drawings were not of a quality that would
22 be consistent with a building to be able to be built.

23 CHAIRPERSON HILL: Have you seen the plans that are
24 currently in the record?

25 MR. ZUBILLER: I have seen the plans currently in the

1 record and little was done to show the construction type, nor the
2 -- how framing, which act- -- and roof beams were actually going
3 to be supported and/or laid to account for pitch for roofs and
4 drainage. They just are showing just flat across the entire
5 drawing and they are showing in two different directions on
6 various sections. So my concern is still -- especially since
7 this accidental collapse, that my concern is still raised about
8 how this project is actually going to be built and how we're
9 going to ensure against any additional issues at this property
10 during construction. The track record over the year has been not
11 great.

12 I do want to address one thing on the side yard issue
13 that the Applicant raised as well. There is currently atypical
14 two lots that are adjoining of different properties, would
15 require a 10-foot setback from that property line for each of the
16 properties requiring effectively a 20-foot setback between
17 properties. The existing house does meet that. The expansion
18 of this house into the side yard by creating a zero lot would
19 encumber that by up to five feet as well as require the tenants
20 of the home who egress out of the house during an emergency to
21 pass underneath the structure of the proposed house in order to
22 then access the front yard again for safety.

23 There is no -- as the Applicant has noted, there is no
24 access to the alley in the rear and it would have a grave concern
25 for those who might not be willing, but not be able to negotiate

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1 down a stair and back up a stair, especially when you're going -
2 - traveling underneath the building. I find that the side yard
3 extension is not needed for this property.

4 CHAIRPERSON HILL: Okay. Mr. Zubiller, I think you're
5 running out of time, just to let you know.

6 MR. ZUBILLER: Okay. All right. And I think that's
7 what I wanted to at least address on, the
8 consistencies of the drawing with what was existing as well as
9 the proposals that are not to a standard that one would see in a
10 typical architectural or (indiscernible) set.

11 CHAIRPERSON HILL: Okay. Okay. Does the Board have
12 any questions of the witness? Okay. Mr. Zubiller, thank you
13 for your testimony. I'm going to go ahead and excuse you.

14 Mr. Young, if you could just keep Ms. Do for a minute.

15 Okay, Mr. Sawant, okay, you're in contact with Ms. Do,
16 correct? You're on mute, Mr. Sawant. Now you're not on mute,
17 now I'm hearing a buzz. Anyway, I saw you nod you're in contact.

18 So Ms. Do, can you hear me?

19 MS. DO: Yes, Mr. Chairman.

20 CHAIRPERSON HILL: Thank you. There will be again a
21 public testimony ANC meeting for you on this case again on June
22 13th it looks like.

23 MS. DO: Yes.

24 CHAIRPERSON HILL: Okay. And your commissioner I
25 guess is Commissioner Kirby there, if you wanted to contact him

1 with any concerns and then also Mr. Sawant. There are regulations
2 per, you know, solar panel and, you know, how much percentage the
3 solar panel will be affected as to whether or not, you know, the
4 building can take place. I can't recall the regulations off the
5 top of my head, but actually maybe Ms. Brown-Roberts can help me.

6 Ms. Brown-Roberts, do you know -- I forget how that
7 works with the solar panels, like how much you're allowed to
8 disturb them or -- I forget, how does Office of Planning look at
9 the solar panels if they're already there now?

10 MS. BROWN-ROBERTS: Yeah. If they're already there,
11 then the applicant has to provide to raise them up so that shadows
12 and ice and that sort of thing doesn't form on the panels, so
13 it's usually worked out between the applicant and the neighbor
14 and that's something that is also reviewed at DOB.

15 CHAIRPERSON HILL: At DOB?

16 MS. BROWN-ROBERTS: Yes.

17 CHAIRPERSON HILL: Okay, great. So Ms. Do, this is
18 something that Mr. Sawant has to do --

19 MS. DO: Yes.

20 CHAIRPERSON HILL: -- if this were to take place,
21 otherwise DOB would block him from building this.

22 MS. DO: Yes.

23 CHAIRPERSON HILL: Do you understand?

24 MS. DO: I'm aware of that. And I want to make sure
25 that it is being followed and it's being heard by Mr. Chairman

1 | and the Board because the Applicant seems to be negligent in
2 | follow-up with this effort along as the other damages at our
3 | house happened after the partial collapse.

4 | CHAIRPERSON HILL: Okay. Well, Ms. Do, I guess -- and
5 | I know that -- I mean, I think that Mr. Sawant is at least
6 | interested in working with you because he's contributed the
7 | \$8,000 at this point, meaning I've had people that haven't even
8 | done that come before us. And so --

9 | MS. DO: Yes, Mr. Chairman. I echo you on that. We
10 | have worked together. However, I wanted to make it clear, loud
11 | and clear, that we only support Mr. Sawant, the 3905, pending on
12 | certain situations. After -- there was so many -- you know, the
13 | vacant property has causing a lot of issues in the neighborhood,
14 | so we want this project to move on, but you know, pending on
15 | certain circumstances that, you know, our current solar panel and
16 | our current property has to be, you know, maintained safe and
17 | sound, everything else.

18 | CHAIRPERSON HILL: Yeah, I got you, sure, Ms. Do. All
19 | right, Ms. Do, I'll let you -- Mr. Sawant, you can comment and
20 | say -- Ms. Do, I'll let you work with Mr. Sawant and then you
21 | will have an opportunity to submit something and the record will
22 | be open pending -- I'll leave the record open for a letter from
23 | you, Ms. Do, okay?

24 | MS. DO: Yes.

25 | CHAIRPERSON HILL: If you'd like to make some comment

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1 to the Board after talking with Mr. Sawant before we come back
2 for a decision on the 21st, okay?

3 MS. DO: Thank you, Mr. Chairman.

4 CHAIRPERSON HILL: Sure.

5 And then, Mr. -- Commissioner, can you hear me, Kirby?

6 ANC COMMISSIONER KIRBY: Yes, I'm here.

7 CHAIRPERSON HILL: So Commissioner, just to let you
8 guys know, like I mean, you know, the sooner that we can get to
9 a decision and the sooner Mr. Sawant might be able to get a
10 permit, if we do agree that he's meeting the criteria for us to
11 grant the relief requested, if there is opposition, not that
12 there shouldn't be, I'm just letting you know, it takes longer
13 for us to get through the process, but that's just how the system
14 works.

15 So Mr. Sawant, do you have anything you'd like to add
16 at the end? Oh, hold on, Mr. Sawant.

17 Mr. Commissioner, do you have anything you'd like to
18 add at the end?

19 ANC COMMISSIONER KIRBY: No, I don't. We're on terra
20 firma.

21 CHAIRPERSON HILL: Okay.

22 Mr. Sawant, do you have anything you'd like to add at
23 the end?

24 MR. SAWANT: I think I'd just to like address Camilla's
25 concerns. I am -- I have spoken to her, told her very

1 specifically that even beyond the \$8,000 that has been submitted
2 to help raise the solar panel, I'm still -- I will continue to
3 making sure that the solar panel is raised and work with her, so
4 I have already like given that confirmation to Camilla.

5 CHAIRPERSON HILL: Okay, great. All right.

6 So what I'm going to do is I'm going to keep the record
7 open, Mr. -- Ms. Do, or if you want to submit a letter, you can.
8 If you don't, it's also fine. I'm just letting you know I'm
9 leaving the record open for a letter from you. And then
10 Commissioner, I'm leaving the record open for a report from your
11 ANC. Do you think, Commissioner, you can be -- you might be able
12 to give us a report by the 5th -- I'm sorry, by the 16th, which
13 is a Friday, the 16th?

14 ANC COMMISSIONER KIRBY: Absolutely. Actually -- and
15 I'm sorry, apologies, we meet that Wednesday, which is the 14th,
16 so, yeah, I can get a turnaround time for you. Absolutely.

17 CHAIRPERSON HILL: Okay, great.

18 So Ms. Do, you'll have until Friday the 16th to give
19 us anything in June. Okay, Ms. Do?

20 MS. DO: Yes. I will work with the 3905 developer to
21 sort this out. If not, we're going to have to submit, you know,
22 our letters to say, you know, have our saying on how much of the
23 solar panel is being impacted and our objection or not to the
24 case. Thank you, Mr. Chairman.

25 CHAIRPERSON HILL: Sure, Ms. Do. Sure, Ms. Do.

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1 Commissioner Miller, you had a comment?

2 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. Yeah,
3 I just had a request. If it's not already in the record, and if
4 it is, someone can direct me to it, I would like to see an
5 illustrative rendering of what this proposed apartment building
6 looks like from Kansas Avenue, from the alley, and maybe from the
7 side of the house where the side yard is being encroached on,
8 but at least from Kansas Avenue. That Slide 6 did show the
9 existing structures, including 3905 I think, but if that slide
10 could be altered to show the proposal, so I just can see how it
11 fits into the neighborhood, I see that it meets the development
12 standards, but I just would like to see an illustrative rendering
13 if possible from both the street, Kansas Avenue side and the
14 alley side, and possibly also the side yard side. That would
15 just be helpful for me. If it's in the record, please direct me
16 to where it is, but I didn't see that.

17 MR. SAWANT: It's there in the record, No. 28 to see.

18 VC VICE CHAIR MILLER: Slide 28 of your PowerPoint?

19 MR. SAWANT: No, not on the PowerPoint. It's the
20 updated architectural plans and elevations, No. 28, so that
21 you'll be able to see what you're looking for.

22 CHAIRPERSON HILL: I don't know if you get the views
23 from that, that Commissioner Miller is speaking of, but I'll let
24 Commissioner Miller -- you're on mute, Commissioner Miller.

25 ZC VICE CHAIR MILLER: Yeah, I looked at -- I was just

1 | looking at Exhibit 28, the architectural plans. I don't see what
2 | I'm looking for, which is an illustrative rendering that shows
3 | what the building's going to look like in the context of the
4 | buildings that are existing there today from Kansas Avenue, from
5 | the alley, and from the side. I see what you provided and I
6 | appreciate that, but I don't see what I'm asking for. So if
7 | you're able to provide that in addition to the ANC's comments
8 | that we're going to wait for and any additional agreements between
9 | Ms. Do and the Applicant. If we're going to -- looking for
10 | that information anyway, I'd like to see some -- a couple of
11 | illustrative renderings.

12 | MR. SAWANT: I'll have (indiscernible) -- yeah, I can
13 | (indiscernible).

14 | CHAIRPERSON HILL: Okay, Mr. Sawant.

15 | MS. DO: Can I just have 30 seconds? Just one question,
16 | actually a request to the Board, the BZA Board? Have you approved
17 | or seen any case of residential solar panel being raised in the
18 | city? I would like to get in contact of those folks to ask them
19 | about the experience of the wind load, the rattle, sounds or
20 | anything of the sound -- of the solar panel when it's being
21 | raised, as we have to live with it for the rest of our life, you
22 | know. And I just want --

23 | CHAIRPERSON HILL: Ms. Do. Ms. Do, hold up. Hold up.
24 | I don't have an answer for you.

25 | MS. DO: Yeah.

1 CHAIRPERSON HILL: So that's okay, I'm just saying I
2 don't know. I guess, you could ask the -- you know, you could
3 ask the Office of Zoning --

4 MS. DO: Yes.

5 CHAIRPERSON HILL: -- whoever you contact, I don't even
6 know who it is, but you know -- you can ask the Office of -- I
7 don't think we know anybody that like -- there's not a reference
8 in that particular way.

9 MS. DO: Got you.

10 CHAIRPERSON HILL: So yeah, we just don't, like it's
11 not something that we here keep track of, but yeah. So, let's
12 see --

13 MS. DO: Do you have a contact that I could reach out
14 to?

15 CHAIRPERSON HILL: Mr. Moy, I don't even know, Mr. Moy,
16 who you can give -- I guess you can ask Ms. Do to call somebody
17 at the Office of Zoning.

18 VICE CHAIR JOHN: Mr. Chairman, wouldn't that be the
19 Department of Buildings, wouldn't someone look at that in --

20 CHAIRPERSON HILL: She's asking --

21 VICE CHAIR JOHN: -- within the permit? We -- that
22 would not be --

23 CHAIRPERSON HILL: I'm sorry, Vice Chair John, to keep
24 talking over you.

25 VICE CHAIR JOHN: All right.

1 CHAIRPERSON HILL: She's asking if we know anybody who
2 has had their solar panels being raised and what it sounds like
3 after it's been raised. I think that's what Ms. Do is asking,
4 correct?

5 VICE CHAIR JOHN: I guess the answer is no,
6 Mr. Chairman.

7 CHAIRPERSON HILL: Right.

8 MR. MOY: If you like, Mr. Chairman, you can ask her
9 to call me and I can give her references.

10

11 CHAIRPERSON HILL: Okay. Okay, great. No, that's
12 good, Ms. Do. So then you have the Office of Zoning's phone
13 number. If not, it's right there on the screen.

14 MS. DO: Yeah, OZ, I got you. Yeah, I'm just, you
15 know, wanted to check in on this and just want to make sure that
16 if this permit is going to be going through the Office of Zoning
17 and DOB, it's going to be a short and sweet application process
18 because I'm afraid that I'm going to have to be, you know, at
19 the BZA hearing again on the case of helping Mr. Sawant to raise
20 our solar panel nine foot above the roof, because right now I'm
21 hearing really mixed input from the contractor is that we cannot
22 have it raised --

23 CHAIRPERSON HILL: Ms. Do?

24 MS. DO: -- that high.

25 CHAIRPERSON HILL: Ms. Do? Ms. Do?

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1 MS. DO: Yeah.

2 CHAIRPERSON HILL: I'll let you go ahead and work with
3 Mr. Sawant. I understand. And the way the process works is,
4 you know, I'm not going to get back here for a decision until
5 the 21st of June, and then we have to write an order, and that
6 can take some time. Then after the order is written, Mr. Sawant
7 can actually go ahead and get his permit. So there still is a
8 process involved, but I'll let you and Mr. Sawant talk about what
9 you guys want to talk about about raising the solar panels. Okay?

10 MS. DO: Got you. Thank you so much, Chairman.

11 CHAIRPERSON HILL: Yep, you're welcome.

12 All right. So we're going to leave the record open
13 again until June 16th for information from Mr. Sawant and Ms. Do
14 about their discussions about the solar panels if we get anything,
15 it's up to them. Then also a report from the ANC after their
16 hearing on the 14th, and then, Mr. Sawant, also the drawings or,
17 you know, that Mr. -- Commissioner Miller is looking for about
18 those particular views, okay?

19 Does anybody have any questions before I close this
20 hearing? All right. Okay.

21 MR. MOY: Mr. Chairman?

22 CHAIRPERSON HILL: Yep, sure. Go ahead, Mr. Moy.

23 MR. MOY: Real quickly, did you give a deadline for the
24 Applicant to file a response to Commissioner Miller's request for
25 additional information?

1 CHAIRPERSON HILL: Yeah.

2 MR. MOY: Okay.

3 CHAIRPERSON HILL: Everything was supposed to come in
4 on the 16th if that's okay with you, Commissioner Miller?

5 Do you see him, he nodded yes. I got a yes that the
6 16th is okay for additional --

7 ZC VICE CHAIR MILLER: Yes.

8 CHAIRPERSON HILL: Okay, great. So he'll look at it
9 before we have a decision.

10 So what I'm asking for, Mr. Moy, then is we're coming
11 back for a decision on June 21st?

12 MR. MOY: Oh, wait a minute. June 21st and not June
13 28th?

14 CHAIRPERSON HILL: No. Are we not meeting on the 21st?

15 MR. MOY: No, there's no scheduled hearing, unless you
16 want to put one on that day.

17 CHAIRPERSON HILL: Why is there not one on June 21st?
18 What holiday is that?

19 MR. MOY: Okay. It is --

20 COMMISSIONER SMITH: Juneteenth.

21 CHAIRPERSON HILL: Oh, Juneteenth. Oh.

22 MR. MOY: Yes. Yes.

23 CHAIRPERSON HILL: Juneteenth is that Monday, the 19th?

24 MR. MOY: Yes, June 19th.

25 CHAIRPERSON HILL: Okay.

1 MR. MOY: Juneteenth.

2 CHAIRPERSON HILL: Is when they're recognizing it?

3 MR. MOY: Yes, sir.

4 CHAIRPERSON HILL: Right, okay. Yeah, then the 28th,
5 the 28th. So then you guys can -- so then, Commission- -- I
6 mean, well, let's keep the deadlines the way they are. All the
7 deadlines then -- I mean, Commissioner, you're fine with the 16th
8 getting us something?

9 COMMISSIONER KIRBY: Absolutely.

10 CHAIRPERSON HILL: Okay, fine. So go ahead and we'll
11 keep all the deadlines the same. Everything's due on June 16th,
12 and we'll come back for a decision on June 28th. Okay?

13 MR. MOY: So June 28th is the continued hearing or a
14 meeting session?

15 CHAIRPERSON HILL: Just a decision.

16 MR. MOY: Oh, okay. All right.

17 CHAIRPERSON HILL: We'll have everything in the record
18 that we'll need to make a decision, unless the Board wants to
19 reopen the record and then we'll reopen the record. I mean,
20 sorry, reopen the hearing. Okay? Okay. If that's good with
21 the Board, unless you have any issues raise your hand, my fellow
22 Board members. Okay. All right.

23 Commissioner and Mr. Sawant, thank you so much. You
24 have a nice day.

25 I'm going to talk to my fellow Board members about what

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1 | their thoughts are for the rest of the day because I did not see
2 | this day going this particular way, and so my apologies, I'm glad
3 | I didn't plan different things at times that I thought -- do you
4 | want to try to do another case and then just see -- like do y'all
5 | want a break because, I -- okay, everybody's yeah, okay. Let's
6 | take a quick break, okay? We'll come back in 15 minutes, okay?
7 | Thank you.

8 | (Whereupon, there as a brief recess.)

9 | CHAIRPERSON HILL: Okay. Mr. Moy, you want to call us
10 | back in and do our next case, and then we can all decide what we
11 | want to do about lunch?

12 | MR. MOY: Thank you, sir. After a brief recess, the
13 | Board is back -- has returned to its public hearing session and
14 | the time is at or about 12:10 p.m. The next case before the
15 | Board is Application No. 20891 of Ramon Tahari and Sarah Tahari.
16 | This is an application for special exceptions and variance,
17 | special exceptions pursuant to Subtitle X, Section 901.2, under
18 | Subtitle U, Section 301.1(g) for the expansion of an accessory
19 | building, under Subtitle E, Section 5201 from the accessory
20 | building rear yard requirements of Subtitle E, Section 5004.1;
21 | the area variance pursuant to Subtitle X, Section 1002, lot
22 | occupancy requirements Subtitle E, Section 304.1. The property's
23 | located in the RF-1 zone at 915 Maryland Avenue, N.E., Square
24 | 937, Lot 26. And I believe, Mr. Chairman, the Applicant filed
25 | or is filing I believe new or updated plans as well as associated

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1 with that a new statement and shadow study. This was done after
2 the 21-day filing period, but there was no waiver of the time
3 requirements that would be subject to Subtitle Y, Section 101.9.
4 And I believe that's all I have, Mr. Chairman.

5 CHAIRPERSON HILL: Okay. No problem.

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

8 MR. TAHARI: Good afternoon, Mr. Chairman and members
9 of the Board. My name is Rahman Tahari. I'm here with my wife,
10 Sarah. We're the owners of 915 Maryland Avenue.

11 CHAIRPERSON HILL: Okay. Mr. and Mrs. Tahari, welcome.
12 Mr. and Mrs. Tahari, I assume that you are requesting a waiver
13 of the time requirements to allow your items into the record,
14 correct?

15 MR. TAHARI: Yes, please, Mr. Chairman.

16 CHAIRPERSON HILL: Okay. All right. Unless the Board
17 has any issues, we'll go ahead and allow them into the record.
18 Please go ahead and do so. Okay. Let's see. All right. All
19 right. Mr. Tahari, I'm going to go ahead and let you guys walk
20 us through your application and why you believe you're meeting
21 the requirements for us to grant the relief requested, and you
22 can begin whenever you like.

23 MR. TAHARI: Okay. Thank you, Mr. Chairman. I don't
24 have a PowerPoint presentation. I'm just going to go mostly off
25 of the updated burden of proof.

1 As Mr. Moy mentioned, we are seeking two special
2 exceptions and an area variance. Special exception to Subsection
3 U 301 -- Section 301 is for the expansion of an accessory building
4 for residential purposes. Special exception for -- to Subsection
5 E, Section 5004.1 is the rear yard requirement, and then of course
6 the variance for Subsection E, Section 304 is for the lot
7 occupancy.

8 We have an existing accessory unit, a garage. It is
9 currently at 75 percent lot occupancy. It sits within the rear
10 yard. We suffered a hit-and-run incident over a year ago in
11 April. It did some damage to the front of the garage, and at
12 that time we decided if we're going to renovate this, why not do
13 what we've always talked about doing, adding some space that we
14 could use, which has become even more pressing since COVID and
15 we're both working from home often and our kids are looking for
16 more space to play, so we wanted to add an office above the
17 garage. So as I said, this special exception for the accessory
18 dwelling, we believe that we meet that -- those requirements
19 because first and foremost we, and you know, we have the unanimous
20 support of our adjoining neighbors. We have the unanimous support
21 with one stipulation from our ANC, which I can address, and
22 unanimous support from the Historic Preservation Review Board and
23 from the Capitol Hill Restoration Society.

24 So for that first special exception about the expansion
25 of an accessory dwelling unit, you know, we feel as though the

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1 proposed building is consistent with the appearance and character
2 of the other accessory buildings on the alley, including a two-
3 story structure very similar to the one that we're proposing
4 right across the alley at 912 D Street, so we don't think that
5 this proposal would in any way be out of character, and we, as I
6 said, we don't think it would adversely affect the use of either
7 our neighboring property, as exemplified by the support from both
8 of our adjoining neighbors.

9 For the special exception to the rear yard requirement,
10 again the current structure is already out of compliance when it
11 comes to the rear yard requirement. The current rear yard is 16
12 feet. The required rear yard is 20 feet, so it already sits in
13 that, so the proposal wouldn't change the rear yard at all. It
14 would just build atop the existing footprint. Again, we think
15 this, you know, turns on the support of our neighbors really.
16 It's not going to affect the enjoyment of their property. We've
17 submitted a shadow study showing that the addition on top would
18 not throw any additional shadows on their principal dwelling
19 units. There would be some shadow on the garage next to ours at
20 917 Maryland Ave and there would be some shadow thrown into the
21 yard at 913 Maryland Ave, but not onto the houses. And both
22 neighbors have expressed their support for our proposal.

23 And then finally for the variance, we -- you know, and
24 this has to do with the fact that we're seeking a waiver to add
25 our updated burden of proof. We had originally been under the

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1 | impression that because the existing structure is already out of
2 | compliance, we would need to seek a variance for lot occupancy
3 | to do any work on that at all with -- you know, without regard
4 | to the proposed size of the addition on top. We just learned
5 | earlier this month that that understanding was incorrect, so we
6 | scrambled then to get some guidance on what it would look like
7 | to try to build at a smaller footprint above to try to meet a
8 | special exception, the 70 percent for a special exception. We
9 | had been advised by a contractor that that would be near
10 | impossible to do and the reasons that he explained to us would
11 | be in order to comply with the ANC stipulation, which is that
12 | there is no entrance to the second floor from the alley, and no
13 | entrance to the second floor from the alley means you can't walk
14 | in from the alley and then walk up the stairs. You have to be
15 | able to enter the second floor only from the rear yard. So in
16 | order to accommodate that, and this is reflected in the updated
17 | plans that we submitted, drawn by this same contractor, we have
18 | added a second door into the rear yard, so the one existing door
19 | that brings you from the garage to our rear yard, and then another
20 | door that you would go into that would bring you up the staircase
21 | to the second floor.

22 | In order to accommodate that stipulation, the staircase
23 | would need to run on a north-south configuration. And in order
24 | to have the staircase, which the contractor estimated to be
25 | between 14 and 15 feet long, and then sufficient landings walking

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1 into and then coming out of upstairs, in addition to the landing
2 coming in from the entrance at the first floor, it wouldn't be
3 possible to situate a smaller structure either at the far northern
4 side of the existing footprint or the far southern side of the
5 existing footprint, so it would be practically impossible,
6 certainly extraordinarily difficult.

7 And then the other option our contractor said might be
8 possible would be to just come in a couple feet, building
9 essentially, imagine a wedding cake, and the reason that wouldn't
10 work is that although it would be supported on the one side by
11 the structural beams that would be included as part of the
12 staircase, on the other side, which is the western side, it would
13 require an additional beam that would push the vehicle garage
14 door over two feet and that would make it impossible to maneuver
15 a car into the garage door because of where our garage is situated
16 with respect to the garage at 432 10th street, it would be
17 impossible to maneuver a car in there at that angle. So we think
18 that trying to comply with the stipulations and trying to comply
19 with the design requirements, it would be practically impossible
20 to try to meet that 70 percent. And again, you know, we believe
21 that this is in character with the neighborhood. We enjoy full
22 support from not only our adjoining neighbors, but multiple other
23 neighbors who have submitted letters. Again, full support from
24 the ANC, full support from the HPRB. I know that the Office of
25 Planning had submitted a memo explaining that they recommended

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1 denial of the variance, but that was based on our previous
2 understanding of what we were required to do and what we thought
3 we would have to do in seeking a variance. I have since updated
4 that burden of proof. I've been in contact with Mr. Jesick, and
5 I'm not sure if they've amended their view, but I would say, Mr.
6 Chairman, that even if this Board does not find that we meet the
7 requirements for a variance, which I feel confident that we do,
8 we would ask in the alternative for a special exception to meet
9 that 70 percent lot occupancy.

10 CHAIRPERSON HILL: Okay. All right, Mr. Tahari --
11 [Tuh-Haur-ee]?

12 MR. TAHARI: [Tuh-Hare-ee], yes, Mr. Chairman.

13 CHAIRPERSON HILL: Tahari. Well, you guys are
14 definitely the best dressed couple that have come out
15 (indiscernible), I just want to let you know.

16 MR. TAHARI: Appreciate that, thanks.

17 CHAIRPERSON HILL: Yeah, we appreciate the effort. I
18 appreciate the effort.

19 MR. TAHARI: You haven't seen the bottom half, so.

20 CHAIRPERSON HILL: That's all right. Nobody ever does.
21 Nobody ever does. Let's see. There's going to be questions,
22 Mr. Tahari. So let me go to the Office of Planning first please.

23 MR. JESICK: Thank you, Mr. Chairman and members of the
24 Board. My name is Matt Jesick, and I'll be presenting OP's
25 testimony in this case.

1 As was described, there are two special exceptions in
2 this case and one variance, and in our written reports we went
3 through the special exception criteria and felt that those areas
4 of relief were fairly straightforward. We did struggle with the
5 variance, and at the time of our written report, as has been
6 stated, we did recommend denial of the variance. After our
7 written report was submitted, the Applicant updated their burden
8 of proof to provide more information on the variance argument,
9 and we appreciate that additional information. We do feel that
10 with that information -- there was a lot of discussion here at
11 the Office of Planning about the variance. We do feel that that
12 information got us over the line. It wasn't the strongest
13 variance case, but we do feel that the Applicant demonstrated
14 that the exceptional conditions of the property, specifically the
15 existing conditions of the accessory building, did result in
16 practical difficulties in meeting the zoning requirements for
17 accessory buildings. So today we can recommend approval of the
18 variance for lot occupancy. Thank you, and I'd be happy to take
19 any questions.

20 CHAIRPERSON HILL: Thanks. So Mr. Jesick, just to get
21 what the Office of Planning or what helped the Office of Planning
22 get over that hurdle, and I do appreciate that it sounds as though
23 there was a discussion within the Office of Planning, is that the
24 condition of the existing first floor, the way that like the
25 beams are situated or the way that the structure is would make

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1 | it practically -- impractical, impractical to change that first
2 | floor to accommodate a smaller second floor, is that what the
3 | Office of Planning is saying?

4 | MR. JESICK: Well, that is the argument that the
5 | Applicant has made and the Office of Planning accepts that
6 | argument as being sufficient to demonstrate a practical
7 | difficulty. There were -- there are structural issues why a
8 | smaller second floor would be difficult to accommodate. The
9 | Applicant mentioned some of those, the need for additional beams
10 | or columns to support the walls of the second floor, difficulties
11 | in accommodating the stair configuration internal to the
12 | building. The Applicant, I don't believe in their verbal
13 | testimony, didn't mention a third area, which was the added
14 | expense should the existing structure need to be partially
15 | demolished to come into compliance with the 70 percent lot
16 | occupancy. That would also be a difficulty for the Applicant.
17 | So those are the reasons that we felt that their arguments, given
18 | the new information, met the variance test.

19 | CHAIRPERSON HILL: Okay. And this being an area
20 | variance rather than just a variance.

21 | Okay. Any questions from the Board for the Office of
22 | Planning? Okay.

23 | Any questions from the Applicant for the Office of
24 | Planning?

25 | MR. TAHARI: No. I would just restate, Mr. Jesick was

1 correct, I did not mention that -- I mentioned the difficulty in
2 adding with respect to the staircase, and I also mentioned the
3 difficulty with respect to the configuration of the vehicle
4 garage door, I did not mention the difficulty in having to raise
5 the structure or partially demolish the structure in order to
6 meet that. That would be an extraordinary expense that would
7 make this difficult, if not impossible.

8 CHAIRPERSON HILL: Okay. All right.

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

10 MR. YOUNG: We do not.

11 CHAIRPERSON HILL: Okay. All right. Does anybody have
12 anything at the end before I let the hearing commence, close,
13 finish? All right. Okay, you guys have a nice day. Closing
14 the hearing. Bye Mr. Tahari and Mrs. Tahari.

15 MS. TAHARI: Bye. Thank you.

16 MR. TAHARI: Thank you.

17 CHAIRPERSON HILL: Thank you.

18 Okay. I had questions about their -- I didn't have any
19 issues with the application's other request that was being -- the
20 areas of relief that were being requested in Subtitle U 301.1,
21 and E 502.1, and 5004.4 -- 5004.1. The area variance is the one
22 that I again had more questions about, and since the supplemental
23 filing came in, I now am better understanding how it would not
24 be -- it is impractically -- it is practically difficult -- tongue
25 tied -- to reduce the size of that second floor to comply with

1 the area variance, so I understand the practical difficulties
2 now. And it being an area variance rather than a variance, it's
3 just practical difficulty that they have to establish, which I
4 do believe they've established. So now I am comfortable with the
5 area variance and can vote in favor of the full application as
6 sought.

7 May I ask, Mr. Smith, your comments?

8 COMMISSIONER SMITH: Like you, you know, I didn't have
9 any issues with the special exception request. It was the area
10 variance. And in light of the initial report that we got from
11 the Office of Planning I did originally struggle with did they
12 meet the area variance criteria, so I do appreciate the Applicant
13 for revising their burden of proof to discuss the reason why they
14 had a practical -- well, a practical difficulty in expanding the
15 second floor of the building. I do, by and large mostly agree
16 with that assessment and OP's assessment of that -- assessment
17 on why they meet the practical difficulty case, and will support
18 the application.

19 CHAIRPERSON HILL: Thank you.

20 Commissioner Miller?

21 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I
22 agree with the comments of my colleagues. I appreciate the
23 Applicant's supplemental updated burden of proof at Exhibit 30,
24 which I do find meets the prongs of the variance test, as did
25 the Office of Planning today in their revised recommendation on

1 the variance.

2 I'm wondering -- I don't want to delay anything going
3 forward today in terms of a decision, in the past have we asked
4 Office of Planning when they've made that change in their
5 recommendation to at least submit a le- -- something in our record
6 so it's in our record that they now are recommending approval of
7 the area variance based on the revised updated burden of proof
8 statement? Because as we know, other people track how we treat
9 variances vis-à-vis recommendations from the Office of Planning
10 and others, so I just wanted -- we have it in our record
11 obviously, but if it doesn't delay anything to delay a decision
12 today to ask them -- ask the Office of Planning to submit a one
13 line or one page or whatever, something very short that just says
14 that they -- based on the new information, just what he said,
15 Mr. Jesick said, they can now recommend approval of the area
16 variance.

17 CHAIRPERSON HILL: Thanks, Commissioner Miller. I
18 think we've done it both ways before. I think -- I know we've
19 been able to just take the testimony of the Office of Planning
20 itself, but I don't see any issue leaving the record open for a
21 written document from the Office of Planning stating your --
22 stating their official position.

23 Vice Chair John, do you have any thoughts?

24 VICE CHAIR JOHN: Sure, Mr. Chairman. I don't -- I'm
25 fine with leaving the record open for the Office of Planning to

1 submit that one sentence. I agree with all of the comments so
2 far. We have not talked about the Office of Planning's
3 recommendation to place a condition on the approval, and I would
4 not be in support of the condition that says that the entrance
5 should be on the alley -- from the alley -- the entrance to the
6 upstairs should be from the alley, but I believe the Applicant
7 has already incorporated that recommendation in the design, but
8 just to keep the record -- make the record clear that I'm not in
9 favor of such a recommendation and I think that the harm that it
10 seeks to prevent is really a matter of enforcement, and so I
11 would not recommend that condition, but otherwise I'm in support
12 of the application. I think that the supplemented burden of
13 proof made the difference for me in being able to approve the
14 area variance because it showed what the practical difficulty
15 would be in reducing the size of the upper -- the second story
16 to the 70 percent threshold, so I am in support.

17 CHAIRPERSON HILL: Okay, great. Thank you, Vice Chair
18 John, and thank you for that clarification. I missed that, and
19 I would agree with your comments concerning the condition from
20 the Office of Planning.

21 So I will go ahead and make a motion to approve
22 Application No. 20891 as captioned and read by the secretary,
23 including leaving the record open for a supplemental from the
24 Office of Planning now being in favor and support of the area
25 variance, and ask for a second, Ms. John?

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1 VICE CHAIR JOHN: Second.

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

4 MR. MOY: When I call your name, if you'll please
5 respond to the motion made by Chairman Hill to approve the
6 application for the relief requested, and the motion to approve
7 was second by Vice Chair John.

8 Zoning Commissioner Rob Miller?

9 ZC VICE CHAIR MILLER: Yes.

10 MR. MOY: Mr. Smith?

11 COMMISSIONER SMITH: Yes.

12 MR. MOY: Vice Chair John?

13 VICE CHAIR JOHN: Yes.

14 MR. MOY: Chairman Hill?

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: We have no other Board members participating.
17 Staff would record the vote as four to zero to one, and this is
18 on the motion made by Chairman Hill to approve. The motion to
19 approve was second by Vice Chair John who was also in support of
20 the motion to approve, as well as approval from -- voted on by
21 Zoning Commissioner Rob Miller, Mr. Smith, and of course Vice
22 Chair John and Chairman Hill. Motion carries, sir, four to zero
23 to one.

24 CHAIRPERSON HILL: Thank you. Okay.

25 The next one might be kind of quick if y'all want to

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1 try and do it or do you want to do lunch?

2 VICE CHAIR JOHN: We can do the next one, Mr. Chairman.

3 CHAIRPERSON HILL: Okay. All right. Great. All I
4 need is one though.

5 All right. Mr. Moy, you can call the next one and then
6 we're going to do lunch.

7 MR. MOY: The next case before the Board is Application
8 No. 20893 of Leif Dormsjo, I can't pronounce that, I apologize.
9 It's D-O-R-M-S-J-O, and Kristin Barcak.

10 This is a self-certified application pursuant to
11 Subtitle X, Section 901.2 for the following special exceptions:
12 Subtitle D, Section 5201 from the lot occupancy requirements of
13 Subtitle D, Section 304.1; rear yard requirements Subtitle D,
14 Section 306.2 and Subtitle D, Section 306.4, which would allow
15 the rear wall of a row building to extend further than 10 feet.
16 The property's located in the RF-3 zone at 2322 39th Street,
17 N.W., Square 1881, Lot 140. And I would like to check one other
18 thing, Mr. Chairman, if I may?

19 (Pause.)

20 MR. MOY: And that's all I have for you. Thank you,
21 sir.

22 CHAIRPERSON HILL: Okay.

23 Could the Applicant please introduce themselves for the
24 record?

25 MR. TERAN: Good afternoon, Commissioners. My name is

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1 Eric Teran, and I'm the architect.

2 CHARMAN HILL: Okay, Mr. Teran. If you can go ahead
3 and walk us through your client's application and why you believe
4 they're meeting the criteria for us to grant the relief requested.
5 I've got 15 minutes on the clock and you can begin whenever you
6 like.

7 MR. TERAN: Sure. Could Mr. Young pull up the
8 presentation please?

9 MR. YOUNG: I did not receive a presentation. Is it
10 in the record?

11 MR. TERAN: Or just the floor plans and the 3D drawings.

12 CHAIRPERSON HILL: Which exhibit, do you know, are you
13 speaking of?

14 MR. TERAN: I can check real quick.

15 CHAIRPERSON HILL: Exhibit 5?

16 MR. TERAN: I mean, the architectural plans and
17 elevations?

18 CHAIRPERSON HILL: It must be Exhibit 5, I think, Mr.
19 Young.

20 MR. YOUNG: Okay.

21 CHAIRPERSON HILL: You should be able to talk us through
22 it, Mr. Teran, Exhibit 5, if it's not, but otherwise, I --

23 MR. TERAN: Okay.

24 CHAIRPERSON HILL: 5 is the architectural plans and
25 elevations.

1 MR. TERAN: So here we're requesting a screened in
2 porch for the owners. They are requesting -- they have a small
3 backyard, so what we're requesting is to go back a little bit
4 more than the 10 feet I believe and -- or to go more than the 10
5 feet from neighbor, which also then reduces the rear yard setback.
6 Go to the next one please?

7 And before I go any further, we did receive full support
8 from the ANC and both neighbors on Lot 139 and 141, provided
9 letters of support. Next slide please?

10 So here you see a screen porch. We're proposing a 12-
11 foot screen porch, so it does go past those -- that 10 feet by 2
12 feet, and we are reducing the rear yard setback from the required
13 20 feet to 16 foot 6. Next slide please?

14 That's just the roof, not much to look at, just a
15 typical screen porch. Next slide please?

16 And here are -- the elevation. This would be looking
17 from the alley and just seeing the back of the screened porch
18 and the house in the background. Next slide please?

19 And these are both views from the side with the stairs.
20 Next slide please?

21 And that's just the existing landing and the stairs
22 that we have going down, that will be demoed. I think that's
23 it. Is there another slide?

24 And then we also prepared a shadow study and 3D
25 drawings, if you want to look at those.

1 CHAIRPERSON HILL: Yeah, Mr. Teran, I'm going to let
2 the Board asks questions as they go because I think everybody's
3 had a chance to look at the record.

4 MR. TERAN: Yes.

5 CHAIRPERSON HILL: Can I ask for the Office of
6 Planning's recommendation please?

7 (Pause.)

8 CHAIRPERSON HILL: Mr. Mordfin, we can hear you kind
9 of. No, we can't hear you. Office of Planning? Okay. There
10 might be a technical issue with them. I'm referring to their
11 report again. I read it before. I'm going to review real quick.
12 Okay. Did the Board have any questions in general? I didn't
13 have any questions in general for the Office of Planning.

14 Okay. All right. Mr. Young, is there anyone here
15 wishing to present or testify?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay.

18 All right, Mr. Teran. Does the Board have any final
19 questions of the Applicant?

20 Okay. Mr. Teran, you have a good day.

21 MR. TERAN: Okay, thank you.

22 CHAIRPERSON HILL: Going to close the hearing.

23 Okay. I thought this was relatively straightforward.
24 I know that we had some discussion about what condition his space
25 was and that's a whole another discussion.

1 I think this is again a rear screened porch, and so I
2 don't have any concerns about the relief that's being requested
3 as to how it's going to affect the adjoining properties' right -
4 - sorry, light and air. And also we do have in the record support
5 from either neighbors regardless, as well as the ANC, which is
6 always helpful to see, as well as support of the Office of
7 Planning and DDOT. So I'm going to be voting in favor of this
8 application. Mr. Smith, do you have anything you'd like to add?

9 COMMISSIONER SMITH: Nothing to add. I will vote in
10 support.

11 CHAIRPERSON HILL: Vice Chair John?

12 VICE CHAIR JOHN: I'm also in support, Mr. Chairman.

13 CHAIRPERSON HILL: Commissioner Miller?

14 ZC VICE CHAIR MILLER: I also agree. Thank you.

15 CHAIRPERSON HILL: Okay. I'm going to make a motion
16 to approve Application No. 20893, as captioned and read by the
17 secretary and ask for a second, Ms. John?

18 VICE CHAIR JOHN: Second.

19 CHAIRPERSON HILL: Motion made and seconded, Mr. Moy,
20 if you'd take a roll call?

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

25 Zoning Commissioner Rob Miller?

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1 ZC VICE CHAIR MILLER: Yes.

2 MR. MOY: Mr. Smith?

3 COMMISSIONER SMITH: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Chairman Hill?

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: And we have no other members participating.

9 Staff would record the vote as four to zero to one, and this is
10 on the motion made by Chairman Hill to approve. The motion to
11 approve was second by Vice Chair John who is also -- voted to
12 approve, along with Zoning Commissioner Rob Miller, Mr. Smith,
13 of course Vice Chair John and Chairman Hill. The motion carries,
14 sir, four to zero to one.

15 CHAIRPERSON HILL: Okay. It's kind of up to you guys
16 again. Like the last case is definitely going to take a little
17 bit of time. Do you want to try to do one more or do you want
18 to take the lunch now? This next one might take 20 minutes, half
19 an hour.

20 VICE CHAIR JOHN: We can take the next one.

21 CHAIRPERSON HILL: Okay, great. Go ahead, Mr. Moy, and
22 call the next case please, and then we definitely will take lunch.

23 MR. MOY: The next case is Application No. 20895 of
24 Michael Potter and Skylar Potter. This is a self-certified
25 application pursuant to Subtitle X, Section 901.2 for special

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1 exceptions under Subtitle U, Section 421 to allow a new
2 residential development, and Subtitle C, Section 703.2 from the
3 minimum vehicle parking requirements of Subtitle C, Section
4 701.5. Property located in the RA-1 zone at 329 Delafield Place,
5 N.W., Square 3304, Lot 78. And let's see, okay, that's all I
6 have, Mr. Chairman.

7 CHAIRPERSON HILL: Okay. Thank you.

8 If the Applicant could hear me, if they could please
9 introduce themselves for the record?

10 MR. POTTER: Hi, my name's Michael Potter, and I'm the
11 Applicant for 329 Delafield Place, N.W., and I do have a short
12 presentation I can provide today, along with answering any
13 questions that you folks may have as well.

14 CHAIRPERSON HILL: Okay, great, Mr. Potter. Why don't
15 you go ahead and give us your presentation? I see the PowerPoint,
16 and I'll have Mr. Young pull that up. You have a little bit of
17 background maybe, Mr. Potter.

18 MR. POTTER: Okay. Let me try to eliminate that, sorry.
19 I'm double booked at the moment, but is that better?

20 CHAIRPERSON HILL: Yes.

21 MR. POTTER: Okay.

22 CHAIRPERSON HILL: Go ahead, Mr. Young, and pull up Mr.
23 Potter's PowerPoint please.

24 MR. POTTER: Okay, thank you. So again, my wife and I
25 are owners of this property that we're looking at here. It's

1 329 Delafield Place, N.W. And if you could go to the next slide
2 please so that we can just dig in?

3 We bought this property vacant 2020 during the
4 pandemic. It's a four-unit property, four two-bedrooms, and we
5 completed renovations at that time and then rented it out. It
6 was damaged by an electrical fire in mid-2022. No one was hurt
7 in the fire. Tenants did have to move out at the time, so it's
8 currently vacant again. And the cause of the fire was an 80-
9 year-old electrical wiring in the ceiling area. We want to
10 continue to own the building. We want to, you know, renovate
11 again, and we want to add two additional units below grade level,
12 along with sprinklers, new electrical systems, almost everything
13 will be new. The footprint of the building will remain the same.
14 The height of the building will remain the same. And our goal
15 is to include this time around three two-bedroom units and three
16 three-bedroom units. Next slide please?

17 I think that first bullet is redundant, so I'm moving
18 to the second bullet. And again, as I may have just noted, we're
19 keeping the same footprint of the property, the same height of
20 the property, we're just trying to add two units at the basement-
21 cellar level and that space is currently used for storage and
22 utilities. So if -- the property is zoned RA-1, which provides
23 for multi-family buildings like this one, but the addition of
24 units requires a BZA special exception. Also adding two units
25 would require that we add one off-street parking space and we're

1 | also seeking relief from the parking requirement. That's because
2 | our tenants generally do not have cars and the parking spot would
3 | reduce by half the available green space in the backyard. That's
4 | really the practical reason we're doing this. And to be clear,
5 | our tenants often do have children and they play outside and we
6 | think that green space is important. Next slide please?

7 | I've got some photos of the neighborhood. That
8 | dumpster is not ours, that's for an adjacent property. Mine's
9 | the one with the -- in the upper left with the red door, and
10 | again we'd keep the same ceiling height, we'd just be adding two
11 | units at the basement level. The picture on the lower right is
12 | very indicative of how this area looks regularly during the day.
13 | It's not densely -- parking, parking isn't an issue there in my
14 | experience. Next slide please?

15 | This is looking the other direction, both directions
16 | actually, just to show the neighborhood. Next slide please?

17 | This is the rear of the property where we would be
18 | adding the -- you can see sort of that in the rear at least these
19 | two additional units would actually be above grade just given the
20 | slope of the property from the front to the rear. And it's also
21 | -- it's not a perfect picture, but this is sort of our current
22 | green space that we're trying to preserve. Next slide please?

23 | We've done a lot of neighborhood outreach. We've
24 | worked with the ANC on this. The ANC voted to approve the project
25 | and both of our requests for relief. The Office of Zoning issued

1 letters to property owners within 200 feet, notifying folks of
2 our requested relief and this hearing as well. We've spoken
3 directly to adjacent neighbors about the project, followed up
4 with meetings, letters, plans via UPS. We posted and maintain
5 the signs of the property that are required as part of this
6 hearing today and we distributed flyers to residents within 200
7 feet of the property, letting them know about our project. My
8 wife and I actually walked the neighborhood and spoke to folks.
9 Next slide please?

10 And my architect is here with me today. I'm going to
11 let him step through the plans, but before I do I wanted to just
12 briefly touch on sort of the relevant statutory factors here as
13 I understand them, and they're more -- they're dealt with in more
14 detail in our Applicant statement, but I would just note for
15 folks that again pursuant to Subtitle U, 421.1, Subtitle X, 901.2,
16 we're here today because we need to have BZA approval in order
17 to add two additional units. This property is zoned at RA-1.
18 The proposed building would be consistent with the height of the
19 existing building and other buildings on this block and many
20 other buildings in the surrounding area, and, you know, it's
21 generally consistent with the character of the neighborhood. In
22 terms of the minimum parking requirement, Subtitle C 701.5 does
23 require us to add a parking space, but this area is well served
24 by mass transit. Parking's not an issue, and we're really trying
25 to preserve the green space for our tenants going forward. I

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1 | would note that we have the support of the ANC. They voted
2 | unanimously to support our application for relief, the relief
3 | we're requesting, and both DDOT and the OPP have filed documents
4 | evidencing their approval as well. That's all I have, but I did
5 | want to see if my architect is here and ready to speak to the
6 | plans.

7 | MR. BOSTAN: Yeah, I'm here.

8 | MR. POTTER: Thanks, Mr. Chairman.

9 | CHAIRPERSON HILL: Yeah, Mr. Potter, just hang on one
10 | second. Let me just -- I appreciate that your architect's here.
11 | Let me just see first -- let me get through these first items
12 | and then if I need to, Mr. Potter, I can bring back up your
13 | architect. Mr. Potter, if you want to mute your line, somebody's
14 | got re- -- background.

15 | Ms. Thomas, could you go ahead and give us the Office
16 | of Planning's recommendation please?

17 | MS. THOMAS: Yes. Good afternoon, Mr. Chairman and
18 | members of the Board, Karen Thomas with the Office of Planning,
19 | and OP is in support of this renovation for the -- in the RA-1
20 | District. We particularly support the three-bedroom units that
21 | will be included and it has met the criteria of Section 421, and
22 | we are in support of the parking relief as requested. And with
23 | that, I'll rest on the record of our report. Thank you.

24 | CHAIRPERSON HILL: Okay. Does the Board have any
25 | questions of the Office of Planning and/or the Applicant? Okay.

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1 Does the Applicant have any questions of the Office of
2 Planning?

3 MR. POTTER: I do not. Thank you.

4 CHAIRPERSON HILL: Mr. Young, is there anyone here
5 wishing to testify?

6 VICE CHAIR JOHN: Mr. Chairman --

7 MR. YOUNG: Sure.

8 VICE CHAIR JOHN: -- I do have one question --

9 CHAIRPERSON HILL: Hold on, Mr. Young.

10 VICE CHAIR JOHN: -- about the layout of the cellar
11 floor, this is on Slide 3 of the architectural plans, and I just
12 need them to walk through with me where the two-bedroom, one bath
13 is located. Maybe I'm not reading the plans correctly.

14 CHAIRPERSON HILL: Sure.

15 Mr. Young, can you bring up the plans? I think it's
16 in the slide deck, Mr. Young, that we just had.

17 VICE CHAIR JOHN: Yeah. It's Exhibit -- it's the
18 architectural plans.

19 CHAIRPERSON HILL: Oh. Then --

20 MR. BOSTAN: I think the next slide.

21 CHAIRPERSON HILL: 17 or 10? 10. 17.

22 VICE CHAIR JOHN: So I guess the question is in the
23 cellar level, are there two three-bedroom units?

24 MR. BOSTAN: Correct. The cellar has two three-bedroom
25 units, and there is one three-bedroom unit on the second floor.

1 VICE CHAIR JOHN: Okay. So the plan says Unit A, two-
2 bedroom, one bath, 721 square feet, on this slide.

3 MR. BOSTAN: That needs to be three-bedroom. I mean,
4 you can see the three-bedrooms. That's a typo.

5 VICE CHAIR JOHN: Well, I wasn't sure what was correct,
6 so I spent a lot of time trying to figure it out last night
7 thinking my architectural skills were lacking.

8 MR. BOSTAN: I apologize. It wasn't you. It was us.
9 If you count, the bedrooms are numbered, bedroom 1, bedroom 2,
10 bedroom 3, but you're right, the text is incorrect.

11 VICE CHAIR JOHN: All right. Thanks a lot. Other than
12 that, I have no questions, Mr. Chairman.

13 CHAIRPERSON HILL: Okay. Thank you, Vice Chair John.
14 All right. Mr. Young, I think I asked, but was there anyone here
15 wishing to testify?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay.

18 Mr. Potter, do you have anything you'd like to add at
19 the end?

20 MR. POTTER: Not at this time. Thank you.

21 CHAIRPERSON HILL: Okay, thank you. Going to go ahead
22 and close the hearing. Mr. Young, if you'd please excuse
23 everyone?

24 Okay. Mr. Smith or somebody else, would anyone else
25 like to start?

1 VICE CHAIR JOHN: Okay, I'll start. I thought this was
2 fairly straightforward, Mr. Chairman. The Applicant is not
3 changing the footprint and is just adding two new units in the
4 basement. I should have asked about the parking requirement
5 because I don't believe that parking might be required because
6 the regulation again I believe says that there would be a parking
7 space required because of the increased density, but only if the
8 -- I think it's one parking space for every three above -- four
9 units, and this is six units so it wouldn't be required. I
10 believe that's the rule. And anyway, in any case, I'm fine with
11 granting the requested relief, but not because of what the
12 Applicant stated, but because of what the regula- -- because the
13 regulations allow it. And I believe the Office of Planning
14 required compliance with the proposed site and landscaping plan,
15 but that's already met, so there's no need for any condition, and
16 so the ANC recommends approval, but is requesting that the
17 Applicant interact with the residents to allow access to the
18 alley during the construction phase. So it is not a condition
19 and it is a request that the Applicant follow up with the
20 residents. So other than that, the application is, as I said,
21 very straightforward and I'm in support. Thank you.

22 CHAIRPERSON HILL: Thank you, Vice Chair John, and
23 thank you for mentioning the parking. Yeah, I just -- it was
24 more kind of out of an abundance of caution and that the analysis
25 of the Office of Planning had provided concerning the caution and

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1 | it being a self-certified application, but I was also comfortable
2 | with the parking.

3 | Mr. Smith, do you have anything to add?

4 | COMMISSIONER SMITH: No, I don't. I don't have anything
5 | to add and will support the application.

6 | VICE CHAIR JOHN: I have a question, Mr. Chairman. I
7 | was wondering if we should require the Applicant to update the
8 | plans for the cellar just to label those units three bedrooms?
9 | It's a minor change just to, you know, add that to the record so
10 | the Department of Building is not confused.

11 | CHAIRPERSON HILL: Sure. I can add -- we can leave the
12 | record open for those changes to plans -- or not change the
13 | plans --

14 | VICE CHAIR JOHN: Just to update -- to remove the
15 | inconsistency in the labelling.

16 | CHAIRPERSON HILL: Thank you. Thank you.

17 | Commissioner Miller?

18 | VICE CHAIR MILLER: I concur with the comments of you
19 | and my colleagues, Mr. Chairman. Thank you.

20 | CHAIRPERSON HILL: Okay, great. Then I'm going to go
21 | ahead and make the motion to approve Application No. 20895 as
22 | captioned and read by the secretary and leave the record open for
23 | the Applicant to submit plans that update the specificity of the
24 | basement being a three-bedroom -- the three-bedroom unit so that
25 | it's not confusing for the plans where it kind of is clear, and

1 ask for a second, Ms. John?

2 VICE CHAIR JOHN: Second.

3 CHAIRPERSON HILL: Motion been made and seconded, Mr.
4 Moy, if you'd take a roll call?

5 MR. MOY: When I call your name, if you'll please
6 respond to the motion made by Chairman Hill to grant the request
7 for the zoning relief in this application, and the motion to
8 grant was second by Vice Chair John.

9 Zoning Commissioner Rob Miller?

10 VICE CHAIR MILLER: Yes.

11 MR. MOY: Mr. Smith?

12 COMMISSIONER SMITH: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 CHAIRPERSON HILL: Yes. Oh, sorry.

16 MR. MOY: That's all right. Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: We have no other members participating. Staff
19 would record the vote as four to zero to one, and this is on the
20 motion that was made by Chairman Hill to approve. The motion to
21 approve was second by Vice Chair John who voted to approve, as
22 well as voted to approve from Zoning Commissioner Rob Miller, Mr.
23 Smith, of course Vice Chair John and Chairman Hill. Motion
24 carries, sir, four to zero to one.

25 CHAIRPERSON HILL: Okay, great. All right. Thanks,

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1 everybody. It's 1 o'clock. You want to try to shoot for 1:30?
2 Okay. And we'll come back for our last case. Thank you.

3 (Whereupon, there was a brief recess.)

4 ZC VICE CHAIR MILLER: I'm here.

5 CHAIRPERSON HILL: Great. Okay.

6 ZC VICE CHAIR MILLER: I'm just not visibly here.

7 CHAIRPERSON HILL: Yep. Thanks, Chairman Miller -- I
8 mean, Commissioner Miller.

9 All right. Mr. Moy, you can call our last case when
10 you get an opportunity.

11 MR. MOY: Thank you, Mr. Chairman. The Board has
12 returned from its lunch recess to the public hearing session and
13 the time is at or about 1:40 p.m. in the afternoon. The next
14 and last case on today's docket is Application No. 20896 of Jeremy
15 Marcus and Una Lee. This is an amended self-certified application
16 pursuant to Subtitle X, Section 901 for a special exception under
17 Subtitle D, Section 5201 from the accessory structure building
18 area requirements Subtitle D, Section 5003.1. The property's
19 located in the R1-B zone at 3617 Newark Street, N.W., Square
20 1914, Lot 53. Mr. Chairman, as you're aware, there is a request
21 for party status in opposition from a Guy Meredith, and I believe
22 that's under Exhibit 27 and 27A. Mr. Meredith has also filed a
23 letter in opposition, which is within the 24-hour block, and I
24 believe -- checking one more thing for you, sir -- and I believe
25 there is witness testimony from a Mark Horton, and that's all I

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1 have, Mr. Chairman.

2 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Moy.

3 Could the Applicant please introduce him for -- please
4 -- can the Applicant please introduce themselves for the record?

5 MR. TERAN: Good afternoon, Commissioners. My name is
6 Eric Teran, and I'm the architect for the project.

7 CHAIRPERSON HILL: All right. Mr. Teran, thank you.
8 If you want to go ahead and walk us -- well, hold on before I do
9 that.

10 Mr. Meredith, can you hear me?

11 MR. MEREDITH: Yes, I can. Can you hear me?

12 CHAIRPERSON HILL: Yes. Yes. Could you introduce
13 yourself for the record please, including your address?

14 MR. MEREDITH: Yes. I'm Guy Meredith, and I live at
15 3608 Norton Place, N.W., which is the property that is immediately
16 adjacent to the rear property line of 3617 Newark Street.

17 CHAIRPERSON HILL: Yep, got you, Mr. Meredith. If you
18 don't want to, that's fine, are you choosing not to use your
19 camera, just so I know?

20 MR. MEREDITH: No, I can use -- I just don't know how
21 to turn it on. Oh, start video. Okay. That might work. Yes,
22 there we go.

23 CHAIRPERSON HILL: Okay, great. Perfect. Thank you.
24 It's just easier to see.

25 MR. MEREDITH: Sure.

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1 CHAIRPERSON HILL: Let's see. So -- and, Mr. Meredith
2 you're still applying for party status, correct?

3 MR. MEREDITH: Yes, I am.

4 CHAIRPERSON HILL: Okay, great. All right. You are,
5 as I understand it, and I'm looking at the application or your
6 request for party status, right, you're immediately directly --
7 your back property line shares the Applicant's back property
8 line; is that correct?

9 MR. MEREDITH: That's correct.

10 CHAIRPERSON HILL: Okay. I don't have any issues with
11 giving Mr. Meredith party status.

12 Do any of my fellow Board members? And if so, please
13 raise your hand. Okay.

14 So Mr. Meredith, I think you can qualify under the
15 regulations for a party who can get party status, and at this
16 point I understand that your party status is in opposition,
17 correct?

18 MR. MEREDITH: Correct.

19 CHAIRPERSON HILL: Okay. Excuse me. So Mr. Meredith,
20 what will happen is, you'll go ahead and get an opportunity to
21 participate as a party. So what that means is that where the
22 Applicant's going to have their presentation, and then you'll
23 have an opportunity. The Board will ask first questions of the
24 Applicant and then you'll have an opportunity to ask questions
25 of the Applicant. You'll also have an opportunity -- you'll have

1 an opportunity to ask questions of the Applicant based on their
2 testimony and what's in the record, and then also you will have
3 an opportunity to give your presentation, testimony, and then the
4 Office of Planning will come forward and give their report, as
5 well as, you know, you'll have an opportunity to ask questions
6 of the Office of Planning. And that's how we'll -- and then
7 we'll just slowly work our way through the hearing and see where
8 we get. Do you have any questions, Mr. Meredith?

9 MR. MEREDITH: No, I think that should work, uh-huh.

10 CHAIRPERSON HILL: Okay, great.

11 All right. So Mr. Teran, if you can explain to us why
12 you believe your client is meeting the criteria for us to grant
13 the relief requested? I'm going to put 15 minutes on the clock,
14 just so I know where we are, and you can begin whenever you like.

15 MR. TERAN: Okay. Thank you, Commissioner.

16 Mr. Young, if you can pull up the presentation please?

17 CHAIRPERSON HILL: Which presentation, Mr. Teran, are
18 you speaking of?

19 MR. TERAN: So these are all exhibits that I had, I
20 emailed Mr. Young, he can bring up --

21 CHAIRPERSON HILL: Got it.

22 MR. TERAN: -- and then he just asked if I could make
23 it one PDF.

24 CHAIRPERSON HILL: Do you know which exhibits they are?

25 MR. TERAN: Yeah, so this one is the site photos, which

1 I believe was Exhibit 4, is what we're starting with.

2 CHAIRPERSON HILL: Okay, got you. Okay. Well, I'll
3 let you give your presentation, so go ahead and we'll follow
4 along with your presentation.

5 MR. TERAN: Okay. So the property that we're adding
6 is, you know, the ones with the cross-hatch there and then we
7 have some photos to look at of the accessory dwelling unit, which
8 is existing. So next photo please, or next slide?

9 So this is the structure facing from the house, facing
10 to the north. Next slide please?

11 Just looking further back, same thing, just to get a
12 little bit of context. Next slide please?

13 Once again, just giving you context so you know what
14 you're looking at. So real quick basically we're keeping the
15 same roof structure and we're actually raising that exact roof
16 so that we don't have any waste. Next slide?

17 This is looking from the existing parking spot, looking
18 back towards the alley. Next slide?

19 Just looking at the existing entrance to the garage
20 area. Next slide?

21 So I believe Mr. Meredith's house is the one right to
22 the left. Next slide?

23 And just looking at the backyard towards the main house
24 on your right. Next slide?

25 Just the main house. Next slide? Next slide?

1 Just the main house again. Next slide?

2 And then we go to the plans. If we go next slide
3 please?

4 Now, once again just showing the location of the main
5 house and the accessory structure. Next slide?

6 So this is what we're proposing, on the left side is
7 the existing first floor. Right now it's divided into the garage
8 where it says living and the stairs, and then where it says
9 dining, it's a studio space. So what we're proposing is making
10 that more of a living space and then that's non-conforming, but
11 it's been existing there for a very long time, because now
12 accessory structures are only allowed to be 450 square feet by
13 matter-of-right. And so what we're proposing on the second floor
14 is to follow the outline of the first floor, and so that's what
15 makes it over the 450 square feet allowed. I believe it's 632.
16 So this on the right side is the second floor that we're -- what
17 we're proposing. Next slide?

18 And that's just the roof plan. Next slide? Oh, sorry,
19 if you hold it. One -- can you go back one second? If you look
20 at the top right corner of the roof, it's actually at an angle
21 and that's because right now the existing roof is actually going
22 over the property line, so this is a remodel we're going to cut
23 that angle off of -- we're going to angle the roof so we can cut
24 it off, and it will no longer be going onto the adjacent property.
25 Next slide please?

1 The south elevation is what's facing the house, so we
2 have one window there facing the house. The east elevation is
3 facing the adjacent neighbor. The north elevation has no windows
4 on the second floor, so there'll be no privacy concern. And the
5 west elevation is what's facing the alley and there's a window
6 on the second floor for the bedroom. Next slide?

7 Just some sections. So that actually, like I said
8 before, that the roof there is what's there existing and the
9 contractor's actually going to raise that roof up, so that's
10 going to be fun to see. Next slide?

11 Just the demo plans of where we are. There's a shed
12 in the rear yard that we are going to be demolishing. Next slide?

13 So these are the 3D images. Next slide?

14 So there's the structure. As you can see, it's
15 basically the same as what's there now, just raised a little bit
16 higher. It's still underneath the allowed height limit, which I
17 think it's 21 feet or 22 feet at the ridge and we're about an
18 inch shorter. Next slide?

19 And then just looking at the back, as you can see,
20 there's no windows or any privacy concerns looking into the
21 adjacent yards. Next slide?

22 And then just working our way around, the door and the
23 window facing the alley. Next slide?

24 Just another one. Next slide please?

25 Just facing from the backyard. Next slide?

1 So this is a exhibit that we prepared showing what 450
2 square feet looks on the second floor. It can be arranged in
3 any way that we want. So you know, kind of the option one, the
4 450 square feet is more on the north side and it goes from the
5 left to the right of the existing building. And I wanted to
6 prepare that because that's basically what we're proposing to
7 show that there is really no increase and issues with the light
8 or shade or shadows. And then option two just shows another
9 option. Next slide please?

10 And then three and four show the other two options of,
11 you know, what 450 square feet look like on the second floor,
12 which would be a matter-of-right. Next slide please?

13 These are our sun studies. So to do the sun study,
14 we went with the one that would probably be least obtrusive to
15 the adjacent neighbor to the north just to see what would be the
16 worst case scenario for what we're proposing. And as you can
17 see on the right is the matter-of-right at 9 a.m. on the summer
18 solstice, and on the left is what's proposed. So it's very
19 minimal additional shading on that property. Next slide please?

20 This is at 12 p.m., there's next to nothing. Next
21 slide please?

22 And here at 3 p.m. on summer solstice, there's no
23 additional shading on the neighboring property. Next slide
24 please?

25 This is winter. This is probably the most shading in

1 the morning where it's going onto that -- the adjacent shed.
2 Next slide please?

3 Top right, you know, you can see a little bit on the
4 proposed at 12 p.m., there's a little bit of extra shading as
5 well. Next slide please?

6 And here in the -- at 3 p.m., there's really no
7 additional shading for the adjacent residents.

8 That's basically it. I'm happy to answer questions,
9 but that's basically why we believe that what we're asking for
10 to increase the 450 square feet to 632 square feet doesn't really
11 bring any hardship to the neighbor in terms of, you know,
12 character of the neighborhood, privacy, lights, or shadows. I'm
13 happy to answer any questions.

14 CHAIRPERSON HILL: Yeah, Mr. Teran. I didn't
15 understand the difference between the 450 and the 632. You were
16 showing everything at 450. Are those -- light shadows were at
17 450 square feet?

18 MR. TERAN: Well, it was just an example of what 450
19 square feet could look like on the second floor. So by --

20 CHAIRPERSON HILL: As opposed to the 632?

21 MR. TERAN: Correct. So we could do 450 square feet
22 all on the northside of the existing accessory structure and it'd
23 create the exact same shadows as the 632 square feet.

24 CHAIRPERSON HILL: Okay. Okay.

25 Does the Board have questions of the Applicant? Sure,

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1 Ms. John?

2 VICE CHAIR JOHN: So Mr. Chairman, I had that same
3 question. Can we go back to the slide that shows how it would
4 be reduced to 450 square feet?

5 CHAIRPERSON HILL: Yeah, I guess, Mr. Teran, even for
6 me, if you can show the difference between -- I'm trying to
7 understand -- the 450 square feet by-right versus the 632 that
8 you're asking for.

9 VICE CHAIR JOHN: Yeah, in terms of the dimensions, how
10 many feet by how many feet, you know?

11 MR. TERAN: So like -- I think you have to go back to
12 a few more, Paul.

13 The idea there is that there's no difference between
14 450 square feet and 632 square feet in terms of privacy, lights,
15 or shadows. If you go back one more please?

16 MR. MEREDITH: No difference, huh.

17 MR. TERAN: So basically option one is basically
18 showing you from east to west, west, left to right, is the same
19 width as what we're proposing for the 632 square feet. So by
20 doing this it's showing that there are no really additional
21 concerns of shadow, or light, or privacy.

22 VICE CHAIR JOHN: Okay. So a follow-up question, is
23 that the north side close to the party in opposition?

24 MR. TERAN: Their property is on the north.

25 VICE CHAIR JOHN: Okay.

1 MR. TERAN: On the top of each image.

2 VICE CHAIR JOHN: Directly adjacent to this side?

3 MR. TERAN: Yeah. So they have the shed that's there
4 on the other property, that rectangle, and then the house a little
5 further back from the outline.

6 VICE CHAIR JOHN: All right. I don't see the shed.
7 This is very difficult to --

8 MR. TERAN: So you have our property, and over to the
9 left there's a rectangle going, I guess, down and up on the sheet,
10 south to north. It's a rectangle about -- that's the adjacent
11 neighbor's shed. Well, I don't know if it's a gara- -- it may
12 be a detached garage.

13 CHAIRPERSON HILL: Mr. Meredith, if you could just mute
14 yourself there while the presentation is going on? Thanks.

15 MR. MEREDITH: Uh-huh.

16 VICE CHAIR JOHN: So the neighbor's shed is along --
17 it's very confusing. It's on the long side of the building, I'm
18 assuming, because you're showing me this side that the neighbor's
19 property would be adjacent to this side you're showing me on the
20 north side.

21 MR. TERAN: Their property is everything that's north
22 of the accessory structure.

23 VICE CHAIR JOHN: Okay. Is there -- can you go back
24 to the first slide that shows their lot and your lot? I believe
25 that would be site plan number two that shows the lots. And I'm

1 seeing Lot 34 or 54 in the back and the accessory structure below
2 it.

3 MR. TERAN: So Lot -- theirs is Lot 34.

4 VICE CHAIR JOHN: Okay, Lot 34.

5 MR. TERAN: The lot, accessory structure is kind of
6 where it says number 3.

7 VICE CHAIR JOHN: Yes. And what you're showing us --
8 what you're showing us as the 450, is that the short side of the
9 rectangle, which is what the accessory building is, are you
10 showing us that short side?

11 MR. TERAN: So in that exhibit, it's showing what's
12 meant -- what we could do by matter-of-right on the second floor
13 of the accessory structure.

14 VICE CHAIR JOHN: Yes, but would the second floor be
15 shorter on the side directly facing Lot 34?

16 MR. TERAN: So it could be any of those scenarios,
17 those four options that I showed. So I was just showing matter-
18 of-right. It won't necessarily work with the floor plans that,
19 you know, the owner wants to pursue. It's -- that exhibit's more
20 to show that there is no difference with the light, air, or
21 shadows from a matter-of-right 450 square feet or 632 square
22 feet.

23 VICE CHAIR JOHN: I get that. I just need to know that
24 any -- for example, one of your options could be making the second
25 floor the full length of the building from what's shown there on

1 the side of Lot 34, so you could go the full length, but make it
2 shorter on the other side.

3 MR. TERAN: Okay.

4 VICE CHAIR JOHN: I believe what you showed us with the
5 shadow study as the one that you selected is the side closest to
6 Lot 57 or Lot 804?

7 MR. TERAN: Lot 57.

8 VICE CHAIR JOHN: Okay.

9 MR. TERAN: Got you, yeah.

10 VICE CHAIR JOHN: All right. So that doesn't really
11 help us in terms of seeing what the impact would be on Lot 34.
12 I would be more interested in seeing what the reduction would be
13 from the long side of the rectangle. Do you have a slide like
14 that?

15 MR. TERAN: I don't have a slide, but there'd be
16 absolutely no difference because the length would be -- or the
17 width going from left to right in this plan, there's no
18 difference.

19 VICE CHAIR JOHN: But you don't have a shadow study
20 showing that?

21 MR. TERAN: Not that. Not for that scenario.

22 VICE CHAIR JOHN: Okay. All right. That's all, Mr.
23 Chairman.

24 CHAIRPERSON HILL: Okay. Let's see. Okay. Anybody
25 else for the Applicant at this point? We'll have plenty of time

1 also to ask questions.

2 Mr. Meredith, do you have any questions of the
3 Applicant at this point?

4 MR. MEREDITH: No, I don't have any specific questions,
5 Mr. Chairman.

6 CHAIRPERSON HILL: Thanks, Mr. Meredith. Mr. Meredith,
7 would you like to go ahead and give your testimony to the Board?

8 MR. MEREDITH: Yes, I would. I mean, the general nature
9 of my testimony, I summarized in an email that I sent yesterday,
10 but unfortunately it was sent 23 hours as opposed to 24 hours
11 before the meeting time, so it couldn't be submitted for the
12 record at that point, but --

13 CHAIRPERSON HILL: That's all right. So Mr. Meredith,
14 are you asking for a waiver to allow that into the record?

15 MR. TERAN: Yes, please.

16 CHAIRPERSON HILL: Okay. Could you guys please drop
17 that into the record, so we can take a look at it? And let me
18 see if that's in there now. I don't think so.

19 MR. MOY: I'll let you know as soon as it's uploaded
20 into the record, sir.

21 CHAIRPERSON HILL: Okay.

22 MR. MEREDITH: The general point that I'm making, in
23 any case, in that communication is that when I had first heard
24 about the project and read the municipal regulations on adding
25 to nonconforming structures -- and this structure that exist on

1 my property line at this point is 40 percent larger than would
2 be consistent with a conforming structure. So we're not talking
3 about a small amount here, we're talking about a very significant
4 amount.

5 And as you know, but I'd like to just repeat, you know,
6 the regulations require that additions to a structure of that
7 nature shall not have a substantially adverse effect on the use
8 or enjoyment of any abutting or adjacent dwelling or property.
9 Well, you know, it's just -- it seems self-evident to me that
10 adding a second story to -- a 632 square feet to an existing
11 structure at 632 square feet are not going to have a substantially
12 adverse effect on my property. Just by way of showing you what
13 the layout is, beyond what the plats show, if it were possible
14 to bring up one of the exhibits, Exhibit 4, page 6 is the photos
15 of the existing structure and how it relates to my property. If
16 that exhibit could be brought up, I think it would be helpful.

17 CHAIRPERSON HILL: Sure.

18 Mr. Young, could you please bring up Exhibit 4, page 6
19 please?

20 While he does that, Mr. Meredith, are you that shed,
21 you're saying that's the shed that --

22 MR. MEREDITH: That shed is on my property.

23 CHAIRPERSON HILL: Okay.

24 MR. MEREDITH: It's not the main residence itself, but
25 it is on one corner of my property.

1 CHAIRPERSON HILL: Okay.

2 MR. MEREDITH: So if we could go down to I believe it's
3 page 6 of that exhibit?

4 CHAIRPERSON HILL: There you go.

5 MR. MEREDITH: Yes. So this photo shows how close that
6 -- first of all, how large the existing structure is and how
7 close it is to my property line and the overhang of the roof and
8 that in fact encroaches on my property as things existed at the
9 current time. And it's very difficult for me to -- I found the
10 shadow and light drawings to be less than fully comprehensible
11 frankly, but I can't imagine how adding, you know, another hundred
12 and, what is it, 180 square feet to the 450 square feet that
13 would be a matter-of-right could not affect materially the light
14 and views and the use and enjoyment of my property. I also
15 submitted a picture of that structure, the existing structure
16 from my backyard that was part of the -- attached to the email
17 that I sent yesterday. So I don't know if it's possible to bring
18 that up, but I think it underscores --

19 CHAIRPERSON HILL: Yeah, if it's all in one attachment,
20 let me just see if it got put into the record yet. Yeah, I think
21 now, Mr. Young, it's Exhibit 33.

22 (Pause.)

23 CHAIRPERSON HILL: Yeah, Mr. Meredith, what they're
24 trying to say or what their argument is, and we'll also continue
25 to talk about, is that they can build 450 square feet two stories,

1 right?

2 MR. MEREDITH: Uh-huh.

3 CHAIRPERSON HILL: And that would have -- by-right --
4 and that will have some effect on your shadowing?

5 MR. MEREDITH: Uh-huh.

6 CHAIRPERSON HILL: They're trying to show the
7 difference between the 450 square feet that they could do by-
8 right and the 632 that they have -- or they're proposing, so just
9 so you kind of can wrap your head around that a little bit.

10 MR. MEREDITH: Yeah, I understand that. I don't --
11 what I don't understand is how that additional square footage on
12 the second floor can have no effect on the light and view from
13 my property. That just does not make sense.

14 CHAIRPERSON HILL: Actually, it's not that it won't
15 have any effect, it's whether or not per the regulations it has
16 -- I'm not saying it is or isn't -- I'm just saying it doesn't
17 have undue effect.

18 MR. MEREDITH: Well, the architect said no effect in
19 his testimony.

20 CHAIRPERSON HILL: Yeah. I think what he was trying
21 to say is that there's no -- there's no additional difference is
22 what I think he was trying to say.

23 MR. MEREDITH: Well, there is an additional difference.
24 It's just is it undue or not, I mean, I guess that's --

25 CHAIRPERSON HILL: No, and I'm sorry, just again

1 | because it's difficult to clarify what -- what their argument is
2 | and I don't know if they're making it or not, I'm just trying to
3 | help clarify, they're allowed to do 450 square feet by-right.
4 | What they're saying is they could do it in a way that would be
5 | the same as what they're trying to propose to you and so that's
6 | what the Board's trying to also kind of look at.

7 | But, nonetheless, Mr. Young can you pull up Exhibit 33
8 | there and show the photograph that I believe Mr. Meredith is --
9 | yeah, there you go.

10 | MR. MEREDITH: So this is the existing structure from
11 | the point of view of my backyard. And to follow-up on the
12 | Chairman's point, I mean, I do understand that as a matter-of-
13 | right they could add 450 square feet to that and to create a
14 | second story for that property as long as the roof height was
15 | below 22 feet, which that latter point has been somewhat
16 | controversial all along, and I do hope that they respect, if they
17 | do go ahead, that 22-foot limit because previous plans did not
18 | show that. But what my point is when we look at this drawing is
19 | that they're asserting that adding 450 square feet as a second
20 | story to that structure or adding 632 square feet as a second
21 | story that there would be no difference in the impact on my
22 | property. And I just -- you know, it seems self-evident to me
23 | that that's not the case.

24 | Now, if they wanted to change the proposal to limit the
25 | area on the second floor to 450 square feet -- and they're saying

1 that the increase to 632 is really just trivial -- well, and I
2 would not be in a position to object because that would be
3 consistent with the zoning code, then so be it. But again, at
4 the risk of being somewhat repetitive, I don't see how you could
5 add an additional 182 square feet to the second story of that
6 structure without it having a significant impact on my property.
7 That's my point.

8 CHAIRPERSON HILL: Sure. No, I understand, Mr.
9 Meredith. And yeah, that's kind of what is before the Board with
10 the Office of -- everything that we're going through, this is the
11 process for that. That additional 182 square feet --

12 MR. MEREDITH: Correct.

13 CHAIRPERSON HILL: -- is what we're trying to figure
14 out. Okay. Do you need this one anymore, Mr. Meredith?

15 MR. MEREDITH: No, that's fine.

16 CHAIRPERSON HILL: Okay. What --

17 MR. MEREDITH: And that basically summarizes my
18 presentation.

19 CHAIRPERSON HILL: Thanks. What, Mr. Meredith, is kind
20 of near that -- I mean, I'm just curious -- like how far away
21 are you from the end of your lot there? I'm trying to see where
22 like -- what they're trying -- what they're trying to do to
23 mitigate some of the possible issues is they're not putting
24 windows on the second story on that side for privacy, and so I'm
25 just trying to see your backyard, how big is it from where that

1 is I guess?

2 MR. MEREDITH: Not too sure what that question is. I
3 mean, but just going back to the privacy issue, I mean originally,
4 yes, as you noted, the
5 windows were oriented towards my backyard, which it raises an
6 interesting question about what the intended use of the structure
7 is, but I guess that's not a part of the BZA's mandate to question
8 that, but there are still doors that open from the revised
9 structure onto a patio that will face my backyard, so that raises
10 privacy issues again. If that's a matter-of-right, then they
11 could modify the rest of the proposal to make it consistent with
12 the zoning regulations and then I would not be able to object.

13 CHAIRPERSON HILL: Okay. What is it, Mr. Meredith,
14 that you think they might do with that second floor? I don't
15 kn- -- I'm just curious now what you think they're doing.

16 MR. MEREDITH: Oh, well, there were suggestions,
17 conversations between neighbors of mine, not my direct
18 conversation, so I would have to say this is hearsay, but it's
19 been introduced at the ANC meetings where issues of neighborhood
20 importance came up and the notion was that that property would
21 be used as an Airbnb.

22 CHAIRPERSON HILL: Okay, got it. Okay, great. Okay.

23 All right. Let's see, does anybody have any questions
24 of Mr. Meredith?

25 VICE CHAIR JOHN: Nope, no questions of Mr. Meredith,

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1 | but I may have a question about the Applicant based on Mr.
2 | Meredith's testimony.

3 | CHAIRPERSON HILL: Okay. Can I hear from the Office
4 | of Planning?

5 | MS. MYERS: Good afternoon. Crystal Myers with the
6 | Office of Planning. The Office of Planning reviewed the case and
7 | concluded that the application is meeting the criteria of a
8 | special exception, so we are recommending approval, and I can
9 | stand on the record of the staff report, but of course if you
10 | have questions, I'm here.

11 | CHAIRPERSON HILL: Yeah, Ms. Myers, Ms. Myers, I
12 | haven't asked you in a while, can you go ahead and walk us through
13 | your report as to why you believe they're meeting the criteria,
14 | what criteria you believe they're meeting?

15 | MS. MYERS: Sure. Sure. So when it comes to the
16 | general special exception criteria, we rely on the fact that it
17 | complies with the specific special exception criteria for D 5201,
18 | so when it comes to will it be in harmony with the general purpose
19 | and intent of the zoning regulations, the application from our
20 | review, it complies with the specific D 5201 special exception
21 | criteria. So we would say that -- or we are saying that it meets
22 | the general purpose and intent of the zoning regulations. And
23 | when it comes to not adversely impacting the neighboring
24 | property, again the specific criteria in D 5201, the intent of
25 | that is to ensure that it doesn't have a significant adverse

1 impact on the neighboring property, and so we believe that it
2 complies with those specific criteria.

3 So therefore, it meets the criteria that it doesn't
4 have a -- it doesn't affect adversely the use of the neighboring
5 property in accordance with the regulations and the zoning maps.

6 I know when it comes to specific criteria, the first
7 one being -- well, the first one really is is that they are asking
8 for maximum building area of an accessory building, so that's
9 what qualifies it for D 5201 special exception relief.

10 And then the next criteria about the light and the air,
11 does it have a -- you know, the criteria is really does it have
12 an undue impact on the light and air of the neighboring property.
13 And as been discussed, the Applicant supplied a shadow study and
14 we relied on the Applicant's shadow study and did not see a
15 significant undue impact when compared with what could be done
16 as a matter-of-right or a by-right project, so we concluded that
17 there was not an undue impact on the neighbor's light and air.

18 You know, and in this section, just to give a little
19 more clarity about it, there could be an impact, I mean, there
20 will be an impact, but in comparison to what can be done by-
21 right, that's how we look at it. And then also the time of day,
22 there may be a slight increase in shadowing, but then like, you
23 know, an hour later, the shadow will go away, so again, it did
24 not seem like it would be an undue impact.

25 And when it comes to privacy of use and enjoyment, as

1 | been discussed, we did not see any -- there are no windows facing
2 | the neighbor to the north. There is a window facing the neighbor
3 | to the west, but it's just the corner of their property and it's
4 | mostly focused on the public alley, so it would not be a
5 | significant impact to that neighbor. And that neighbor that
6 | would be there is the apartment building and it's their rear
7 | yard, I think close to the parking area, so that's not as much
8 | of an impact. And then the other window is facing the property's
9 | -- the subject property's main house.

10 | And then when it comes to the -- does it fit within the
11 | character of the alley or the street, it wouldn't be significantly
12 | visible from the street, but it would be visible from the alley.
13 | However, there are similar size detached rear structures along
14 | the alley, and we did not think that this one would be
15 | significantly different from others. And on top of that, this
16 | is in a historic district, and so the Historic Preservation Review
17 | staff also reviewed this and determined that -- oh, I'm sorry,
18 | not just the staff, the Review Board reviewed this and determined
19 | that the proposed plans fit within the historic district, it's
20 | compatible with the district.

21 | So I mean, with that we were able to conclude that it
22 | meets the criteria for special exception relief and recommending
23 | support of it.

24 | CHAIRPERSON HILL: Okay. I've got a couple questions,
25 | and one is for you, Ms. Myers. But -- well, actually no. It is

1 | for you, Ms. Myers. So in terms of like I never really remember
2 | how like there's light and air and privacy, and then I didn't
3 | know whether, you know, noise or proximity is something that the
4 | Office of Planning tends to look at, meaning that there's that
5 | patio that's in the back of the property that is kind of then
6 | now that patio -- that rear patio on the first level is then now
7 | going to be up against the neighboring property. Does the Office
8 | of Planning -- like if those windows weren't there, if that patio
9 | wasn't there, if it was on the other side, like is that something
10 | that the Office of Planning takes into consideration or how do
11 | you guys view that?

12 | MS. MYERS: We take it into consideration, but they're
13 | in their rear yard. A patio is allowed in the rear yard, and
14 | they only need relief for doing the second level for the accessory
15 | structure. So it wasn't something that we thought would be
16 | causing an undue impact. We do specifically look at light and
17 | air, but I mean, with the general special exception criteria we
18 | can consider other things, but you know, I didn't see anything
19 | in this case that would be to a point of an undue impact on the
20 | neighbor in respect to like noise or --

21 | CHAIRPERSON HILL: No, I'm just trying to understand.
22 | I agree. I mean, it's in the rear yard. It's in the rear yard
23 | of the ADU, you know.

24 | MS. MYERS: Well, it's not an ADU. I just want to make
25 | sure that's clear.

1 CHAIRPERSON HILL: All right. Sorry. I apologize. I
2 misspoke. It's in the rear yard of the proposed project. Let's
3 see, but anyway, so right.

4 Okay. Mr. Teran, might one quick -- yeah, I'll get -
5 - Mr. Meredith, you'll have an opportunity to ask questions also.

6 Mr. Teran, there was a thing like -- are you guys
7 putting up a new fence there or is that the existing fence, are
8 you replacing that fence?

9 MR. TERAN: Along the property line?

10 CHAIRPERSON HILL: Yeah.

11 MR. TERAN: I don't -- as far as our plans are
12 concerned, I don't recall calling out to replace it. It may be
13 something they decide to do.

14 CHAIRPERSON HILL: In your presentation, and I can't
15 find it, that's what I'm trying to find, you had like diagrams
16 of that rear -- the rear of the project, is that anywhere in the
17 record or is that just in your 3D images?

18 MR. TERAN: Concerning the fence? Or that are the 3D
19 images?

20 CHAIRPERSON HILL: Yeah.

21 MR. TERAN: Yeah, that's on the record.

22 CHAIRPERSON HILL: Where?

23 MR. TERAN: I think it's Exhibit 10 or 9.

24 CHAIRPERSON HILL: Okay, thanks.

25 MR. TERAN: Yeah, I think it's 9.

1 CHAIRPERSON HILL: Yeah, it's 9. It's 9. Right. So
2 that fence is the preexisting fence?

3 MR. TERAN: Correct.

4 CHAIRPERSON HILL: Okay.

5 MR. TERAN: And also we want to add real quick, right
6 now it's a story and a half, the building, and so we're only
7 raising the eaves and the ridge by 4 feet, 9 inches and it is -
8 - the ridge is a half inch below the allowed 22 feet, so we're
9 not adding a full floor and an extra 10 feet. It's only 4 feet,
10 9 inches. So I think that's why there's less impact on the shadow
11 study.

12 CHAIRPERSON HILL: Okay. All right.

13 Does anybody have any questions before I ask Mr.
14 Meredith if he has any questions? Does the Board have any
15 questions of anybody, including the Office of Planning?

16 Okay. Mr. Meredith, do you have any questions of the
17 Office of Planning?

18 MR. MEREDITH: Yes. Yeah, I do have a question about
19 whether this project is consistent with the character, scale, and
20 pattern of houses along the street or alley frontage? And this
21 is a question to the Office of Planning where I believe it was
22 asserted that there are similar detached structures in the alley
23 that are of similar size to what is being proposed in this
24 project. And I'm not aware of any, and I live there, so I'd be
25 very interested if the Office of Planning can give examples of

1 | those structures. And I ask this because the neighbors, I'm not
2 | the only person who is opposed to this project. I have -- because
3 | of the situation of my property, I obviously have a special
4 | interest, but there is concern in the neighborhood about changes
5 | in the character of the properties in the alley as a result of
6 | this proposal. So going back to my specific question, what are
7 | the examples of other detached structures that are of similar
8 | size?

9 | MS. MYERS: I'd just slightly clarify and say that
10 | there are attached rear structures along the alley. As for the
11 | exact size of them, I do not have that, but this one, if it is a
12 | little bit bigger, it's still within that character in that
13 | respect. I mean, on the plans, we can see that the -- well, your
14 | property, for example, has a detached structure in the rear of
15 | the yard. There's one it looks like next to or at the apartment
16 | site as well. The exact size of the structures, I mean, this
17 | particular property's structure may be bigger than them, but we
18 | look at it as more in a general context and the fact that there
19 | are other accessory structures along the alley is something we
20 | would take into account when it comes to that. But like I said,
21 | the size of them, I'm not saying that they are exactly bigger or
22 | smaller.

23 | MR. MEREDITH: Okay. Yeah, my shed in the back is
24 | actually 320 square feet and 10 feet high, so it would be about
25 | a quarter the size of the proposed structure at 3617 Newark

1 Street. The only other detached structure I'm even aware of is
2 a row of garages behind the Abby Apartments. Again, the roof of
3 that structure is probably 10 feet high. I haven't measured it.
4 And so the impact in my mind on the neighborhood of doubling the
5 size of what's already a very large detached structure is
6 significant. And I'm not aware of any detached structures, not
7 only in that alley, but anywhere in the neighborhood that are of
8 that size.

9 CHAIRPERSON HILL: Okay. Mr. Merritt, do you have any
10 more questions of the Office of Planning?

11 MR. MEREDITH: No.

12 CHAIRPERSON HILL: Okay.

13 Mr. Teran, do you have any questions of the Office of
14 Planning?

15 MR. TERAN: No.

16 CHAIRPERSON HILL: Okay.

17 Is there anyone here wishing to testify, Mr. Young?

18 MR. YOUNG: Yes, we have one witness signed up and that
19 is Mark Horton.

20 CHAIRPERSON HILL: Mr. Horton, can you hear me?

21 MR. HORTON: Yes, I can.

22 CHAIRPERSON HILL: Could you introduce yourself for the
23 record please, sir, as well as where you live?

24 MR. HORTON: Yes. My name is Mark Horton and I live
25 at 3606 Norton Place, N.W., which is adjacent and behind the 3617

1 Newark Street property that's the subject of the hearing. I'm
2 Mr. Meredith's neighbor to the east --

3 CHAIRPERSON HILL: Okay, great.

4 MR. HORTON: -- at Lot 35.

5 CHAIRPERSON HILL: Lot 35. Okay, great. If you please,
6 sir, could go ahead and give your testimony, you will have three
7 minutes and you can begin whenever you like.

8 MR. HORTON: Thank you. I'm new to this process, and
9 I'm grateful for the opportunity to address both the Advisory
10 Neighborhood Commission twice and the Board of Zoning Adjustment.
11 My property is significantly affected as the structure is just a
12 few feet from my back door. From my house, there's a big change
13 in the winter months with the change in the leaf coverage in the
14 neighborhood and the structure's quite large already from my back
15 door and would be significantly larger. So I do ask the Board
16 of Zoning Adjustment to reject the request for a special
17 exception.

18 As Mr. Meredith has noted, the accessory building is
19 already quite large at 632 square feet and expanding it by
20 increasing its height by 8 feet would have a significant
21 detrimental impact on adjacent properties, including mine. The
22 building is very close to three property lines, and as shown in
23 the photographs, currently overhangs the rear property line. It
24 was also important to see the view from Mr. Meredith's backyard,
25 which gives an idea of how it would affect his residence. The

1 focus and the discussion has been on shade, but bulk is really a
2 key concern. At another 4-and-a-half to 8 feet higher, it would
3 really become an obstructive structure, even more obstructive,
4 and that would lend its adverse impact. The lots in this area
5 are not large and it is noteworthy that the building in question
6 sits closer to adjacent properties, Mr. Meredith's and myself,
7 than to the primary house.

8 We have provided email and testimony and photographs
9 to the ANC 3A, which neither supported nor voted against the
10 exception. The neighbors are also concerned about the
11 prospective use of the expanded property, including as discussed
12 here possibly as a short-term Airbnb type rental. We're concerned
13 that this would significantly increase traffic in a narrow alley,
14 lead to increased parking difficulties, and worsen issues with
15 noise, trash, and rodents.

16 We do wonder if the existing accessory building could
17 not be renovated within its existing size and footprint and
18 profile. It is noteworthy that the 3617 Newark property already
19 contains one accessory apartment on site.

20 In summary, I would ask the Board of Zoning Adjustment
21 to reject this request for a special exception as we consider it
22 would have significant and detrimental impact on neighbors.
23 Thank you.

24 CHAIRPERSON HILL: Okay, thank you.

25 Does anyone have any questions for Mr. Horton, first,

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1 of my Board members?

2 Mr. Meredith, you have any questions of Mr. Horton?

3 MR. MEREDITH: No, Chairman, I don't.

4 CHAIRPERSON HILL: Mr. Teran, do you have any questions
5 of Mr. Horton?

6 MR. TERAN: Just a quick clarification. We're not
7 raising it 8 feet. The eaves and the ridge are being raised 4
8 foot 9, or 4 foot 9-and-a-half, but still under the height limit.

9 CHAIRPERSON HILL: Okay. And that's to 22 feet?

10 MR. TERAN: Correct, for the ridge. And the eaves are
11 about 6 feet below that. I mean, yeah, the eaves are 6 feet.
12 The ridge is a half-inch below it. It's a gable roof.

13 CHAIRPERSON HILL: Okay. All right. Thank you.

14 And, Mr. Horton, that you put on a tie for us, thank
15 you so much.

16 MR. HORTON: Thank you. And apologies for not getting
17 the right cameras quickly there. Thank you.

18 CHAIRPERSON HILL: That's all right. Thank you for
19 your testimony, sir.

20 MR. HORTON: Thank you.

21 CHAIRPERSON HILL: Okay. All right.

22 Let's see, Mr. Teran, I got a question. So -- and I
23 don't know why it's bothering me, and I don't know what I think
24 of it, like you currently have the property done where there's
25 like -- I mean, that particular building that your clients have,

1 | they have doors that come out and face their house, right? And
2 | so now you're closing those doors off and you're putting the
3 | patio to the rear of that project, correct?

4 | MR. TERAN: Correct.

5 | CHAIRPERSON HILL: Okay. So why are you guys doing
6 | that?

7 | MR. TERAN: That's just the client's preference. I
8 | would have had it differently. I always have clients ask for
9 | stuff that sometimes I don't understand. That's what he
10 | preferred.

11 | CHAIRPERSON HILL: Got it.

12 | MR. TERAN: I'm not 100 percent sure why.

13 | CHAIRPERSON HILL: Got it. So my concern, and I don't
14 | know whether it is or not, and that is what I'm trying to figure
15 | out, is that that then makes the noise and the outdoor activity
16 | head toward the other person's property as opposed to it coming
17 | back into the person's property, who if it were a guest -- I
18 | mean, again it doesn't matter to me whether it's an Airbnb or
19 | not, you know, if it's a guest house, then though then you get
20 | to see your guests, right, as opposed to the other way around
21 | where it's just privacy and it's a, you know, it's a place that
22 | who cares who's there. So right, but you're telling me again,
23 | right, it's the program that your client had that's driving that?
24 | Full stop on that question. Okay.

25 | MR. TERAN: Correct.

1 CHAIRPERSON HILL: Okay. Let's see. Anyone else, Vice
2 Chair John?

3 VICE CHAIR JOHN: So along the same lines, I was curious
4 as to the distance or the length of Mr. Meredith's rear yard,
5 the distance between the rear of his house and the accessory
6 structure, I mean, is it over 20 feet or what's the size of that
7 rear yard?

8 MR. MEREDITH: The distance from the nearest part of
9 my house to the accessory structure is that the measurement --

10 VICE CHAIR JOHN: Yes. Yes.

11 MR. MEREDITH: -- you would like to have?

12 VICE CHAIR JOHN: Uh-huh.

13 MR. MEREDITH: I don't -- I haven't done that
14 measurement. If I were to judge, I would say it would be in the
15 range of 20 feet.

16 VICE CHAIR JOHN: Okay. And the patio is directly next
17 to that --

18 MR. MEREDITH: Yeah.

19 VICE CHAIR JOHN: -- the property line?

20 MR. MEREDITH: Yes.

21 VICE CHAIR JOHN: Okay. All right.

22 CHAIRPERSON HILL: Yeah, okay. I got to tell you, I
23 don't know where I am. I'm going to have to wait or you guys
24 can figure it out or whatever. Like I'm uncomfortable with that
25 back patio, right, and so you know, Mr. Teran, if that back patio

1 | were flipped and it were, you know, I would see no issue with
2 | privacy or enjoyment to anybody's property. It's the fact that
3 | that patio is up against the property line of the neighbor that
4 | I'm just going to have to chew on for a little bit. I don't if
5 | that sways this one way or the other to be quite honest, because
6 | you need three votes, you don't need four. And so I'll let my
7 | fellow Board members chew on that also because I don't know, and
8 | then we'll come back.

9 | Mr. Meredith, do you have anything in conclusion?

10 | MR. MEREDITH: No, Mr. Chairman. I think the issues
11 | are quite clear.

12 | CHAIRPERSON HILL: Okay. Mr. Teran, do you have
13 | anything in conclusion?

14 | MR. TERAN: Yeah. I just want to say that there is an
15 | existing door back there now. Also we do need to get access back
16 | there, and you can't go from the fence and between the accessory
17 | structure, it's too tight. So regardless, we're going to need
18 | access to get back to that corner. So also even if we did change
19 | the upper stories, I don't know how it affects the first floor
20 | because that's -- you know, it's a matter-of-right thing that we
21 | can have a patio back there, so I don't really understand how
22 | that would affect the second floor. I see it as being two
23 | different topics.

24 | CHAIRPERSON HILL: I understand. And it's good. You're
25 | doing a good job for your client, Mr. Teran, because I'm also

1 | just trying to, you know, the difference between a matter-of-
2 | right what people say they're going to do as a matter-of-right
3 | and what is actually happening, I very much appreciate the
4 | comparison because it's very helpful for the Board, but in
5 | practicality someone would have to tear that down and do it again,
6 | right, so that's a different matter altogether, right? So okay,
7 | so you have anything in conclusion, Mr. Teran?

8 | MR. TERAN: No, I just think that we met special
9 | exception requirements. I think we showed it. I think it's,
10 | you know, doesn't cause undue and, you know, we just look forward
11 | to your votes.

12 | CHAIRPERSON HILL: Okay, great. I'm going to close the
13 | hearing and the record. Oh, before -- yeah, I'm going to close
14 | the hearing and the record and you all stick around because we're
15 | going to deliberate now.

16 | I am going to lean on my Board members, because you
17 | guys are smart, right? And I've been like sitting here, and
18 | maybe it's just late in the day and I'm a little tired, and you
19 | know, the regulations are what the regulations are and since Mr.
20 | Smith, I think, is very good as is Vice Chair John, I'm going to
21 | start with either one of you two. Not that Mr. Miller's not
22 | good, but like you two I'm with every week. Does either of you
23 | want to start the deliberation?

24 | VICE CHAIR JOHN: I'm going to defer to Mr. Smith on
25 | this one because I'm like you, I'm sort of -- I'm still thinking

1 about it. I don't have a clear picture of what the additional
2 180-foot addition would look like. Actually, I can't visualize
3 the 450 square feet. Well, let me hear from Board Member Smith.

4 COMMISSIONER SMITH: Usually you'll be, you know,
5 surprised to say that. I am -- to hear that. You know, as far
6 as what was raised by Chairman Hill regarding the patio, I don't
7 have any heartburn on allowing a ground floor patio in the rear.
8 You know, a patio is by-right. Even without the accessory
9 structure, they could have put a concrete patio that deep onto
10 their property, and again it's ground floor. You know, they
11 could put up a privacy fence or the neighbors can put up, you
12 know, screening, as, you know, like landscape screening. That's
13 something that's, you know, commonly done, so that's not -- I
14 don't have any heartburn about that.

15 Given the special exception criteria of 632 -- or
16 they're proposing to have a 632-square foot accessory structure
17 when up to 450 square feet is permitted. In looking at the
18 criteria for us to evaluate that with D 5201.4, and I can go
19 through (a), (b), (c), and (d). (a), the light and air available
20 probably should not be unduly affected. Yes, this is up against
21 the property line, but these are fairly sizable lots within this
22 area, so I do -- and again, I hear the neighbors' concerns about
23 impacts to light and air. The question is is it undue? Given
24 the height of this structure and given the orientation of the
25 properties, I do not believe it will be undue.

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1 (b), the privacy of use and enjoyment of neighboring
2 properties should not be unduly compromised, I believe the
3 Applicant has attempted to minimize privacy concerns along the
4 side that would face their neighbor's property. They're putting
5 -- they're not putting windows on the rear of this structure on
6 the second floor. The larger, you know -- they have skylights,
7 there'll be skylights that would illuminate or provide some, you
8 know, the bulk of the illumination from the rear of this structure
9 and the largest windows are on the ground floor. So I think they
10 largely attempted to mitigate those concerns regarding the
11 privacy of use and the enjoyment of neighboring properties by not
12 constructing windows.

13 Proposed addition -- going to (c), the proposed
14 additional accessory structure together with the original
15 building of the new principal building at street, alley, or public
16 way should not substantially invasively intrude. Again, this in
17 the rear of the property, there is no alley, so that's not
18 applicable. And they have provided, you know, a fairly
19 substantial amount of information within the record as far as the
20 elevations are concerned and also a sun study showing what could
21 occur as a matter-of-right versus with this special exception as
22 presented. And going into the standard special exception
23 criteria, which largely overlap with the criteria I've just
24 stated, I do believe they've met -- they've largely met the burden
25 of proof for us to grant it.

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1 Could I, you know, have some heartburn about the size
2 of it? Sure, but we don't have criteria to evaluate based on
3 the size, bulk, and mass. The criteria is based on light and
4 air. And given the size of this property and adjacent properties,
5 I'm fairly comfortable with what was presented for me to support
6 the application.

7 CHAIRPERSON HILL: Okay.

8 Vice Chair John, do you have -- I mean, sorry, Vice
9 Chair Miller, do you have a opinion?

10 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman, and I
11 thank the Applicant's representative, the Office of Planning, and
12 the party in opposition, and the neighbor in opposition for their
13 testimony here today.

14 I think Board Member Smith has done an excellent job
15 as usual in being very comprehensive in his analysis of this
16 special exception request. I guess I would add -- I don't know
17 if it's relevant, but I mean I happen to live in this general
18 neighborhood, although not in the -- no longer in the -- no longer
19 part of the Advisory Neighborhood Commission that now goes along
20 the Wisconsin Avenue corridor. That was changed. It used to be
21 part of our ANC. But I would just note that this had gone through
22 Historic Preservation Review Board approval as Office of Planning
23 on the record has noted, which did review the compatibility
24 issues, that's what they do, and it was approved by HPRB.

25 I just also would note that, yeah, there are large lots

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1 | in this neighborhood generally, as Mr. Smith -- Board Member
2 | Smith noted. My own lot happens to abut seven or eight different
3 | properties, including the entire backyard property line shares
4 | with the District government, Macomb Street playground. The
5 | first ba- -- the home plate and first baseline is right on our -
6 | - 10 feet away, I don't know how many feet, but it -- I hear the
7 | crack of the bat, I hear the screaming kids and the parents
8 | cheering them on. The swimming pool that's adjacent to our back
9 | and side yard, that was just recently built. It's like within 5
10 | to 10 feet. It seems like it's 10 feet. It seems closer when
11 | the kids are all there. That's -- I mean, it's part of living
12 | in an urban neighborhood that you live with your neighbors and
13 | hopefully neighbors are respectful of the time of day and the
14 | noise that's generated. So I think there have been mitigations
15 | that have been done with the particular development. I'm sorry
16 | this couldn't be -- couldn't have been worked out, which I guess
17 | the ANC, by taking -- they took no position on the application
18 | hoping maybe that there might be -- might be some workout between
19 | neighbors in this case. And there is the adjacent neighbor with
20 | the apartment building owner, the Abby Apartments, which is
21 | supportive, but that's a much bigger apartment building, so but
22 | that is a letter in support in the record, just to note that.

23 | So I generally concur with the Office of Planning and
24 | analysis and with Board Member Smith's analysis, and I'm prepared
25 | to move forward, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay.

2 Yep, go ahead, Mr. Smith.

3 COMMISSIONER SMITH: Can I make one more point because
4 this was raised by, I believe, the party in opposition and it
5 was stated that there's been some conversations within the
6 neighborhood about this potentially being an Airbnb. I do -- I
7 hear their concern, I understand their concern, but this is not
8 the body that regulates Airbnbs. If there is a -- if this is
9 used other than for the intended purpose as stated, it's not
10 supposed to be -- it's not an ADU, it's not a Air -- it's not
11 supposed to be an Airbnb, there are other enforcement mechanisms
12 within the District government that you can lean on to rectify
13 any issue with it potentially being an Airbnb or rented out as
14 an ADU illegally. So I just wanted to put that out there. Again,
15 it potentially being an Airbnb or an illegal ADU, if we -- without
16 that evidence, we can't make a decision based off of what could
17 potentially occur in that sense, so I just wanted to put that
18 out there. Thank you, Chairman.

19 CHAIRPERSON HILL: Thank you, Mr. Smith.

20 ZC VICE CHAIR MILLER: Mr. Chairman, I appreciate Mr.
21 Chrishaun Smith bringing that up, and I also -- that reminded me
22 of one other point that I wanted to make, not related to that
23 point, but in terms of the height of the, I think, the second
24 story being added. Basically -- because the height of the pitch
25 of that roof currently, even though it's not livable space I

1 | guess up there, it's already beyond what a first floor normally
2 | would be, it's not a full floor in terms of the total height. I
3 | mean it's going to be two floors, yes, and it's currently a one-
4 | floor garage or whatever it is, but it's not as going -- it's
5 | not doubling the height of what's there now from what I understand
6 | from what's in the record. But I also think that Mr. Smith made
7 | a point about the Airbnb regulations are separately enforced and
8 | that should be addressed, if it needs to be, by another Body.

9 | CHAIRPERSON HILL: Okay. Well, I'm more comfortable
10 | with moving forward based upon hearing from Mr. Smith. I still
11 | -- for some reason, it still kind of bothers me. I can't figure
12 | out why, but I agree that what -- and because I know -- who knows
13 | what's going to happen with this, but that the Applicant stated
14 | that they would -- and I'm hanging up on -- I'm hung up on this
15 | like noise doesn't -- you know, I mean, I guess if anything,
16 | there isn't a word noise in the regulations, but it's like, let
17 | me now look. All right, whatever. Privacy of use and enjoyment,
18 | so the enjoyment, you know, could be construed, but that they do
19 | need to service that area back there, and so there needs to be a
20 | door or something so that they can go back there and if there's
21 | a door that can go back there, then anybody can go back there
22 | that's actually in that room. So it doesn't -- really it's not
23 | -- you know, the glass patio, what have you, doesn't necessarily
24 | negate or make it any -- I guess, it makes it a little bit more
25 | inviting, but even if there was a door, they could still do a

1 paved patio back there with a door that then people could access
2 and be back there. And, again, as you said, you know, hopefully
3 they are good neighbors, and I can't remember the regulations on
4 -- it's not in our area as to Airbnb as to whether or not this
5 is zoned for Airbnb, and if they can or not because if they could,
6 I would assume that that is definitely a possibility. But how
7 many people actually are back there, or whether people would be
8 back there, you know, I don't know. I'm just a little sensitive
9 to that in terms of what I believe to be enjoyment of one's
10 property. And that the lots, while big in this neighborhood, you
11 know, I don't think they're necessarily that great -- that large.
12 You know, ot at least lot 34 might not -- you know, I don't know.
13 In some ways, it is a large lot, Lot 34 that is, but it is close
14 to this potential project. Anyway, so okay, so I'll agree.

15 Vice Chair John, do you have anything before we take a
16 vote?

17 VICE CHAIR JOHN: Not a whole lot to add. I agree
18 substantially with all of the comments so far. And you know, it
19 is a large lot, the width of this lot is 50 feet and looking at
20 Lot 54, that's a wider lot. So in terms of light and air, I
21 don't think there's any undue impact, even though I would like
22 to have seen the matter-of-right with a shorter rear, I can, you
23 know, accept the notion that, you know, there is no undue impact
24 in terms of the shadow, but if the rear yard for Lot 54 is about
25 20 feet, then, you know, there is enough room for air circulation

1 just looking at how Lot 54 and the adjacent Lot 35, I believe,
2 or 55, I mean there's a lot of room so that there shouldn't be
3 any adverse impact on light and air so.

4 And, in terms, of the patio, I agree. At first I was
5 concerned about having a patio back there, but then even if it's
6 grass, people could be out there, so the patio is not really
7 something that would concern me, significantly. So I am in
8 support of the application because I believe it meets the criteria
9 for relief and I would give great weight to the Office of
10 Planning's report and there is no -- there are no issues and
11 concerns expressed by the ANC, so there's nothing to give great
12 weight to. In terms of the ANC's comments about the neighbors
13 continuing to work together, well, that's a request and we would
14 hope that that would happen anyway. So that's it for me.

15 CHAIRPERSON HILL: Okay. In final thoughts, again I'm
16 referring back to the Office of Planning's report, while we do
17 have an order being written that again speaks to the use of light
18 and air and privacy with regards to the height being nominal in
19 comparison to what is already there now, that there aren't windows
20 on -- they have mitigated, the Applicant has mitigated, there are
21 no windows facing -- on the second floor facing the property to
22 the rear and that I do believe that the Applicant has made efforts
23 to create a design that has little impact concerning privacy with
24 regard to windows. And I do think that the light and air is not
25 unduly impacted in comparison to what it was at a by-right at

1 450 square feet for an additional -- you know, the additional 182
2 square feet, and that it could be built in a way that basically
3 would have the same effects on light and air if it were to be
4 built by-right at 450 square feet. So I'm just reiterating how
5 I'm now getting to this point. And I appreciate the thoughts
6 that Vice Chair John said about the rear patio, as I am also
7 seconding those thoughts.

8 I'm going to, however, agree with again the Office of
9 Planning and my fellow Board members and make a motion to approve
10 Application No. 20896 as captioned and read by the secretary and
11 ask for a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: Motion been made and seconded, Mr.
14 Moy, if you'd take a roll call please?

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

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

19 Zoning Commissioner Rob Miller?

20 ZC VICE CHAIR MILLER: Yes.

21 MR. MOY: Mr. Smith?

22 COMMISSIONER SMITH: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: No other board member participating. Staff
3 would record the vote as four to zero to one, and this is on the
4 motion made by Chairman Hill to approve. The motion to approve
5 was second by Vice Chair John who also voted to approve, as well
6 as approval from Zoning Commissioner Rob Miller, Mr. Smith, and
7 then of course Vice Chair John and Chairman Hill. Motion carries,
8 sir, on a vote of four to zero to one.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. All right. Mr.
10 Moy, is there anything before the Board today -- else before the
11 Board?

12 MR. MOY: Nothing from the staff, sir, but a reminder
13 that the Board returns June the 7th, and on behalf of the BZA
14 staff and the OZ staff, we wish you a very enjoyable Memorial
15 Day weekend.

16 CHAIRPERSON HILL: Thank you. That's very kind of you.
17 That reminds me, everyone, yeah, have a nice Memorial Day, and
18 we'll see everyone afterwards.

19 And thank you, Mr. Moy, and please on behalf of the
20 Board, please wish the staff a happy Memorial Day from us and a
21 well-deserved time off or at least away from us. Okay? Thank
22 you. All right. Does anybody have anything else they'd like to
23 add before we adjourn? Okay. All right. See you guys next --
24 see you guys in June.

25 (Whereupon, the above-entitled matter was adjourned.)

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

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In the matter of: Public Hearing

Before: DCBZA

Date: 05-24-23

Place:

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