

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 12, 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, Lorna John, Vice Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
MARK HAMALA, Staff
PAUL YOUNG, Data Specialist

OFFICE OF ZONING ADJUSTMENT LEGAL COUNSEL:

MARY NAGLELHOUT, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on July 12, 2023.

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(9:30 a.m.)

VICE CHAIR JOHN: Good morning, ladies and gentlemen. The Board of Zoning Adjustment July 12, 2023 public hearing will please come to order.

My name is Lorna John, Vice Chairperson of the District of Columbia Board of Zoning Adjustment. Joining me today is Board Member Chrishaun Smith and Zoning Commissioners Anthony Hood and Rob Miller. Chairman Fred Hill will be joining us shortly.

Today's meeting and hearing agendas are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via WebEx and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on WebEx or by telephone will be muted during the hearing. Also, please be advised that we do not take any public testimony at our decision-making sessions.

If you experience difficulty accessing WebEx or with your telephone call-in, then please call our OZ hotline number 202-727-5471 to receive WebEx log-in or call-in instructions. At the conclusion of the decision meeting session I shall, in consultation with the Office of Zoning, determine whether a full or summary order may issue. A full order is required when the

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

6 In today's hearing session, everyone who is listening
7 on Webex or by telephone will be muted during the hearing, and
8 only persons who have signed up to participate or testify will
9 be unmuted at the appropriate time. Please state your name and
10 home address before providing oral testimony for your
11 presentation. Oral presentations should be limited to a summary
12 of your most important points. When you have finished speaking
13 please mute your audio so that your microphone is no longer
14 picking up sound or background noise.

15 Once again, if you experience difficulty accessing
16 Webex or with your telephone call-in or if you have forgotten to
17 sign up 24 hours prior to this hearing, then please call our OZ
18 hotline number at 202-727-5471 to sign up to testify and to
19 receive Webex log-in or call-in instructions. All persons
20 planning to testify either in favor or in opposition should have
21 signed up in advance. They will be called by name to testify.
22 If this is an appeal only parties are allowed to testify. By
23 signing up to testify, all parties completed the oath or
24 affirmation as required by Subtitle Y § 408.7.

25 Requests to enter evidence at the time of an on-line

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

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

25 The order of procedure for appeal applications pursuant

1 to Subtitle Y § 507 will be as follows: preliminary procedural
2 matters, statement of the applicant and the applicant's
3 witnesses, the respective cases of the parties or interveners in
4 support of the appeal in the following order; the owner, lessees
5 or operator or contract purchaser of the property involved if not
6 the appellant, the affected ANC but not the appellant, and any
7 other party permitted to intervene in the proceedings in support
8 of the appeal, the statement of the administrative officials
9 appellee's case, the respective case of the parties or
10 interveners in opposition to the appeal in the following order;
11 the owner, lessee, operator or contract purchaser of the property
12 involved, the affected ANC and any other party permitted to
13 intervene in the proceeding in opposition to the appeal, rebuttal
14 evidence from the appellant followed by rebuttal evidence from
15 the parties in support of the appeal in the order indicated in
16 sub-paragraph 3 of this paragraph and closing arguments in the
17 order established in subparagraphs 2 through 5 of this paragraph.

18 Pursuant to Subtitle Y § 408.2 and 408.3 the following
19 time constraints shall be maintained. The applicant, appellant
20 and all parties except an affected ANC in support including
21 witnesses exclusive of cross-examination maximum of 60 minutes
22 collectively; the appellee, persons and parties except an
23 affected ANC in opposition including witnesses collectively have
24 an amount of time equal to that of the applicant and parties in
25 support but in no case more than 60 minutes collectively;

1 individuals maximum of three minutes, organization
2 representatives maximum of five minutes.

3 These time restraints do not include cross-examination
4 and/or questions from the Board. Cross-examination of witnesses
5 by the applicant or parties, including the ANC is permitted. The
6 ANC within which the property is located is automatically a party
7 in a special exception or variance cases. Nothing prohibits the
8 Board from placing reasonable restrictions on cross-examination
9 including time limits and limitations in the scope of cross-
10 examination pursuant to Subtitle Y § 408.5.

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

25 Once again, after the Board adjourns the hearing, the

1 Office of Zoning in consultation with me, will decide whether a
2 full or summary order may issue. A full order is required when
3 the decision it contains is adverse to a party including an
4 affected ANC. The full order may also be needed if the Board's
5 decision differs from the Office of Planning's recommendation.
6 Although the Board favors the use of summary orders whenever
7 possible, an applicant may not request the Board to issue such
8 an order.

9 Finally, the District of Columbia Administrative
10 Procedures Act requires that the public hearing in each case be
11 held in the open before the public. However, pursuant to §§
12 405(b) and 406 of that Act the Board may, consistent with its
13 rules of procedure in the Act, enter into a closed meeting on a
14 case for purposes of seeking legal counsel on a case pursuant to
15 D.C. Official Code § 2575(b)(4) and/or deliberating on the case
16 pursuant to D.C. Official Code § 2575(b)(13), but only after
17 providing the necessary public notice and in the case of an
18 emergency closed meeting after taking a roll call vote.

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

20 MR. MOY: Good morning, Madam Vice Chair, Members of
21 the Board. I just have a brief announcement regarding today's
22 docket. First, case application No. 20920 Florence Olijade has
23 been postponed and rescheduled to November 29, 2023 and the only
24 other remark I had, or announcement I have, is a reminder to you,
25 Madam Vice Chair, that in today's meeting session the Board has

1 four cases for decision making and I believe one of those cases
2 is going to be rearranged because of a quorum issue and other
3 than that, any other preliminary matters I'll bring to your
4 attention when I call the case. Thank you.

5 VICE CHAIR JOHN: Thank you, Mr. Moy. So if there's
6 nothing further we'll continue with the consent calendar, and you
7 may read the first case, Mr. Moy.

8 MR. MOY: The first three cases are -- were filed as
9 expedited review cases. So that first case in that series is
10 Application No. 20923 of Jessica Rowlands and John Conte C-O-N-
11 T_E. Again, this is a self-certified application pursuant to
12 Subtitle X § 901.2 for special exception under Subtitle E § 5201
13 from the lot occupancy requirements Subtitle E § 304.1. Property
14 is located in the RF-1 zone at 504 F Street, N.E., Square 834,
15 Lot 25, and I believe in this application, Madam Vice Chair, the
16 ANC 6C filed their letter in support. It was filed just this
17 morning so it should be in the record now and I believe the letter
18 indicates it was afforded three votes in support, if you want to
19 double check me. Thank you.

20 VICE CHAIR JOHN: Thank you, Mr. Moy. I'll just take
21 a minute to try to look at that letter.

22 (Pause.)

23 VICE CHAIR JOHN: So now I'm having difficulty pulling
24 up that letter. Oh, I'm in the wrong calendar. Just a minute.

25 (Pause.)

1 VICE CHAIR JOHN: Okay. I have the letter from the ANC
2 and it appears to recommend approval by a vote of four to three,
3 so thank you, Mr. Moy. Thank you.

4 So, if we're ready to deliberate I will start and add
5 a few comments.

6 So this is an application for a three-story rear
7 addition to an existing three-story attached principal dwelling.
8 What's notable about this addition is that the lot is very narrow.
9 It's only 15 feet wide existing and 15 feet proposed. So the
10 lot occupancy would therefore increase to 70 percent. The
11 applicant is not seeking any other relief and the addition is
12 within the ten foot limit allowed as a matter-of-right.

13 There is a letter in opposition from an adjacent
14 neighbor who asserted that there will be loss of light and air
15 and impact to privacy because of the existence of an addition to
16 the other side and so he will -- his property will not be in the
17 middle of two additions. He also says that the air will be cooler
18 in the shade because there will be more shade.

19 OP evaluated the application and reviewed the sun study
20 that the Applicant submitted and concluded that there would be
21 no undue impact to light and air and that there would be very
22 little impact on privacy because there are no windows on the
23 sides facing the adjacent neighbors. So based on the record and
24 what's in OP's analysis which I will give great weight and will
25 also give great weight to the ANC's letter in support expressing

1 no issues and concerns, and I will be in support of the
2 application.

3 So I'd like to hear from the other Board Members
4 starting with you, Board Member Smith.

5 MR. SMITH: Sure, Chair John. I agree with your
6 assessment of this particular case. I do understand the main
7 concerns, of Mr. Bak, concerning light and air to the neighbor's
8 property. But as you stated Office of Planning has evaluated
9 those sun studies that were submitted by the Applicant and they
10 found that the proposed addition would not have an undue impact
11 on the adjacent property. Yes, there may be shadow and these
12 additions are fairly common across the District in an urban
13 environment, in particular townhomes and row homes. The
14 exception is that they have an undue impact and I do believe that
15 based on my analysis of the shadow study that a certain amount
16 of shadow will not rise to a level that is undue.

17 So I do agree with everything that you stated as well
18 as everything that's in the record and give OP's status report
19 great weight and support the application as well.

20 VICE CHAIR JOHN: Thank you. Commissioner Miller?

21 ZONING COMMISSIONER MILLER: Thank you, Madam Chair. I
22 concur with your comments and those of Board Member Smith that
23 the Applicant has met the standards for the relief that's being
24 requested here and note, as you each have, the support by the
25 Office of Planning and the ANC 6C and the -- we also have a

1 support letter from the Capitol Hill Restoration Society.

2 The opposition letter from Richard Bak, the owner of
3 502 F Street, N.E., one of the adjacent owners did concern me.
4 I think we had other letters from the other adjacent neighbor in
5 support and other neighbors in support. It did give me pause
6 the opposition letter however, but when I looked at it including
7 all of the very helpful photos that Mr. Bak provided, you know,
8 at least two thirds of the wall that he's complaining about were
9 there when he moved in to that house apparently. So I can see
10 why he would be concerned about losing the one side that doesn't
11 have a wall so to speak, but that is somewhat in the nature of
12 this zone and the urban environment that we live in, as Board
13 Member Smith pointed out.

14 So I'm prepared to move forward, Madam Chair.

15 VICE CHAIR JOHN: Thank you, Commissioner. I would
16 just add that the wall, the addition is only seven feet nine
17 inches long which is conservative considering the Applicant could
18 have gone to ten feet and in terms of the rear yard, even after
19 the addition the rear yard will be approximately 30 feet. So I
20 believe there will be sufficient light and air. It's true that
21 there will be this closed-in ceiling but as Board Member Smith
22 mentioned, this is a fact of living in the City and this is a
23 very narrow lot.

24 So, yes, so with that I will also say that I'm in
25 support of the application. I think I said that already and so

1 based on the comments I will make a motion to approve application
2 20923 as captioned and read by the Secretary and ask for a second.
3 Mr. Smith?

4 MR. SMITH: Second.

5 VICE CHAIR JOHN: I didn't hear you, Mr. Smith.

6 MR. SMITH: Second.

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

9 MR. MOY: Thank you, Madam Vice Chair. When I call
10 your name if you will please respond to the motion made by Vice
11 Chair John to approve the application. The motion was second by
12 Mr. Smith.

13 Zoning Commissioner Rob Miller?

14 ZONING COMMISSIONER MILLER: Yes.

15 MR. MOY: Mr. Smith?

16 MR. SMITH: Yes.

17 MR. MOY: Vice Chair John?

18 VICE CHAIR JOHN: Yes.

19 MR. MOY: And we have no participation from two other
20 members, well actually that one seat is vacant. Anyway, Staff
21 would record the vote as three to zero to two and this is on the
22 motion made by Vice Chair John to approve the application for the
23 relief as requested, that's being requested. The motion to
24 approve was second by Mr. Smith who is also in support and voted
25 to approve the application as well as approving the application

1 from Zoning Commissioner Rob Miller, and again, Mr. Smith and
2 Vice Chair John. The motion carries on a vote of three to zero
3 to two.

4 VICE CHAIR JOHN: Thank you, Mr. Moy. And please call
5 the next case when you're ready.

6 MR. MOY: The next case is application No. 20926 of
7 Matthew Harper and Heidi Harper. This is advertised as a self-
8 certified application pursuant to Subtitle X § 901.2 for special
9 exceptions under Subtitle D § 5201, side yard requirements
10 Subtitle D § 206.2 and the location restriction in Subtitle D §
11 5004.1(a). The property is located in the R-1-A zone at 4343
12 39th Street, N.W., Square 1834, Lot 32, and that's all I have
13 for you. Thank you.

14 VICE CHAIR JOHN: So are we ready to deliberate?

15 So this is an application to add a one-story with cellar
16 rear addition to an existing detached principal dwelling unit
17 which also has -- which is also three story with cellar and this
18 is a very large lot. The lot area is 17,400 square feet which
19 has not changed from what is existing. The lot occupancy is, as
20 proposed, 16.72 percent and the existing is 15.7 percent with
21 approximately 30 feet in the rear yard.

22 So even after the one story addition is built, there
23 wouldn't be sufficient light and air so that there should not be
24 any adverse impact on the neighbor whose property would border
25 the side yard which the Applicant proposes to be 6.8 feet instead

1 of the eight feet minimum required which is not a significant
2 request for relief, being approximately one and a half feet.

3 The other side yard is 65 feet. So there is no impact
4 on light and air and I'm sure no privacy impact on that side
5 because the addition is on the other side. The rear yard however
6 would be reduced from 19.5 feet to 11.68 feet which also requires
7 special exception because the addition will be encroached into
8 the side yard as the Applicant needs relief while the addition
9 will encroach into the side yard, and I'm looking at the
10 Applicant's exhibit that shows where the encroachment occurs and
11 because it is now, the enlarged addition is now also in the rear
12 yard, the Applicant will also need relief for the accessory
13 building which is already existing because the regulations do not
14 allow the existence of an accessory structure in a required rear
15 yard.

16 So I think I got that right. In any event, this is a
17 fairly straightforward application and I could agree with OP's
18 analysis that there should be no impact to light and air because
19 of the features I just mentioned and in terms of privacy the lot
20 is so large that there should be no impact on light and air. The
21 ANC is also in support and I'm going to give great weight to the
22 ANC's support which also indicates no issues and concerns and
23 will give great weight to the Office of Planning's report and
24 recommendation. There were also persons in support. The adjacent
25 neighbor at 3816 Yuma Street and the adjacent property owner at

1 3818 Yuma Street as well as a property owner at 3900 Windom Place,
2 Northwest.

3 So based on all, well this is also a property in the
4 historic, in the inventory of historic sites. So the property
5 will undergo approval under the D.C. Historic designation
6 regulations. So I'm in support of the application and I'd like
7 to hear from the rest of the Board starting with Mr. Smith, if
8 you're ready.

9 MR. SMITH: Chair John, I think you have very thoroughly
10 summed up the merits of this case and the reason why I also
11 support the case. I agree with you. This is a very large lot
12 and the proposed addition, other than the fact that it's closer
13 to the rear property lines, it's fairly straightforward and I do
14 believe given that the remaining setback for the property to the
15 rear, which is about what, close to seven, six feet nine inches
16 or so and given the size of all the properties here, including
17 the property to the rear of this building it should not have a
18 significant impact on light, air and privacy to the closest
19 neighbor or the closest property line and the proposed addition
20 will be around the same height as the one story frame, the
21 accessory building relatively. So it would not have a major
22 impact on privacy to the adjacent properties to the east.

23 So I do believe, again, it's a fairly straightforward
24 application and I give OP's staff report great weight, also noting
25 that the ANC is in support of this application as well as this

1 is a sort of property which would have considerations and would
2 be deemed by the appropriate parties. So with that, I will
3 support the application.

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

6 ZONING COMMISSIONER MILLER: Thank you, Madam Vice
7 Chair. I concur with each of your comments. You've covered
8 everything that needs to be covered. Thank you.

9 VICE CHAIR JOHN: Thank you. Mr. Moy, would you please
10 take the roll call? Oh, sorry, missed a step. So I will make a
11 motion to approve application 20926 as captioned and read by the
12 Secretary and ask for a second. Mr. Smith?

13 MR. SMITH: Second.

14 VICE CHAIR JOHN: Thank you. Mr. Moy, would you please
15 take the roll call?

16 MR. MOY: Thank you, Madam Vice Chair. So when I call
17 your name, if you'll please respond to the motion made by Vice
18 Chair John to approve the application. The motion to approve was
19 second by Mr. Smith.

20 Zoning Commissioner Rob Miller?

21 ZONING COMMISSIONER MILLER: Yes.

22 MR. MOY: Mr. Smith?

23 MR. SMITH: Yes.

24 MR. MOY: Vice Chair John?

25 VICE CHAIR JOHN: Yes.

1 MR. MOY: And we have two members not participating and
2 again, of course, one of those two is a vacancy. But anyways,
3 and staff would record the vote as three to zero to two and this
4 is on the motion made by Vice Chair John to approve the
5 application for the relief that's requested. This motion to
6 approve was second by Mr. Smith, who also voted to approve the
7 application and Zoning Commissioner Rob Miller voted to approve
8 the application as well as Vice Chair John. Once again, the
9 motion carries on a vote of three to zero to two.

10 VICE CHAIR JOHN: Thank you, Mr. Moy. And when you're
11 ready, please call is the next case.

12 MR. MOY: The next case is application No. 20922 of
13 Lucia Cambria and Adrian Maseda. This is advertised as a self-
14 certified application pursuant to Subtitle X § 901.2 under
15 Subtitle D § 5201 from the rear yard requirement to Subtitle D §
16 306.1. Property is located in the R-1-B zone at 5724 Nebraska
17 Avenue, N.W., Square 2312, Lot 61. Thank you.

18 VICE CHAIR JOHN: Thank you, Mr. Moyer. So this
19 application is fairly straightforward. The Applicant is seeking
20 to build to replace an existing one-story covered porch with a
21 two-story building addition within the minimum required rear yard
22 of an existing one family detached dwelling. The current lot
23 occupancy is 25 percent, where 40 percent is allowed, and the
24 Applicant proposes to increase the lot occupancy by 28.1 percent.

25 So it's not a very large addition and because of the

1 very conservative use of lot occupancy, there's enough light and
2 air, I believe, so that there should not be an adverse impact or
3 undue impact on the neighboring properties. The addition itself
4 is not very large and the reduction in the rear yard would be 12
5 feet.

6 I believe also that the building to the one side is set
7 back. Let me make sure that I have the correct application. So
8 the neighbor to the south, I believe, looking at the sun study
9 in the record is where the addition itself encroaches. Just a
10 minute. Okay. So this is the one where the rear yard is really,
11 let's see. Right. So the rear yard is reduced to 12 feet and
12 the impact is likely to be on the neighbor, I believe it is to
13 the south. But on my diagram it looks as if it could be on the
14 west side. So I don't believe that there is significant shadowing
15 and the record, the sun study does not show any significant
16 shadowing on any of the neighbors and the property to the left
17 to the south also has a large setback as well.

18 So again, I thought this was really straightforward.
19 I thought the Office of Planning did a very good analysis and
20 showed how there should not be any adverse impact in terms of
21 privacy because of how the building is situated at the
22 intersection of Oliver Street and Nebraska Avenue.

23 So I think based on OP's analysis and the information
24 in the record, I'm in support of the application which, as I
25 said, is really very straightforward and I didn't have any

1 questions because of this significant, because there is so much,
2 sorry, there's not too much lot occupancy that's being utilized
3 and the increase is only three percent. So I'd like to hear from
4 you, Mr. Chrishaun Smith, Board Member Smith next.

5 MR. SMITH: So I'm in agreement with everything that
6 you stated. The proposed additions would be to the rear of the
7 property and the most, probably the property that would have the
8 most impact would be to the west of the property behind, the home
9 behind this property along Oliver Street and I do believe that
10 the Office of Planning did a good job stating how in any shadowing
11 that would occur would not be undue and will be, I believe, on
12 the equinoxes and for a very brief period of time.

13 So given that that minor impact to the existing
14 property owners, I do not believe that the proposed addition will
15 have an undue effect on light, air or privacy and I do believe
16 that the proposed addition does meet the general special
17 exception standards. The proposed additions would be in harmony
18 with the adjacent properties. The property will remain single
19 family home and given looking at the submitted designs of the
20 proposed addition, it would largely be in character with the
21 design, the designs of the homes within the broader area there,
22 and I do not believe would adversely affect any of the neighboring
23 properties in accordance with the zoning regulations.

24 So with that, I would support the application, give the
25 OP staff report great weight and recognizing that the ANC is also

1 in support and the adjacent property owners that would be most
2 impacted by this proposed addition are also in support of the
3 application. So I would support it.

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

6 ZONING COMMISSIONER MILLER: Thank you, Madam Vice
7 Chair. I concur with each of your comments and support this
8 application, particularly with the OP, ANC 3/4G report and with
9 the community letters in support from the adjacent neighbors to
10 the west and south, as Board member Smith pointed out, as well
11 as an additional neighbor across the street on Oliver Street. So
12 I'm prepared to move forward as well, Madam Vice Chair.

13 Thank you.

14 VICE CHAIR JOHN: Thank you, Commissioner Miller, and
15 with that, I would make a motion to approve application 20922 as
16 captioned and read by the Secretary and ask for a second. Board
17 Member Smith?

18 MR. SMITH: Second.

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

21 MR. MOY: Thank you, Madam Vice Chair. When I call
22 your name, if you'll please respond to the motion made by Vice
23 Chair John to approve the application. The motion to approve
24 were second by Mr. Smith.

25 Zoning Commissioner Rob Miller?

1 ZONING COMMISSIONER MILLER: Yes.

2 MR. MOY: Mr. Smith?

3 MR. SMITHI: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: And we have no others on the Board voting.
7 Staff would record the vote as three to zero to two and this is
8 on the motion made by Vice Chair John to approve the application
9 for the relief that was requested. The motion to approve was
10 second by Mr. Smith, who also voted to approve the application
11 Zoning Commissioner Rob Miller also voted to approve. Of course,
12 as I just stated Mr. Smith and Vice Chair John approved. So
13 staff would record the vote is three to zero to two. The motion
14 carries, ma'am.

15 VICE CHAIR JOHN: Thank you, Mr. Moy. Would you please
16 call the next case?

17 CHAIRPERSON HILL: Vice Chair John, I'm online with you
18 guys just so you know.

19 VICE CHAIR JOHN: Oh, welcome, Chairman Hill, and I'm
20 happy to turn over the proceedings to you. So you can take this
21 next case, if you like.

22 CHAIRPERSON HILL: Sure.

23 VICE CHAIR JOHN: Okay. Thank you.

24 CHAIRPERSON HILL: Thank you.

25 MR. MOY: Thank you. Thank you. Thank you. So the

1 next decision making case in the Board's meeting session is
2 application No. 20906 of KIPU, LLC. This is a self-certified
3 application pursuant to Subtitle X § 901.4.

4 CHAIRPERSON IHLL: Mr. Moy. Can I ask?

5 MR. MOY: Uh-huh.

6 CHAIRPERSON HILL: Did you say 20906?

7 MR. MOY: Yes.

8 CHAIRPERSON HILL: Is Chairman Hood joining us for this
9 one?

10 MR. MOY: No. I had this --

11 CHAIRPERSON HILL: Oh, okay. Okay.

12 MR. MOY: -- this --

13 CHAIRPERSON HILL: This one, I think Ms. John, you were
14 going to do the first portion of, is that correct, and then or
15 no?

16 VICE CHAIR JOHN: Yes, Mr. Moy. Mr. Chairman, I can
17 continue with this one.

18 CHAIRPERSON HILL: Okay. So then, and Ms. John's got
19 this one again. Okay. Thank you, Mr. Moy. If you could call
20 it again. I apologize, Moy.

21 MR. MOY: Okay. All right. Then, for the record, for
22 the transcript, Mr. Chairman, I'll recap for the convenience for
23 the transcript.

24 So this is a self-certified application pursuant to
25 Subtitle X § 901.2 for the following special exceptions. Subtitle

1 U § 320.2 to allow the conversion of an existing residential
2 building into an apartment house. Subtotal E § 5201 from the
3 court requirements of Subtitle E § 203.1, side yard requirements
4 Subtitle E § 207.3 Subtitle E § 205.5 to allow a rear wall to
5 extend further than ten feet. Subtitle E §§ 206.4 and 5207 from
6 the rooftop architectural features requirements. Subtitle E §
7 206.1. Property is located in the RF-1 zone at 1251 Morse Street,
8 N.E., Square 4069, Lot 57 and as Board will recall this was last
9 heard at the Board's decision meeting on June 28, 2023 and
10 participating on this decision is Chairman Hill, Vice Chair John,
11 Mr. Smith and Zoning Commissioner Anthony Hood.

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

13 So just to recap, as Mr. Moy said, the Board completed
14 the hearing on tis case on June 14 and closed the record and
15 requested only submission from the Applicant which would address
16 the fire safety concerns which the Board raised and which the
17 Board indicated was not critical to its decision.

18 Subsequently, on June 28, the Board postponed the
19 decision meeting and rescheduled for that day to September 13th
20 at the request of the ANC Commissioner, Anna Roblin. At the time
21 the Board made that decision it did not also provide an
22 opportunity to the Applicant to address the Motion for
23 Continuance. Subsequently, the Applicant filed a Motion to
24 Reopen the decision to postpone to September 13th and so that
25 motion is before the Board.

1 My recommendation then, because Chairman Hood is not
2 with us now, is to continue this case till maybe after the first
3 case in the hearing session and when hopefully Commissioner Hood
4 will join us and then we will address both the motion and the
5 substance of the decision. So if everyone is in agreement, we
6 can proceed in that manner or if there's another suggestion.

7 Chairman Hill?

8 CHAIRPERSON HILL: I agree. That sounds like a prudent
9 course.

10 VICE CHAIR JOHN: Okay. Right. Thank you. So Mr.
11 Moy, let's proceed with the hearing calendar, and does anyone
12 need a break right now? Maybe a five minute break. Okay. So
13 let's take a five minute break and reconvene at 10:30.

14 (Whereupon, there was a brief recess.)

15 CHAIRPERSON HILL: And, Mr. Moy, you may call 20925
16 when you get a chance.

17 MR. MOY: All right. Thank you, sir. So the first
18 case in the board's public hearing session was application No.
19 20925 of Sarlea S-A-R-L-E-A Mah and Camile Williams. This is
20 advertised as a self-certified application pursuant to Subtitle
21 X § 901.2 for special exception under Subtitle D § 5201 from the
22 side yard requirements of Subtitle D § 206.2. Property is located
23 in the R-1-B zone at 2214 Otis Street, N.E., Square 4242, Lot
24 42, Lot 10. Thank you, sir.

25 CHAIRPERSON HILL: Great. If the Applicant can hear

1 me or whoever the Applicant's representative is, can they speak
2 up and introduce themselves for the record?

3 MS. MAH: Hi. I'm Sarlea Mah and next to me here is
4 the owner, the other owner, Camile Williams.

5 CHAIRPERSON HILL: Okay. All right, Ms. Mah. Are you
6 giving us your presentation?

7 MS. MAH: Yes. I was just going to go ahead and start
8 the presentation with a little history concerning the lot and how
9 we came to this point.

10 CHAIRPERSON HILL: Okay.

11 MS. MAH: So I'll go ahead and start.

12 CHAIRPERSON HILL: Let me do this, Ms. Mah. [My?]

13 MS. MAH: Mah.

14 CHAIRPERSON HILL: Mah. Okay. Yes, Ms. Mah, Go ahead.
15 You can tell us, you know, what you think about -- you can explain
16 your project and why you believe you're meeting the criteria for
17 us to grant the relief requested and however you plan on doing
18 your presentation is completely fine and I'll let you begin. I'm
19 going to put 15 minutes on the clock just so I know where we are.
20 But please, you know, feel comfortable going at your pace. Okay?

21 MS. MAH: Okay. Thank you. Well, good morning, ladies
22 and gentlemen.

23 My name is Sarlea Mah. Sitting next to me here is
24 Camile Williams, and we are the owner of 2214 Otis Street, N.E.
25 We are long time residents of Ward 5 and we are embarking on a

1 new but old endeavor which started over ten years ago when my
2 late wife, Linda McAllister, purchased the lot now known as 2214
3 Otis Street, N.E.

4 Linda and I had a big dream, but this particular one
5 was dear to us, to our hearts because we wanted to build a single
6 family home on this lot to raise our children. After losing her
7 to breast cancer in October of 2016, I was devastated.
8 Nonetheless, I sit here in front of you today still learning to
9 pick up the pieces and eight months pregnant.

10 To make this dream possible I'm only asking that you
11 please grant us approval for a special exception for side yard
12 reduction. We have gotten unanimous support from both the ANC
13 and the Office of Planning on our proposal. It would have no
14 negative impact on the neighborhood other than to enhance it.

15 We have worked very hard to get here and this will mean
16 the world to us. Thank you and I'll pass it along to the other
17 owner, Camile Williams and we also have here the designer of the
18 project, who is Carl Knight.

19 CHAIRPERSON HILL: Okay. Ms. Williams, if you want to
20 say anything, go ahead. I'm going to, Ms. Mah, kind of run us
21 through this hearing and so we'll see who we have any questions
22 from. But Ms. Williams, did you have anything to add?

23 MS. WILLIAMS4: Nothing to add other than Carl Knight,
24 who's also on the call will just briefly go over the project
25 plans and design and get at the questions I think that you all

1 are looking for.

2 CHAIRPERSON HILL: Okay.

3 MS. WILLIAMS: As part of our team, the Applicant's
4 team.

5 CHAIRPERSON HILL: Okay. Great. And Ms. --
6 Commissioner Ms. Brevard, are you there?

7 MS. BREVARD: Yes, I'm here.

8 CHAIRPERSON HILL: Okay. I just want to make sure you
9 can hear us. Okay. Mr. Knight, do you have anything you'd like
10 to add?

11 MR. KNIGHT: Yes. I just wanted to give a brief
12 description of the property and what we're looking for.

13 CHAIRPERSON HILL: Could you introduce yourself for the
14 record, Mr. Knight?

15 MR. KNIGHT: I'm sorry. My name is Carl Knight, and I
16 am the associate designer for this project.

17 CHAIRPERSON HILL: Okay. Great. Go ahead, Mr. Knight.

18 MR. KNIGHT: The improved property at lot 2214 Otis
19 Street, N.E., is designated is in zone R1-B and located the
20 Woodbridge neighborhood of D.C., which is a residential area
21 consisting of primary single detached homes with yards and rear
22 yards as well as accessible side yards.

23 The lot designated as Lot 10 is a buildable lot
24 determined by the D.C. government, therefore the R-1-B zone
25 requirement of a 5,000 square foot minimum lot area and a 50 foot

1 minimum width is not required. However, the proposed
2 construction of a planned single family detached structure on the
3 subject lot would be nonconforming. However, the lot is not
4 conforming because the minimum side yard requirement in the B-1
5 and R-1-B zone district cannot be met. The property is 25 feet
6 wide and 159.69 feet long. A special exception is required for
7 side yard exception only.

8 A subject buildable lot required a lot occupancy of 40
9 percent. We are able to provide a reasonable dwelling with a 20
10 percent in lot occupancy with a 159 foot rear vacant yard area
11 designated to accommodate two parking spaces and thus will not
12 create any burden on the existing street parking.

13 The new home would be a detached single family three
14 story residence with a cellar similar to neighboring homes. A
15 special exception for side yard relief would not limit the light
16 and air to adjacent properties or to the dwellings in the
17 neighborhood. The adjacent neighbors have expressed support in
18 the proposed structure. Once again, the lot is 125 feet wide.
19 The proposed structure would be 17 foot wide which will leave us
20 with eight feet available for side yard setbacks. We are
21 requesting relief for both side yards with a three foot five
22 setback on the east and four foot five setback on the west. The
23 special exception variance for the lot width would not generate
24 any negative impacts on the zoning regulations or neighbors
25 because the reduced lot's width provide adequate pedestrian and

1 small equipment access to both yards.

2 In conclusion, the project will contribute to the
3 continual improvement to the Woodbridge land area and development
4 and develop a tasteful design single family detached residence
5 on the in-fill lot, which will be compatible with new properties
6 in the neighborhood. Please take this information into
7 consideration to approve our request for a special exception from
8 minimum lot width requirements in the R-1-B zone.

9 Thank you.

10 CHAIRPERSON HILL: Thank you, Mr. Knight. Commissioner
11 Brevard, can you hear me?

12 ANC COMMISSIONER BREVARD: Yes, I can.

13 CHAIRPERSON HILL: Is there anything you'd like to
14 present to the Board?

15 ANC COMMISSIONER BREVARD: I just want to say that we
16 met with the community on May 15 and there were no objections to
17 the project. On May 17 voted six zero zero to support this
18 project. There were no objections and that's all I have to say.

19 CHAIRPERSON HILL: Okay. Great. Thank you. If my
20 fellow Board Members will indulge me I'm going to go to the Office
21 of Planning first and we'll go through questions. Could I hear
22 from the Office of Planning, please?

23 MS. BROWN-ROBERTS: Good morning, Mr. Chairman, and
24 members of the BZA. Maxine Brown-Roberts on BZA case 20925 with
25 special exception relief for the rear, I'm sorry, for the side

1 yard requirements for a new home.

2 As outlined in our report, the Applicant meets the
3 requirements of Subtitle D 5201 and light and air to the adjacent
4 properties will not be affected as well as privacy. They
5 provided, they still have enough rear yard and they abut a 15
6 foot wide alley. They also meet the requirements of the special
7 exception criteria, the general special exception criteria, in
8 that they would not result in a building that is out of scale
9 and meets the intent of the zone. As noted, the side yard
10 reduction should not adversely affect the enjoyment and use of
11 privacy of the neighboring properties.

12 The Office of Planning therefore recommends approval
13 of the requested special exception. Thank you, Mr. Chairman and
14 I'm available for questions.

15 CHAIRPERSON HILL: Thank you, Mr. Brown-Roberts. Does
16 the Board have any questions of the Applicant, the architect or
17 the Commissioner or the Office of Planning? All right.

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

19 MR. YOUNG: Yes, we have one witness signed up.

20 CHAIRPERSON HILL: Okay. Could you give me that
21 person's name, please?

22 MR. YOUNG: Edward Johnson.

23 CHAIRPERSON HILL: Okay. Mr. Johnson, can you hear me?
24 Mr. Johnson, can you hear me? Can you hear me? Okay?

25 MR. JOHNSON: Can you hear me?

1 CHAIRPERSON HILL: Yes, yes. Can you introduce
2 yourself for the record, please, sir?

3 MR. JOHNSON: I'm sorry. My name is Edward M. Johnson.
4 I am president of Edward M. Johnson & Associates, Architects --

5 CHAIRPERSON HILL: Okay.

6 MR. JOHNSON: -- and Planners, Washington, D.C.

7 CHAIRPERSON HILL: Okay. Mr. Johnson, you'll have
8 three minutes to give your testimony, and you can begin -- do
9 you live close by to the property?

10 MR. JOHNSON: Yes. Approximately. My office is close
11 by, it's 3612 12th Street, N.E.

12 CHAIRPERSON HILL: Your address is 3612 12th Street.
13 That's not your home address, that's your office address?

14 MR. JOHNSON: That's my office. That's close.

15 CHAIRPERSON HILL: And how close?

16 MR. JOHNSON: Maybe eight blocks.

17 CHAIRPERSON HILL: Okay. All right. Go ahead, Mr.
18 Johnson.

19 MR. JOHNSON: I'd like to state first that Mr. Knight
20 is not the architect of record. I am. So he's and therefore, I
21 also want to mention that I signed a contract with Ms. Mah and
22 Ms. Williams in September of 2022. I object to approval of this
23 project. They have no right to carry this project forward and
24 my documents.

25 At any rate, I signed a contract with them in September.

1 CHAIRPERSON HILL: Mr. Johnson?

2 MR. JOHNSON: Yes.

3 CHAIRPERSON HILL: I'm not trying to -- what am I trying
4 to clarify? We are here for only zoning issues. If you have
5 any other issues that concern Ms. Mah or Mr. Knight, this isn't
6 the forum for it. This is just about the zoning.

7 MR. JOHNSON: Okay. Look, let me read a letter I sent
8 to the Zoning last night at 10:23 p.m., I sent to Robert Reid.
9 Please be informed that pursuant they -- first of all, I received
10 a letter from Ms. Williams yesterday in the middle of the day,
11 and I provided the following response. Please be informed -- the
12 letter states that they chose not to have me make the presentation
13 today. So I sent this letter last night.

14 "Please be informed that pursuant to the above notice
15 was received today from the property owners, I will not be
16 participating on their behalf in the above referenced hearing at
17 about 10:59 p.m. on today. This office received what appears to
18 be client's letter of dismissal via email, a copy of which is
19 attached for your convenient reference. Please further be
20 noticed that pursuant to written agreement with clients, use of
21 architectural drawings developed through this office is not
22 granted without written authorization from this office. Should
23 there be inquiries for further communications from this office
24 on this matter, please feel free to call me at 202-526-3610. If
25 I am unavailable to take your call, may I request you please

1 provide a window of time during which a return call can be made."

2 So point is, Mr. Knight has no authority from my office
3 to move these documents forward. These documents are the property
4 of the architect of record, which we are and so therefore, I
5 request that this approval be dismissed.

6 CHAIRPERSON HILL: Okay. So let me, just give me a
7 second now, Mr. Johnson. So I don't think -- I'm going to ask
8 the legal department, like, I don't think this has anything to
9 do -- if they're if there's a private matter concerning whether
10 or not documents are moving forward or architectural drawings
11 moving forward, this is nothing that pertains to our zoning
12 issues, correct, and I'm asking legal?

13 VICE CHAIR JOHN: Mr. Chairman, can I ask a question
14 while --

15 CHAIRPERSON HILL: Sure.

16 VICE CHAIR JOHN: -- we're waiting for legal to come
17 in?

18 CHAIRPERSON HILL: Sure.

19 VICE CHAIR JOHN: So Mr. Johnson, were the drawings in
20 the record, were they submitted by you or by the Applicant at
21 the time that you gave permission to use those drawings?

22 MR. JOHNSON: The drawings were prepared by my firm and
23 submitted to the BZA by our firm.

24 VICE CHAIR JOHN: Okay. That's what I needed to know.

25 MR. JOHNSON: So officially prepared by us and

1 | officially submitted --

2 | VICE CHAIR JOHN: Okay.

3 | MR. JOHNSON: -- by us.

4 | VICE CHAIR JOHN: All right. So I think I'll wait to
5 | hear from the lawyers and thank you for answering the question.

6 | CHAIRPERSON HILL: Yes, Ms. Mah, you'll get a chance
7 | to respond. I'm just trying to figure out what. Okay. Hold on
8 | first, Mr. Smith. Go ahead. You're on mute, Mr. Smith.

9 | MR. SMITH: I have one more question. This will be to
10 | Mr. Knight or Mr. Johnson because the plan was stamped with his
11 | architecture firm and he is the, on record as the Applicant's
12 | rep. Is Mr. Knight an associate at your architectural firm?

13 | MR. JOHNSON: I gave Mr. Knight a title of associate.
14 | He is not part of our firm, no.

15 | MR. SMITH: He does not work at your firm?

16 | MR. JOHNSON: No, he does not.

17 | MR. SMITH: Okay. Did he alter these plans to say the
18 | design (indiscernible)?

19 | MS. WILLIAMS. Yes. Yes.

20 | MR. JOHNSON: No, he didn't alter the plans. The plans
21 | that were submitted were created entirely in our office.

22 | MS. WILLIAMS: That's inaccurate. That's inaccurate.

23 | MR. SMITH: Well, that raises another question that if
24 | he did alter a set of plans that were stamped by his firm that
25 | that raises a higher, another legal question.

1 MR. KNIGHT: No, there were no alterations to the plans.

2 MS. WILLIAMS: There were no alterations. That's
3 inaccurate. That's inaccurate. As to -- yes, that's inaccurate.

4 VICE CHAIR JOHN: Mr. Chairman, can we have the parties
5 --

6 CHAIRPERSON HILL: Hold on. Give me a second. Wait a
7 minute. Now what I'm going to do -- I love it -- Ms. Mah and
8 Ms. Williams, don't worry. We'll figure this out. Right?

9 MS. WILLIAMS; Okay.

10 CHAIRPERSON HILL: And so, and you will have an
11 opportunity to respond which, I mean, Mr. Johnson, just give them
12 a chance to respond. Go ahead, and then when I'm going to do
13 -- I love it, I just got here -- I may do the emergency meeting
14 because I want to find out from legal what's going on and so I
15 don't have, Mr. Moy, you can send me the emergency meeting thing
16 to read because I don't have it where I am right now. Go ahead,
17 Ms. Williams or Ms. Mah.

18 MS. WILLIAMS: I was just going to say that's
19 inaccurate. Mr. Johnson agreed to work with Mr. Carl Knight on
20 this project, and the majority of the plans had already been
21 designed and presented to Mr. Johnson. Mr. Johnson did make some
22 technical changes towards the end to make sure everything was in
23 compliance. That's first and we do have emails to support that.

24 The next thing is that the email that Mr. Johnson is
25 referencing is basically me saying that I did not want him to

1 represent us for today's hearing. I spoke with Mr. Reid last
2 week and earlier this week, and I understand that a licensed
3 architect does not have to represent the owner or the applicant
4 at these hearings. There are plenty of applicants that represent
5 themselves. So Mr. Johnson's understanding of how this works, I
6 think is a bit skewed.

7 There is a private matter between Mr. Johnson and us
8 that's still pending and it's around payment. But at the time
9 in which Mr. Johnson rendered these drawings, the payment was
10 current. So we're proceeding. It was not a dismissal of this
11 case. When I told Mr. Johnson that we did not want him to present
12 us or represent us today, that we would, you know, take care of
13 it ourselves it was a dismissal of his services for today. So I
14 wanted to clarify that.

15 CHAIRPERSON HILL: Okay. Great. All right. I mean,
16 I don't need to necessarily == I don't think there's any of the
17 zoning concern, right, and so I don't think that I need to take
18 a break unless Ms. Naglehout --

19 MR. SMITH: I do think that --

20 CHAIRPERSON HILL: Oh, you want to take a break, Mr.
21 Smith. That's fine.

22 MR. SMITH: Yes.

23 CHAIRPERSON HILL: All right. Then, okay. Then I'm
24 going to go ahead and do the next thing that I have to do and I
25 don't have my correct laptop here with me. So let me see if I

1 can find my email. Give me a moment, please. Mr. Moy, did you
2 send me the statement?

3 MR. MOY: It's coming to you, like within five seconds.

4 CHAIRPERSON HILL: Okay.

5 MR. MOY: Hang on. Yes.

6 MR. JOHNSON: Can I make another comment?

7 CHAIRPERSON HILL: No, you can't right now, sir. Let
8 me go -- I'm going to go and talk to my legal department.

9 MR. JOHNSON: Sure.

10 CHAIRPERSON HILL: As soon as I can get my statement
11 up. Okay.

12 MR. MOY: I just forwarded it to you, sir.

13 CHAIRPERSON HILL: Okay. Great. Okay. I'm going to,
14 okay.

15 As Chairperson of the Board of Adjustment for the
16 District of Columbia and in accordance with Section 407 of the
17 District of Columbia Procedures Act, I move that the Board of
18 Zoning Adjustment hold a close meeting on July 12, 2023 for the
19 purposes of case No. 20925, seeking legal advice from our counsel
20 on 7/12/2023. Deliberate upon but not vote on 7/12/2023 for case
21 No. 20925.

22 Is there a second, Ms. John?

23 VICE CHAIR JOHN: Second.

24 CHAIRPERSON HILL: Mr. Secretary, the motion was made
25 and seconded. If you could take a roll call, please.

1 MR. MOY: When I call your name, if you'll please
2 respond to the motion made by Chairman Hill for an emergency
3 meeting and this is a roll call vote.

4 Zoning Commissioner Rob Miller?

5 ZONING COMMISSIONER MILLER: Yes.

6 MR. MOY; Mr. Smith?

7 MR. SMITH: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: Staff would record the vote as four to zero
13 to one, on the motion, Chairman Hill, to move to an emergency
14 closed meeting. The motion was second by Vice Chair John and
15 the roll call vote is four to zero to one to move, and the motion
16 carries, sir.

17 CHAIRPERSON HILL: Okay. Great. So now, Ms. Mah and
18 Ms. Williams, just so you know what we're going to do, we're just
19 going to go to another room and kind of talk with our legal
20 department and then we'll come back, and, Mr. Johnson, just so
21 you know, you're a member of the public giving testimony. So
22 you get three minutes for your testimony, which you've now just
23 gotten but we, the Board, might have questions for you. So we'll
24 go ahead and allow you to stay in the hearing room and if we have
25 any questions for you, we will ask them.

1 So I will see you guys in a little bit and I will click
2 out of this meeting. I'll see my fellow Board Members in the
3 other meeting. Thank you.

4 MR. JOHNSON: Can I make a quick comment before you go?

5 CHAIRPERSON HILL: Sure, Mr. Johnson. Go ahead.

6 MR. JOHNSON: Mr. Knight's testimony was reading from
7 one of the documents that we prepared and submitted.

8 CHAIRPERSON HILL: Okay. Well, Mr. Johnson, again,
9 what I'm trying to figure out is whether or not this is in our
10 purview; right? Whether this is something that's a matter between
11 you and the Applicant or whether or not this is a zoning issue.
12 If it's a zoning issue, it's something that we'll be talking
13 about per the regulations. But if it's not, then it's just
14 something that I guess you guys are going to have to work out.
15 But I'll let you know once I talk to legal; okay?

16 MR. JOHNSON: Sure.

17 CHAIRPERSON HILL: Thank you. All right. See you
18 guys.

19 (Whereupon, there was a brief recess.)

20 CHAIRPERSON HILL: All right. Mr. Moy, can you go
21 ahead and call us back in, please?

22 MR. MOY; Yes, sir. With pleasure. After a Board
23 emergency closed meeting with legal counsel, the Board has
24 returned to its public hearing session and the time is now at or
25 about 11:19 a.m.

1 CHAIRPERSON HILL: Okay. So we have had a lengthy
2 discussion with legal and I'm pretty sure I know where I am.
3 However, there is a letter, I guess, that hasn't been admitted
4 into the record yet and so, Mr. Moy, if you could go ahead and
5 drop that into the record, ask staff to drop it into the record?

6 MR. MOY: Yes, sir. Thank you.

7 CHAIRPERSON HILL: I'm going to just wait for us all
8 to read it and see if that changes any perception as to the
9 conversation we had.

10 MR. MOY: Okay. It should be in the record now, sir.

11 CHAIRPERSON HILL: Okay.

12 (Pause.)

13 CHAIRPERSON HILL: Okay. All right. So that doesn't
14 change my thoughts as to what happened from our discussion. So
15 I'm looking at my fellow Board Members for the record. I mean,
16 what I understand is that we have a self-certified application
17 that has been processed through the Board of Zoning Adjustment,
18 meeting everybody's -- the criteria for us, the criteria that the
19 Board of Zoning adjustment needs to have for it to be with us
20 has been fulfilled and now we're looking at the zoning issues and
21 that's what I believe is before us at this point in time.

22 Do any of my fellow Board Members have anything else
23 on that comment? If so raise your hand. Okay. All right.

24 Mr. Johnson, can you hear me?

25 MR. JOHNSON: Yes. Yes, I can.

1 CHAIRPERSON HILL: Yes. We talked with legal and kind
2 of went through this and so we're currently, this is something
3 that's out of our purview. It's not a zoning question for us
4 and so this is something, I guess, that you'll have to work out
5 with the Applicant. Okay?

6 MR. JOHNSON: Oh, can I make a comment?

7 CHAIRPERSON HILL: You can make a comment, sure.

8 MR. JOHNSON: Because the client has not fulfilled its
9 financial obligation to us, I submitted that letter which I asked
10 to be placed in the file that this case would not go forward.
11 When Mr. Knight spoke, as I mentioned, Mr. Knight spoke reading
12 from our documentation. He did provide some original concept
13 documents but the documents that were submitted, they were
14 produced totally by my resources within the context of my firm,
15 including the text that Mr. Knight read from. He did not produce
16 that. He is not an architect. He is not a licensed architect,
17 and did not produce our documents.

18 CHAIRPERSON HILL: All right. Ms. Mah and Ms. Williams
19 you'll have an opportunity. Okay, Mr. Johnson, is that it?

20 MR. JOHNSON: Yes. Yes. So I'm --

21 CHAIRPERSON HILL: No, I got you and I'll let Ms. --
22 so now just how this works again, Mr. Johnson. You are not a
23 party. You're a member of the general public who is supposed to
24 get three minutes to give their testimony. However, your
25 testimony opened up a bunch of questions for the Board, which

1 made us then go to an emergency closed meeting, which has then
2 brought us back to this point. So Ms. Mah and Ms. Williams, it's
3 their application. So you're going to get an opportunity to
4 rebut whatever the witness just said; right?

5 MR. JOHNSON: But I prepared the application.

6 CHAIRPERSON HILL: Pardon me?

7 MR. JOHNSON: I prepared the application.

8 CHAIRPERSON HILL: I understand and so what I'm saying
9 is that it's -- so Ms. Mah and Ms. Williams, it's their
10 application. So the, anyway, so what I'm just trying to get at,
11 Mr. Johnson, I can't go back and forth. like they're going to
12 get a chance to respond to your comments. But before they do,
13 again, Ms. Mah and Ms. Williams, I've already told you what I
14 think; right? Okay. And so you know, you can go ahead and say
15 whatever you want to say, but I've made, you know, we've had a
16 discussion. Do you have any rebuttal?

17 MS. WILLIAMS: No, I don't. I understand exactly what
18 you're saying and it's what you said earlier. It's a private
19 matter and I'm not going to waste the Board's time or your time,
20 Commissioner. It's a separate matter.

21 CHAIRPERSON HILL: Okay. Okay. All right.

22 MS. WILLIAMS: It's a private issue, so.

23 CHAIRPERSON HILL: Mr. Johnson, so we're going to go
24 ahead and let you guys settle this or figure it out. All right.
25 I got Mr. Smith raising his hand.

1 MR. SMITH: Okay. I'm sorry. I did go back and look
2 at the application. The application is signed by Mr. Edward
3 Johnson, not by the owners of the property in question. So they
4 created that issue but it's not (indiscernible).

5 MS. WILLIAMS: It's our application --

6 MR. SMITH: Oh, Ms. Williams. Sorry.

7 MS. WILLIAMS: That's okay. It's our application. We
8 gave permission for Mr. Johnson to represent us at the time and
9 submit the documents and which he's been paid for. The matter
10 that we're really facing now is a matter of pride. We've decided
11 to move forward without Mr. Johnson due to a payment discrepancy.
12 And that's what we're in the middle of. But Mr. Johnson was paid
13 for the rendering of those documents. There is a remaining
14 balance in full transparency that we're working through with him,
15 but we gave him the permission to represent us as a registered
16 agent and I think at any time if the owner feels uncomfortable
17 with someone after assigning them that status, they can revoke
18 that and move forward.

19 When I spoke to Mr. Reid, you don't have to be a
20 licensed architect to represent yourself here. I've seen plenty
21 of cases where there was no licensed architect and applicants
22 represented themselves. So this is not a matter of him being,
23 Mr. Carl Knight being licensed or not licensed. We are here
24 representing ourselves as the applicants.

25 MR. SMITH: I guess my concern, Ms. Williams, isn't

1 even about him being a licensed architect per se. You are correct
2 that, you know, individuals, you can represent yourself as a
3 property owner. My concern was that the entire, the majority of
4 the application, everything that is submitted is under his hand
5 as your representative and that's my only concern.

6 MS. WILLIAMS: Got it. He's been paid for those
7 services, Mr. Smith.

8 MR. SMITH: Okay.

9 MR. JOHNSON: No, he has not. We submitted the
10 application --

11 CHAIRPERSON HILL: Hold on one second. You guys, give
12 me a second, please. Go ahead, Ms. John.

13 VICE CHAIR JOHN: Mr. Chairman. I think that we're at
14 the point where the Board should move on and the way I'm looking
15 at this is that at the time the self-certification was signed,
16 it was signed by --

17 CHAIRPERSON HILL: Ms. Williams, we can hear.

18 VICE CHAIR JOHN: Can you hear me?

19 CHAIRPERSON HILL: No, I can hear you, Ms. John. I
20 can also hear Ms. Williams. Go ahead.

21 VICE CHAIR JOHN: It was signed by Mr. Johnson as the
22 representative of the owners. Since then, Mr. Johnson has
23 withdrawn his representation as to future dealings, but I don't
24 see how he couldn't retroactively amend his certification at this
25 time. So that would be my thinking and that the Board accepted

1 the application as complete based on the representation at the
2 time that the Office of Zoning reviewed the application in terms
3 of what's required under the regulations. For example, Y 300.8(c)
4 which requires that there should be architectural plans submitted
5 in the record and since the self-certification requirement is
6 that Section wide 300.6 and in this case the certification, as I
7 noted before, was signed by Mr. Ed Johnson, who was authorized
8 to sign at that time.

9 So what we have here is a dispute as to whether Mr.
10 Johnson is authorized to represent them at this hearing, and the
11 Board shouldn't inquire as to the payment arrangements between
12 the parties. That's a private dispute that the parties need to
13 resolve themselves, but there was no misrepresentation to the
14 Board when the architectural plans and the self-certification
15 were submitted.

16 So I also think that there is no requirement for a
17 licensed architect to represent the owner at this hearing. So
18 it seems to me that Mr. Johnson's contention is that because he
19 is not being paid to represent the owners at this hearing, he
20 should therefore withdraw his previous certification. So I am
21 in favor of the Board moving forward, and I would choose to
22 believe that the Applicants have a good faith belief that Mr.
23 Johnson was authorized to represent them at the time the
24 certification was submitted.

25 CHAIRPERSON HILL: Okay. All right. So Ms. John,

1 right, we're all kind of deliberating, which is great. So I
2 don't have any more questions. Does anybody have any more
3 questions of anybody?

4 MR. JOHNSON: I don't have any questions. I'd just to
5 correct on Ms. John's --

6 CHAIRPERSON HILL: Mr. Johnson? Mr. Johnson, I'm
7 sorry. I appreciate what you're trying to say, but like again,
8 you're not a party, you're a witness and so we're just trying to
9 work with what we have in front of us. So Ms. [My} how do you
10 say your name?

11 MS. MAH: It's Mah.

12 CHAIRPERSON HILL: Mah. All right. Ms. Mah. So, do
13 you guys have anything -- it's your application. Do you have
14 anything to add in conclusion?

15 MS. MAH: No.

16 CHAIRPERSON HILL: Okay. All right. I'm going to
17 close the hearing and the record. Mr. Young, if you can, please
18 excuse everyone.

19 MR. SMITH: Wait. Did we hear from the Office of
20 Planning, from OP?

21 CHAIRPERSON HILL: Yes, we did.

22 MR. SMITH: Okay.

23 CHAIRPERSON HILL: Okay. All right. So I think Ms.
24 John said it very well in terms of everything that was in
25 discussion about whether or not this application is before us

1 correctly. I believe this application is before us correctly.

2 So with regard to the zoning issues, in 5201 I would
3 agree with the analysis the Office of Planning has put forward.
4 I don't think there's any light or air issues. I don't think
5 there was any, you know, any character issues to the block and I
6 don't have any problems with the relief that's being requested,
7 which is the side yard relief and so I'm going to be voting in
8 favor.

9 In addition to that, I would take great weight from the
10 ANC, which is also in support of this application and vote to
11 approve. Does anybody have anything to add. Mr. Smith?

12 MR. SMITH: I don't have anything to add. I do believe
13 that the Applicant has met the burden of proof for us to grant
14 special exceptions as presented by the Office of Planning,
15 therefore there will be very minimum light and air concerns
16 related to the construction of this property or on the adjacent
17 neighbors and I do believe that that the property would be in
18 substantial (phonetic) conformance with the special exception
19 standards of Subtitle X 901(a), (b), and (c), and note that the
20 ANC is in support of the application.

21 Regarding, you know, the dialogue that we just had
22 regarding the Applicant's representative. I do agree with Ms.
23 John that the Applicant does have the right to withdraw his
24 representation and that's not a concern of the Board. Going
25 forward, which has been a concern beyond this Board with the

1 Department of Buildings where the plans are submitted for
2 building permit evaluation at that time, so it has to do with
3 that Department and I won't go down that road.

4 So with that I give OP's staff report great weight,
5 give ANC's recommendation of approval great weight and support
6 the application.

7 CHAIRPERSON HILL: Thank you. Commissioner Miller.

8 ZONING COMMISSIONER MILLER: Thank you, Mr. Chairman.
9 I support the application moving forward, having met the
10 standards for the zoning relief that's being requested with
11 justifications outlined quite comprehensively in the Office of
12 Planning report which recommends approval, as does the ANC
13 recommend approval in a unanimous vote.

14 So I'm ready to move forward. Thank you.

15 CHAIRPERSON HILL: Thank you. Vice Chair John?

16 VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm in
17 support of the application. The relief is really quite
18 straightforward and the application otherwise meets the criteria
19 for relief, I believe the Applicant's letter in the record clearly
20 states that Mr. Johnson is not authorized to represent them at
21 this meeting. I believe the application was complete as it was
22 submitted and meets the criteria in the regulations and so I
23 believe that the application can move forward on that basis, and
24 so as I said before, I will be in support of this application.

25 CHAIRPERSON HILL: Thank you. All right. I make a

1 motion to approve application No. 20925, a self-certified
2 application pursuant to Subtitle x 901.2 for a special exception
3 under Subtitle E 5201 from the side yard requirements of Subtitle
4 D 206.2 to eight feet required proposed 2.5 feet on the east side
5 and 4.5 feet on the west side and ask for a second. Ms. John?

6 VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: The motion made and seconded. Mr.
8 Moy, would you please do a roll call.

9 MR. MOY: Thank you, sir. When I call your name, if
10 you would, please respond to the motion made by Chairman Hill to
11 approve the application that's requesting zoning relief. The
12 motion to approve was second by Mr. Smith, I mean, Vice Chair
13 John.

14 Zoning Commissioner Rob Miller?

15 ZONING COMMISSIONER MILLER: Yes.

16 MR. MOY: Mr. Smith?

17 MR. SMITH: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: We have no other votes. Staff would record
23 the vote as four to zero to one, and this is on the motion made
24 by Chairman Hill to approve. The motion to approve was second
25 by Vice Chair John, who also voted to approve the application.

1 Other members voted to approve the motion in the application is
2 Zoning Commissioner Rob Miller, Mr. Smith and of course, Vice
3 Chair John and Chairman, Hill. The motion carries, sir, on the
4 vote of four to zero to one.

5 CHAIRPERSON HILL: Okay. Great. Thanks. And Mr. Moy,
6 just so I know did you guys process all the expedited review
7 cases?

8 MR. MOY: Yes, sir.

9 CHAIRPERSON HILL: Okay. All three of them? So they're
10 not coming back?

11 MR. MOY: Hopefully not.

12 CHAIRPERSON HILL: Okay. Okay.

13 MR. MOY: I did notice that Zoning commission Chair
14 Anthony Hood has entered the hearing chamber.

15 CHAIRPERSON HILL: Okay. Great. So we're ready to go
16 back to the one that Ms. John is in charge of.

17 VICE CHAIR JOHN: Okay. Are you going to call it, Mr.
18 Moy?

19 MR. MOY: Yes, ma'am. Okay. For the ease of the
20 hearing transcript, let me reread the caption again.

21 So this would be the last case in the meeting session
22 we had, we turn to the public meeting session and this is
23 application No. 20906 at KIPU, LLC as advertised as a self-
24 certified application pursuant to Subtitle X § 901.2, special
25 exceptions under Subtitle U § 320.2 to allow conversion of an

1 existing residential building to an apartment house. Subtitle E
2 § 5201 of the court requirements, Subtitle E § 203.1 side yard
3 requirements, Subtitle E § 207.3, Subtitle E 205.5 to allow a
4 rear wall to extend further than ten feet beyond the farthest
5 rear wall. Subtitle E §§ 206.4 and 5207 from the rooftop
6 architectural feature requirements under Subtitle E § 206.1.

7 Property is located in the RF-1 zone at 1251 Morse
8 Street, N.E., Square 4069, Lot 57, and again this was last heard
9 by the Board in its decision meeting session on June 28th, 2023
10 and once again, participating is Chairman Hill, vice Chair John,
11 Mr. Smith and Zoning Commission Chair Anthony Hood.

12 VICE CHAIR JOHN: Thank you, Mr. Moy. So there's a
13 preliminary matter, as we noted earlier, and that is the
14 Applicant's Motion to Reopen Decision to postpone the hearing to
15 September 13th and at the time the Board continued, well, to
16 recap.

17 At the June hearing, the record was closed except for
18 submission from the Applicant addressing fire safety concerns and
19 a response from the ANC and on June 28, the Board postponed a
20 decision meeting based on a late request from the ANC Commissioner
21 to postpone the hearing until September 13.

22 At the time, the Board made that decision the Board did
23 not afford the Applicant an opportunity to respond to the motion
24 and the Applicant subsequently filed this Motion to Reopen the
25 Decision to postpone to September 13. So I'd like to hear from

1 | the Board as to whether the Board should grant the Motion to
2 | Reopen the Decision.

3 | Does anyone have any comments? I am not opposed to
4 | reopening the decision because it is appropriate to allow the
5 | Applicant to respond. Chairman Hill?

6 | CHAIRPERSON HILL: Sure. Vice Chair John, I would
7 | agree with what you just said insofar as it's appropriate for the
8 | Applicant to have an opportunity to respond and so I have no
9 | problem opening the record to let the Applicant respond.

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

11 | MR. SMITH: I agree with the position of both Board
12 | Members and will support reopening the record for that particular
13 | reason.

14 | VICE CHAIR JOHN: Commissioner Hood, are you on?

15 | ZONING COMMISSIONER HOOD: I would agree, Vice Chair
16 | John, because I probably caused a lot of this. I would agree
17 | that they should have opportunity. I think we just missed that
18 | so I'll leave it at that. Thank you.

19 | VICE CHAIR JOHN: Thank you. So I'll make a motion to
20 | reopen the record and ask for a second.

21 | CHAIRPERSON HILL: Second.

22 | VICE CHAIR JOHN: Mr. Moy, would you take a roll call?

23 | MR. MOY: When I call your name if you'll please respond
24 | to the motion made by Vice Chair John to reopen -- to grant the
25 | motion to reopen the record that was filed by the Applicant, and

1 | this motion was second by Chairman Hill. Mr. Smith.

2 | MR. SMITH: Yes.

3 | MR. MOY: Zoning Commission Anthony Hood?

4 | ZONING COMMISSIONER HOOD: Yes.

5 | MR. MOY: Vice Chair John?

6 | VICE CHAIR JOHN: Yes.

7 | MR. MOY: Chairman Hill?

8 | CHAIRPERSON HILL: Yes.

9 | MR. MOY: We have no other vote. Staff would record
10 | the vote as four to zero to one and this was on the motion made
11 | by Vice Chair John to re-open the record to allow the filing from
12 | the Applicant. The motion was second by Chairman Hill. Also,
13 | voting to grant the motion to re-open is Zoning Commission Chair
14 | Anthony Hood, Mr. Smith and of course Vice Chair John and Chairman
15 | Hill. The motion carries on vote of four to zero to one.

16 | VICE CHAIR JOHN: Thank you. So the Applicant is now
17 | seeking that the Board make a decision, to make it's decision
18 | today instead of continuing the hearing to September 13 and if
19 | everyone's in agreement, we can proceed with the discussion of
20 | the decision. Chairman Hill?

21 | CHAIRPERSON HILL: I'm comfortable deliberating today.

22 | VICE CHAIR JOHN: Okay. Board Member Smith?

23 | MR. SMITH: Yes, I'm comfortable with deliberating
24 | today.

25 | VICE CHAIR JOHN: Commissioner Hood?

1 ZONING COMMISSIONER HOOD: I'm comfortable deliberating
2 today. I didn't get what I thought I was going to get in the
3 submissions, Madam Vice Chair, so I want to thank the Board for
4 doing that and I didn't necessarily always like the tone of what
5 the Applicant said but the Applicant actually brought up some
6 valid points and I think you all mentioned it previously. So
7 thanks for indulging me. I'm ready to go ahead and proceed.
8 Thank you.

9 VICE CHAIR JOHN: Thank you, Chairman Hood. Also, I
10 didn't mention it, but I thought that the request for a decision
11 no later than July 12 is, well, let me not comment on that. I
12 think the Applicant is -- some of the questions that the Applicant
13 raised in requesting that the Board re-open the decision were
14 valid primarily because the Board should have given the Applicant
15 an opportunity to respond to the ANC's late submission and that
16 submission, in my view, did not address issues that the Board
17 could consider.

18 Primarily, the ANC wanted the Applicant to change its
19 design from a three unit apartment house to a two unit apartment
20 house with an accessory structure and in viewing the application,
21 I believe that the design proposed by the Applicant already met
22 the criteria for relief and so I do not believe that the ANC's
23 letter added anything to the discussion and the ANC was not
24 requesting to, the Board made one request which was clarification
25 of the fire safety issues raised by the Board as a point of

1 information and did not necessarily intend that that fire safety
2 concern would be an important criteria in reaching a decision and
3 that was clear from the decision.

4 So I believe that the ANC's letter did not add anything
5 to the record and also reiterated its position that the ANC would
6 not support the application. So I'm saying all this to say that
7 it's appropriate for the Board to allow the Applicant to respond
8 to requests that the Board reconsider the extension to September
9 13, because the Applicant had comments on that.

10 So having said all of that, Chairman Hill, may I ask
11 you to start the discussion?

12 CHAIRPERSON HILL: Sure. Thank you for that
13 clarification on those other issues.

14 In terms of the zoning issues that are before us, I
15 mean, I'm going back to the Office of Planning's Report and also
16 the Applicant's presentation. I mean, I don't think that there
17 concerning the general requirements under 901.2, I think that it
18 will be in harmony with the general purpose and intent of any
19 regulations and will not adversely affect the use of the zoning,
20 I'm sorry, the use of neighboring property in accordance with the
21 zoning regulations and maps and I'm not going to necessarily need
22 to read through all of the arguments that have been put forth.
23 I would refer the Board to slide 15 of the Applicant's PowerPoint
24 presentation, as well as the Office of Planning's report.

25 In terms of the light and air affecting neighboring

1 properties, I didn't think that the proposed development was
2 going to adversely affect the light and air of neighboring
3 properties, nor the privacy use enjoyment of the neighboring
4 properties I don't think would be unduly compromised.

5 It is a three unit building and not a four unit
6 building. So the fourth dwelling unit does not come into concern
7 concerning IZ requirements. I thought that the concerns that the
8 Office of Planning did have about some fencing, I think it was
9 fencing, maybe it was, yes, there was fencing that had their
10 concerns and that had been addressed and again, because of the
11 shadow studies and provided I didn't have any issues with the
12 light or air.

13 I mean I do think that it is going to be, you know,
14 three bedroom units, which I mean people think, or not think,
15 hope that those are "family size" that may make it more capable
16 for families to stay in the neighborhood and so I would be happy
17 with that fact that the Applicant has put forward that opportunity
18 and as far as, again, I didn't have any problems with the windows.
19 I didn't think there was any issue with the windows or bothering
20 or facing the neighbor's property and I would agree with the
21 Office of Planning's analysis.

22 It is unfortunate that the ANC could not see this as a
23 project that they could get behind. However, I do think they
24 are meeting the regulations for us to grant the relief requested,
25 and I will be voting in favor of the application.

1 Thank you, Vice Chair John.

2 VICE CHAIR JOHN: Thank you, Chairman Hill. Board
3 Member Smith?

4 MR. SMITH: So, you know, I'm going to agree with
5 everything stated by Chairman Hill. The Board heard the merits
6 of this case on June 14th, so in reviewing the testimony that
7 was heard during that hearing the Board indicated then that we
8 generally accept that the Applicant had met the burden of proof
9 to grant the necessary special exceptions to allow for the
10 expansion of the building to a three unit apartment house.

11 But we did keep the record open to address fire safety
12 issues and to get a letter in the record from the ANC regarding
13 this particular case and I believe that the ANC's position is
14 still they are mostly concerned that is beyond the, the language
15 of the decision that can be made by this Board is more of a
16 concern related to the creation of potentially at risk windows
17 if there is a potential expansion, hypothetical expansion that
18 hasn't been reviewed or approved by this Board at a future date
19 and those concerns, again, don't necessarily rise to the purview
20 of this Board to consider.

21 But given everything that's in the record, I do believe
22 the Applicant has met burden of proof. I looked at the sun
23 studies and it doesn't seem that the -- any shadowing that would
24 occur would have a substantial undue adverse impact on adjacent
25 properties. I do not have any concerns about the windows. There

1 | would not be any windows along that property line. There's a
2 | court being created that would allow for light and air to access
3 | those windows.

4 | So, and I do not believe that the rooftop architectural
5 | changes would have substantial -- would create a substantial
6 | change in character along the street. They are creating a full
7 | mansard roof which common within this area along Florida Avenue
8 | for the existing properties, and I do believe that even though
9 | they're keeping the majority of the façade building that this
10 | would be (indiscernible) in character in keeping with the
11 | existing historic character, more than what we've seen for some
12 | of these newer developments that have occurred in Trinidad.

13 | So I do believe they've met the burden of proof of the
14 | granting of special exception in evaluating all of the criteria
15 | for these various special session, as well as the standard special
16 | exception criteria under Subtitle X 901 and I will also support
17 | the application giving OP staff's report great weight.

18 | VICE CHAIR JOHN: Thank you, Board Member Smith.
19 | Commissioner Hood.

20 | ZONING COMMISSIONER HOOD: Oh, yes. Thank you, Madam
21 | Vice Chair. Yes, I would agree to this point under Subtitle X,
22 | The Applicant, 901.2 as already stated by my colleagues for
23 | special exception, Subtitle U, Subtitle E, I'm not going through
24 | all the specifics, but I will say that what I was looking for
25 | was just again, as we mentioned, the fire code which I know DOB

1 has authority of and I know is not necessarily within the scope
2 of the Board. I get that. I just want this record to be complete
3 or what may be potentially what's going to happen when it gets
4 to the DOB. But I know there is another venue for that to be
5 resolved and get that comfort (phonetic) level. I like to have
6 one when I vote on cases as well.

7 So again, I appreciate the Board holding up for that.
8 I'm just sorry from my standpoint, I didn't get back what I
9 thought I was going to get back. So with that I am ready to vote
10 in favor of this. So thank you.

11 VICE CHAIR JOHN: Thank you, Commissioner Hood. And
12 as I noted earlier, I am also in support of the application. The
13 only thing I would add, oh, and I agree with all of the comments
14 so far by my fellow Board Members, the only thing I would add in
15 terms of the conversion, and for the information of the ANC, is
16 that the conversion is allowed under 320.2 and the most important
17 criteria is that there will be a minimum of 900 square feet of
18 land area for each existing or new dwelling unit.

19 So the Applicant meets that requirement as well and as
20 everyone else has noted, it meets the criteria under Subtotal X
21 901 which is a special exception review standards, and so with
22 that, since everyone appears to be in agreement, I will make a
23 motion to approve application 20906 as captioned and read by the
24 Secretary and ask for a second. Chairman Hill?

25 CHAIRPERSON HILL: Second.

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

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

7 Mr. Smith?

8 MR. SMITH: Yes.

9 MR. MOY: Zoning Commission Chair Anthony Hood?

10 ZONING COMMISSIONER HOOD: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: With no other votes staff would record vote
16 as four to zero to one, and this is on the motion made by Vice
17 Chair John to approve. The motion to approve was second by
18 Chairman Hill, who also voted to approve as well as approval from
19 Zoning Commission Chair Anthony Hood, Mr. Smith, Vice Chair John
20 and Chairman Hill. The motion carries four to zero to one.

21 VICE CHAIR JOHN: Thank you, Mr. Moy and Chairman Hill.

22 ZONING COMMISSIONER HOOD: You all take care.

23 VICE CHAIR JOHN: Thank you, Commissioner Hood.

24 CHAIRPERSON HILL: Bye Chairman Hood.

25 ZONING COMMISSIONER HOOD: Have a good day.

1 VICE CHAIR JOHN: Thank you. And Chairman Hill, I
2 believe you're back in charge?

3 CHAIRPERSON HILL: Yes, and I'm happy for you to be in
4 charge, Ms. John.

5 Okay. You want to call the next one, Mr. Moy?

6 MR. MOY: Yes, sir. So the next case is application
7 No. 20924 of Capital Realty Solutions, LLC. This is advertised
8 as amended the self-certified application pursuant to Subtitle X
9 § 901.2 For the following special exceptions, Subtitle E 205.5
10 to allow a rear wall of a row or semi-detached building to extend
11 further than ten feet. Subtitle E § 5201 for lot occupancy
12 requirements. Subtitle E § 304.1 and Subtitle U § 320.2 to allow
13 conversion of a residential building to an apartment house.
14 Property is located in the RF-1 one zone at 310 Varnum street,
15 N.W., Square 3311, Lot 68.

16 And let me check one ne other thing, if I may. Okay.
17 The only preliminary matter I have, Mr. Chairman, is that within
18 the 24 hour block, the Applicant did submit revised PowerPoint
19 slides. That's it. Thank you, sir.

20 CHAIRPERSON HILL: Is that the one that's Exhibit 42?

21 MR. MOY: I believe, no.

22 CHAIRPERSON HILL: Okay. Ms. Wilson, if you can hear
23 me could you introduce yourself for the record?

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

1 CHAIRPERSON HILL: Do you know, Ms. Wilson, if your
2 PowerPoint is Exhibit 47?

3 MS. WILSON: I don't think the updated one has been
4 submitted to the record yet.

5 CHAIRPERSON HILL: Okay. Unless the Board has any
6 issues, I'd like to see the updated PowerPoint and and just so I
7 can state this also, like as far as the PowerPoint goes, like
8 it's something that if we were live, we would be seeing it in
9 the hearing room and so the reason why I like it in the record,
10 even if it comes in late, is because I like to be able to look
11 at the PowerPoint on my own and if we were in the hearing room,
12 it would be unnecessary for it to be put in the record. I guess
13 maybe we would say after the fact that we wanted it in the record.
14 So I'm just kind of stating that for the record.

15 Mr. Moy, If you could drop that PowerPoint in there and
16 then, Mr. Young, if you can go ahead and bring it up. Ms. Wilson,
17 if you can, go ahead and walk us through your client's
18 presentation as to why you believe they're meeting the criteria
19 for us to grant the relief requested. I'm going to put 15 minutes
20 on the clock so I know where we are, and you can begin whenever
21 you like.

22 MR. MOY: Mr. Chairman, sorry to intrude just for a
23 second. Just to amend my earlier statement, we also have written
24 testimony from a Ms. Alexis Gutierrez, who was just filed
25 recently. So if you can make a decision whether to allow her

1 written testimony and the record, then I'll know what to do next.

2 CHAIRPERSON HILL: Yes. Please go ahead and drop it
3 into the record, Mr. Moy.

4 MR. MOY: Thank you, sir.

5 CHAIRPERSON HILL: Again, the written testimony, it's
6 interesting because that could be something where if the person
7 were there in the hearing room, they'd be giving their testimony
8 at that point in time as well. But that's not to say that we
9 shouldn't do what we're doing now.

10 MR. MOY: Yes. Well, I think in this special case, she
11 was planning to give oral testimony, but she couldn't wait any
12 longer. So that's all I know.

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

15 All right. Mr. Young, you can pull up the, if you have
16 the current PowerPoint, you can pull that up for the Applicant
17 to proceed.

18 MS. WILSON: Great. Thank you. Our architect, Mr.
19 Kurley, is in the attendee list, and he'll be presenting with me
20 if we could please bring up him, too.

21 CHAIRPERSON HILL: Okay. Mr. Young, if you can do
22 that.

23 MS. WILSON: There we go. Thank you so much.

24 CHAIRPERSON HILL: Mr. Kurley, if you can hear me, if
25 you can introduce yourself for the record.

1 MR. KURLEY: Yes, I can hear you. Yes. My name is
2 Gregory Kurley, principal at Inscape Studio and the architect for
3 this project.

4 CHAIRPERSON HILL: Great. Thank you.

5 MS. WILSON: Mr. Young, could you please go to the next
6 slide? Thank you so much.

7 The property is improved with a two story single family
8 single family row dwelling with an accessory structure. It's
9 located in the RF-1 zone and the lot measures 2,800 square feet
10 in land area. The proposal is to construct a rear addition and
11 a third story addition to convert the building to three principal
12 dwelling units and to reconstruct and enlarge the accessory
13 structure. The accessory building will then be used for parking
14 on the first level and incidental use on the second level. The
15 addition and conversion requires special exception relief
16 pursuant to E 5201 for lot occupancy and the ten foot rule. It
17 will extend an additional five feet and six inches past the rear
18 wall of the neighboring property to the east and three feet and
19 six inches past the rear wall of the neighboring property to the
20 west, and the other area of relief is for the conversion pursuant
21 to U 320.2.

22 Next slide, please. Thank you. In terms of community
23 and agency support, the Applicant has worked with the neighbors
24 and ANC 4C and made substantial revisions from the original
25 proposal, including removing the penthouse and moving the

1 accessory structure to the rear of the property. In doing so it
2 reduced the space in the accessory building as the lower level
3 will now be used for the parking and not living space and these
4 changes successfully responded to the ANC and neighbor concerns,
5 as evidenced by the unanimous ANC support and OP is recommending
6 approval of the application.

7 Next slide, please. In terms of the general
8 requirements, the RF-1 zone does permit more than two dwelling
9 units pursuant to the special exception under U 320.2, and this
10 proposed use was therefore contemplated and included in the
11 zoning regulations.

12 Next slide, please. With respect to the specific
13 requirements of E 5201 for the lot occupancy and ten foot rule,
14 the degree of relief for each is relatively limited. It's 3.4
15 percent lot occupancy and then five and a half feet and three
16 and a half feet respectively for the east and west walls of the
17 neighboring properties. When I'm finished here, Mr. Kurley will
18 walk through the shadow study to demonstrate that the light and
19 air will not be unduly affected by the proposed addition.

20 With respect to privacy, there are no east or west
21 facing windows proposed on the addition and with respect to the
22 character the third story additions will be set back from the
23 front, and the proposal is compatible with other renovated
24 structures on the block, and the accessory structure is
25 compatible with the rear alley scapes and is compliant with all

1 area requirements for accessory structures.

2 Next slide, please. With respect to the specific
3 requirements for the conversion under U 320.2, there is an
4 existing building on the property. The Applicant is not proposing
5 a fourth dwelling unit. The Applicant is proposing three dwelling
6 units total, requiring a minimum of 2,700 square feet of land
7 area, and the subject property has 2,800 square feet of land
8 area.

9 Next slide, please. Thank you. With that, I'll turn
10 it over to Greg Kurley to walk through the plans, and then we're
11 happy to take any questions.

12 MR. KURLEY: All right. Thanks, Alex, and thanks for
13 everyone for your time here.

14 These just show the images, the current state of the
15 existing structure from the rear and from the front and next
16 slide, please.

17 And this is the existing site plan which you see on
18 the bottom right. You see the three townhomes where the one in
19 the middle, 310 Varnum, and you see the existing footprint of the
20 building and then there's an existing accessory structure in the
21 back, which is a garage which you see there at the rear.

22 Next slide. These are just existing elevations.

23 Next slide. And this is the proposed site plan which
24 shows the rear addition which now extends 15 feet six inches and
25 13 feet six inches from the adjacent neighbors, which we're asking

1 for the relief for the five six and the three six, and then you
2 see the existing the proposed accessory structure in the rear.
3 One of the concessions we made in dealing with the neighbors, we
4 had the accessory structure in the middle of the rear yard and
5 that was a matter-of-right. But they had concerns that it wasn't
6 consistent with other accessory structures that are along this
7 alley and so we moved it back as far as we could based on zoning
8 regulations and now it's at the rear of the property consistent
9 with the neighboring structures and the neighboring properties.

10 Next slide. These are the proposed plans. I'm just
11 going to go through them. I don't need to go through these in
12 detail.

13 But, next slide. One thing to note, we did originally,
14 we're proposing a penthouse and we're asking for a relief from
15 the penthouse to access the roof deck that has been taken out
16 per the neighbors' comments and concerns. So we took that out.

17 Next slide. And this is the accessory structure which
18 you see the garage, and then you have incidental use for the
19 cellar unit on the upper floor of the accessory structure.

20 Next slide. Proposed elevations.

21 Next slide. Proposed section and side view.

22 Next slide.

23 Next slide. And this is the elevations of the accessory
24 structure.

25 Next slide. A section through the building.

1 Next slide.

2 Next slide. These are the sun studies and so you can
3 see the sun studies, and we get them from the summer solstice,
4 the winter solstice and the spring fall equinox. So what you're
5 seeing is the sun studies which show the matter-of-right
6 development in comparison with the proposed development and as
7 you can see, the red shows any additional shadow or shade. So
8 we have at early morning in the summer, you have a bit of
9 additional shadow and shade on 312 and creeping into 314. At
10 the middle of the day it's almost nonexistent. There's just a
11 touch at 308 and then again at late in the day when the sun gets
12 low in the west, you have a little bit of additional shade here.

13 Next slide. This is the winter solstice and it's
14 basically the same in the morning. You have a little bit of
15 additional shade to the west with the sun rising in the east.
16 When you get to the middle of the day you almost have, there's
17 just a very little bit of additional shade at 308 and then late
18 in the day, you have this line of red that you see there, which
19 is additional shade.

20 Next slide. And then this is the spring fall equinox,
21 which basically is the same condition. Morning, noon and late
22 afternoon that you have a little bit of additional shade to the
23 west in the morning and a little bit of additional shade to the
24 east late in the evening. But we believe that it's a very minimal
25 impact, especially since we eliminated the proposed penthouse and

1 | trying to get relief from that and we actually decreased the
2 | depth of the proposed addition by six inches.

3 | And so our next slide, I think that should be it in
4 | terms of this. Well, these images are images of the neighboring
5 | properties that are similar. The one here at 314 Varnum Street.
6 | The third from the left is just three down and that has a two
7 | story accessory structure with a unit above.

8 | Next slide. We can go through, these are just similar
9 | type projects, which was part of our communication to the
10 | neighbors.

11 | Next slide. And that's it for me.

12 | MS. WILSON: Thank you, Greg. That concludes our
13 | presentation and we're happy to answer any questions.

14 | CHAIRPERSON HILL: Okay. I got a few, and then I'll
15 | let my fellow Board Members.

16 | So, Ms. Wilson, why didn't you guys not go for a fourth
17 | unit in the back there?

18 | MS. WILSON: I'll defer to Mr. Kurley, although that
19 | might be more of a --

20 | MR. KURLEY: I can answer that really quickly. With
21 | the 900 square foot rule for units and in an RF-1 zone district,
22 | we're limited to three and we want to stay within the zoning
23 | regulations. So that is not intended to be an independent unit,
24 | it does not have a kitchen. But it is intended to have incidental
25 | use for the cellar unit. It's a small unit in the cellar and

1 with people working at home these days and to have that
2 flexibility that they can have a home office or some type of a
3 incidental use would be a real advantage for that particular
4 unit.

5 CHAIRPERSON HILL: Right. So you guys don't have the
6 900 square feet, though. That's the thing.

7 MS. WILSON: Correct (indiscernible).

8 CHAIRPERSON HILL: You don't have enough for the fourth
9 unit anyway?

10 MR. KURLEY: No, and we're not proposing a fourth unit.

11 CHAIRPERSON HILL: Right. And so, but I'm saying you'd
12 have to try to get an area variance or something if you wanted
13 to do a fourth unit. So, okay. That's my first question.

14 Then the other, Ms. Wilson, who's the owner, who's the
15 developer? They're not here, are they?

16 MS. WILSON: I don't think he signed up to testify.
17 It's Mr. Matta, Ritesh Matta if he's on the attendee list, he's
18 the owner.

19 MR. KURLEY: I'm glad to answer any questions on behalf
20 as needed.

21 CHAIRPERSON HILL: Yes. I mean, I don't know if you
22 read the testimony, and we can come back to it. So Ms. Wilson,
23 you can, I mean, it's kind of extensive to the point where, like,
24 I also, I've had a bunch of experience recently with also
25 developments and so, you know, it's kind of like the developer,

1 I mean, Ms. Wilson, you can go ahead and tell us about your
2 experience with the ANC and how you guys made changes in order
3 to get the ANC to get on board. I mean, a lot of the things that
4 are in there is just like, you know, I mean, I love the good
5 neighbor policy, just common sense stuff. Like I mean, they're
6 talking about, you know, how different developers have gotten rid
7 of the Porta Johns and just, you know, I just wanted to hear from
8 the owner that they are a reputable developer that is going to,
9 you know, adhere, not here. Like, you know, be thoughtful, is
10 here.

11 MR. KURLEY: Ritesh is here. He hasn't been let into
12 this meeting so I don't know if he actually signed up or not,
13 but he is present here.

14 CHAIRPERSON HILL: Okay. Great.

15 MR. KURLEY: I've worked with him on a dozen projects,
16 Mr. Chairman, and he's a reputable developer. He takes the
17 neighbors' comments and concerns seriously. He will give the
18 neighbors his phone number if there is an issue with anyone who
19 has a problem with noise or trash or anything like that.

20 CHAIRPERSON HILL: That's great. I'd like to hear from
21 him if he wants to come in.

22 MR. KEARLEY: Ritesh Matta is --

23 CHAIRPERSON HILL: I already see him.

24 MR. KEARLEY: -- his name, so if you see him here.

25 CHAIRPERSON HILL: Mr. Young, if you want to bring that

1 person in and then, but before we do that, we'll come back to
2 Mr. Matta in a minute because he might have to get sworn in by
3 Mr. Moy. But the, oh, yes. Ms. Wilson, tell us about the ANC
4 and what you guys did in order to, so I know you spoke about
5 pushing that ADU back into the rear rather than being in the
6 middle.

7 MR. KURLEY: I can probably speak to that because I'm
8 the one who really --

9 CHAIRPERSON HILL: Sure.

10 MR. KURLEY: -- represented the developer at the ANC
11 meetings.

12 CHAIRPERSON HILL: Go ahead.

13 MR. KURLEY: So we had a number of rounds with the
14 community and Karen Livingston, the ANC Single Member District
15 really orchestrated that. So we had -- one of the biggest
16 concerns was, again, the accessory structure being in the middle
17 of the rear yard which had still met all the zoning requirements.
18 We moved that back and we lost one level of occupiable space in
19 the accessory structure because we need now to have it as parking.
20 But that was a really big concern of the neighbors and so we
21 listened to them and redesigned for their concerns and then moved
22 it to the rear of the property to be consistent with the
23 neighboring structures.

24 Another concern was the penthouse was always a concern
25 of us trying to get a variance for that, which we eliminated,

1 that.

2 CHAIRPERSON HILL: (Indiscernible) to get a variance,
3 of variance for the penthouse? Special exception.

4 MR. KURLEY: A special exception, excuse me.

5 CHAIRPERSON HILL: Right.

6 MR. KURLEY: And so we eliminated the penthouse. We
7 actually reduced the depth of the overall development and so we
8 did a -- we probably had three or four conversations that were
9 orchestrated by Karen with the neighbors and so we took that all
10 into consideration. Some of it had to do specifically with the
11 physical nature of the building. Others had to do with concerns
12 about noise and trash and those things that I'll let Ritesh speak
13 more of.

14 But we finally came to a, I guess, a consensus with the
15 neighbors and the ANC that the reduction of the size of the
16 building, removal of the penthouse and moving back the accessory
17 structure to the rear of the property satisfied their concerns
18 and then that led to really a unanimous approval from the ANC
19 for this particular development.

20 CHAIRPERSON HILL: Okay. Mr. Matta, can you hear me?
21 You're on mute, Mr. Matta.

22 MR. MATTA: Hi, everyone. Thank you. I can hear.

23 CHAIRPERSON HILL: Did you sign up in advance, by any
24 chance, Mr. Matta, and take the oath?

25 MR. MATTA: Actually not.

1 CHAIRPERSON HILL: Just raise your right hand. Raise
2 your right hand.

3 MR. MATTA: Okay.

4 CHAIRPERSON HILL: Mr. Matta, do you swear to tell the
5 truth and nothing but the truth?

6 MR. MATTA: Yes.

7 CHAIRPERSON HILL: There you go. All right. Let's
8 see. Right.

9 So Mr. Matta, I think, I don't remember, I know you've
10 been before us before and so like do you know, and, Ms. Wilson,
11 you can tell me, how close is 310 Varnum to 318?

12 MS. WILSON: She's about four doors down or she's four
13 doors down.

14 CHAIRPERSON HILL: Does she share the alleyway?

15 MS. WILSON: There's a, yes, the rear alleyway that
16 runs along.

17 CHAIRPERSON HILL: : Okay. Great. So Mr. Matta, do
18 you know about Dr. Gutierrez?

19 MR. MATTA: No, I don't know her.

20 CHAIRPERSON HILL: Okay. So would you be willing to
21 reach out to Ms. Gutierrez and offer her your cellphone number
22 or whatever communication you think necessary so that you can
23 help with any concern she might have during construction?

24 MR. MATTA: Oh, absolutely, yes. I do believe in
25 neighbors being a significant stakeholder of any of the projects

1 that we do and I have worked very closely with all of them. Every
2 time I have been working very closely with 308 Varnum, Ms. Meehal
3 (phonetic) who is my immediate neighbor on this project, and we
4 were there yesterday actually trying to resolve some smell issues
5 that are coming out of the building. So we are always kind of
6 on the ball and just as a little bit of a background.

7 This building was in a very terrible shape and the
8 previous owners had a fancy for some night life stuff, but there
9 were all kind of things and there were two trees in the backyard
10 which were about to kind of fall off on any of the houses in the
11 vicinity, including ours. So immediately after we closed on this
12 (indiscernible) within the next ten days, we cleared out the
13 whole house of approximately 20 dumpsters and got the two trees
14 removed after getting the permitting cleared.

15 So we have I hope and I hope the neighbors acknowledge
16 that we have at least gotten them rid of a very significant, I
17 would say, like I do have some pictures that I can share, but
18 yes.

19 CHAIRPERSON HILL: That's good. Just take a look at
20 Exhibit 44 and some of the concerns.

21 MR. MATTI: Sure.

22 CHAIRPERSON HILL: Mr., oh, I see Mr. Hamala there.
23 Okay. Mr. Moy is having some ID issues. All right. Do my fellow
24 Board Members have any questions?

25 VICE CHAIR JOHN: Mr. Chairman, I was just reading the

1 letter from Ms. Gutierrez, which was updated to the file and I
2 think I just want to say that the concerns that she has raised
3 and although these are construction related concerns, it would
4 be important to have the commitment of the developer to address
5 the issue of parking in the alley, and I can tell you it's a pet
6 peeve of mine because I live in a row house and with construction
7 going on and trucks blocking the alleys and because so many people
8 park in their garages because there's no parking on the street,
9 then what deliveries and trucks just parked in the alleys do is
10 they just tie up all the neighbors and nobody can park their cars
11 in the back of their house.

12 So I would really like to see a commitment from you to
13 the neighbors to make sure this doesn't happen for your
14 development and I believe that, just as an aside, this is
15 something the City needs to be more vigilant about and I feel so
16 very strongly about it that I want to raise it with you, and
17 perhaps I should do so in every case that comes before us, because
18 it's really so important. People have to go pick up kids and go
19 to the doctor and all sorts of things, and they're stuck in their
20 alleys not able to move. So I would just want to make that
21 comment.

22 So as to the other issues, some of them are beyond the
23 scope of the Board, but I appreciate her bringing them to our
24 attention. So that's it? That's what I have, Mr. Chairman.

25 CHAIRPERSON HILL: Mr. Matta, what reassurances can you

1 give Vice Chair John that you're not going to block the alleys?

2 MR. MATTA: Yes. I did have significant discussions
3 with the ANC about all these matters, about having a Porta-Potty
4 out there and how to kind of manage the parking situation from,
5 like thankfully, in this project, we have already cleared the
6 existing garage on the back. There was like an old car and all
7 that, so that's all gone. So we'll be using that for our parking
8 significantly and also as needed, we'll be getting a dumpster
9 parked on the front if needed. So and thankfully, the alley in
10 the back actually opens on both the sides and we are very close
11 to the side alley. So basically 310 and 308, then you get to
12 the side alley.

13 So if anybody has like, I believe that's not what we
14 planned to, but there is always a back-up option of getting to
15 anybody's house from either one of the two directions just for
16 your information, and we will definitely be very, very watchful.
17 We will post our information, including my cell phone number, for
18 anybody to reach out to me at any point in time in case any
19 exceptions occur.

20 VICE CHAIR JOHN: Thank you.

21 MR. MATTA: Thank you.

22 CHAIRPERSON HILL: Anyone else? Okay. I'm going to
23 turn to the Office of Planning.

24 MS. MYERS: Good afternoon. Crystal Myers with the
25 Office of Planning.

1 The Office of Planning is in support of this case and
2 I can stand on the record of the staff report, and of course your
3 questions. Thank you.

4 CHAIRPERSON HILL: Thank you. Anybody have any
5 question of the Office of Planning? Mr. Young, is there anyone
6 we should speak?

7 MR. YOUNG: Yes, we have one witness.

8 CHAIRPERSON HILL: Okay. Can you give me that person's
9 there, please?

10 MR. YOUNG: It is Christopher Yook.

11 CHAIRPERSON HILL: Okay. Good morning, Mr. Yook. If
12 you can hear me, could you introduce yourself for the record,
13 please?

14 MR. YOOK: Sure. My name is Christopher Yook. I'm a
15 neighbor at 4232 Third Street, N.W., which is just across the
16 alley adjacent to the property.

17 CHAIRPERSON HILL: Okay. Mr. Yook, you'll have three
18 minutes to give your testimony and you can begin whenever you
19 like.

20 MR. YOOK: Appreciate it. So I appreciate the
21 opportunity to speak. I have two main concerns continuing about
22 this project. One is the classification of the detached structure
23 in the back, as well as the overall inconsistency of this project
24 for the neighborhood.

25 In terms of the rear structure, the plan does include

1 a detached structure in the backyard. The developer has not
2 requested this Board for an exception for that, claiming that
3 they can do this as a matter-of-right and I believe it's because
4 the developer wants to convince you all that this is an accessory
5 structure, not an accessory apartment and an apartment is not
6 permitted in the zone.

7 Again, this is zoned RF-1 and the U 301.1(g) which
8 covers zone RF-1 says that any proposed expansion of an accessory
9 building or residential purposes shall be permitted only as a
10 special exception approval. The other subsection also says no
11 expansion or additions may be made to the accessory building to
12 accommodate an apartment, except as a special exception.

13 So the core question for you all is whether you truly
14 believe that this detached structure is not for residential
15 purposes? I don't want to waste the time in terms of bringing
16 up any plans but if you all look at the latest plans, which is,
17 I believe, Exhibit 22A, I'd like to draw your attention to page
18 11 of that PDF. That is the page that includes the plans for
19 the detached structure. If you look at that, it has two floors.
20 One is, the first is the garage, but the second is a new
21 construction. This new construction would have its own full
22 bathroom, including a shower. It would have a mini-kitchen and,
23 and I want to emphasize this, it would have a second set of washer
24 and dryer and that page also describes this as a home office/
25 study for incidental use.

1 So I understand, this is the first time I've been
2 involved in a proceeding like this, but I understand you all as
3 Board Members bring your common sense and experiences to this
4 decision and it's just not good common sense to believe that an
5 investor would, excuse me, a developer would invest in a second
6 washer dryer if it's not to be used for residential purposes. It
7 certainly doesn't make sense for someone who is living at the
8 main existing building to walk across the lawn to do their laundry
9 when they already have their own washer dryer. The developer may
10 try to say that there's no kitchen, but if you look at that page,
11 it includes a whole counter space with the sink and so if that's
12 the distinction, that's a pretty fine line.

13 We know that developers are not in the business of
14 putting extra money into things that are not necessary. We have
15 here a developer who did in fact do all these things. It is, in
16 fact, for residential purposes. Don't let them convince you
17 otherwise.

18 I just want to emphasize, this is not just a
19 technicality. This new floor is going to directly face the homes
20 adjacent to. So it's going to be looking directly back at the
21 homes adjacent as well as my home and others on Third Street.
22 We're looking directly broad side out at this new addition. So
23 it does impact the neighbors. It's not just a technicality.

24 I would just also note that they flashed a screen that
25 314 Varnum has an accessory structure in the back. I will note

1 | that that owner went through a BZA variance process and got the
2 | approval. All I'm saying is that developers should be required
3 | the same rules that you and I do and that all of us do to be able
4 | to do this and it's apparent that they're trying to skirt the
5 | rules.

6 | CHAIRPERSON HILL: Okay, Mr. Yook. So that one that
7 | you're talking about, that other one you're saying they -- and
8 | I'm just curious, you don't have to -- you're saying that that
9 | person went through the BZA to get a variance for a fourth unit?
10 | You don't know.

11 | MR. YOOK: I'm not an expert in this. I don't want to
12 | be misstate.

13 | CHAIRPERSON HILL: That's all right.

14 | MR. YOOK: I believe it was a variance, not a special
15 | exception. I do know that as a neighbor I got a notice from the
16 | Board and I did not object in that case, because, again, I think
17 | it was more respectful than this project was. But there was a
18 | whole proceeding to get approval for that.

19 | CHAIRPERSON HILL: Okay, Mr. Yook. All right. Does
20 | anybody have any questions for Mr. Yook? Okay. Ms. Wilson, you
21 | got any questions for Mr. Yook?

22 | MS. WILSON: No, thank you.

23 | CHAIRPERSON HILL: Okay. All right, Mr. Yook. Thank
24 | you so much for your testimony.

25 | MR. YOOK: Thank you very much.

1 CHAIRPERSON HILL: Okay. This I, well, you know, that
2 Mr. Matta, like I -- Mr. Smith, there was something recently
3 where you had a stronger reaction than you normally do to
4 something being maybe another unit and I can't remember which
5 case that was; right? So that's No. 1. But I'm just kind of
6 getting you to think about that for a second. Then No. 2, Ms.
7 Myers, can you hear me?

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

9 CHAIRPERSON HILL: Can you explain to me again, like,
10 I mean, this is where I get all kinds of, no, I shouldn't say.
11 I mean, I think the City needs as much housing as it can get;
12 right? So like, that's what I believe as far as the housing
13 goes. But as far as the regulations go, they need 900 square
14 feet for a fourth unit; right? Or they need an area variance in
15 order to get the fourth unit and that's correct; correct, Ms.
16 Myers?

17 CHAIRPERSON HILL: Yes. I mean, they don't have enough
18 to do a fourth unit as a special exception. So they would have
19 to go through a variance if they were going to do it.

20 CHAIRPERSON HILL: Right. And so how would the Office
21 of Planning determine whether or not they think it's a fourth
22 unit?

23 MS. MYERS: I mean, we go by what we are told by the
24 Department of Building and my understanding of that is that
25 there's no kitchen. It does not qualify as a dwelling unit.

1 But I mean, we're not the experts of that though. You know, this
2 is self-certified as well so we also, you know, abide by that as
3 well.

4 CHAIRPERSON HILL: Right. And, Ms. Wilson, I see
5 chomping at the bit there. Like it's like you're, or I shouldn't
6 say chomping, whatever, it looks like you're about to say
7 something. So the, whether or not it becomes or it's used as a
8 fourth unit turns into an enforcement issue that then DB is
9 responsible for, Ms. Myers?

10 MS. MYERS: I believe so. I mean, they may have
11 recently changed from DCRA to DOB and there's another agency, so
12 I might be slightly incorrect with which agency would be the one
13 to police this, but Department of Building would be the one to
14 at least interpret what the regulations say and or what the use
15 is and my understanding is that this does not qualify as a
16 dwelling unit.

17 CHAIRPERSON HILL: I got it. Okay.

18 MR. KURLEY: I can address that as, for the architecture
19 if you'd like. If not --

20 CHAIRPERSON HILL: Sure.

21 MR. KURLEY: -- we can move on. But I don't think
22 Ritesh is trying to get away with anything. I think he's trying
23 to maximize the opportunity for this unit. It's a very small
24 unit with a cellar. Half of it is under grade. So to have a
25 incidental use, whether it's a home office, yes, this will be

1 used as a residence, as part of a residential use because it's
2 part of the cellar unit. It's not intended to be a separate
3 unit. There is no kitchen. Could someone sleep there? Sure.
4 Someone could sleep there, which everyone has -- which you have
5 a matter-of-right to do. Could it be a home office? Yes. I
6 don't think Ritesh can police who the person who buys this at
7 and what they do with it. But we're trying to follow everything
8 by the zoning regulations, D.C. zoning regulations and DOB
9 regulations for this particular unit, which is the incidental use
10 for the cellar unit. So I understand Chris's concerns, the
11 neighbors' concerns, but it's not the intention that this is a
12 fourth unit.

13 CHAIRPERSON HILL: Yes. I mean, I don't know. And
14 this is where, Mr. Kurley, I don't know when it comes into an
15 area that it's more of a concern for zoning or not, meaning us.
16 I mean, again, that's why I was talking to Mr. Smith at one point
17 in time. The fact that there's, I mean they're making valid
18 points, and we've had this discussion before and I don't want to
19 get too far down this road because Ms. Wilson does a lot of work
20 with us and so it's better for everybody to know what the Board
21 thinks about everything, rather for it for one day be one thing
22 and then maybe another thing; right? And I remember like, you
23 know, we've had discussions about like showers, washer, dryers,
24 or sinks before. I mean, there is like, you know, somewhere
25 where the Board kind of starts to get a little bit concerned as

1 to whether it is a zoning issue for us, because you don't have
2 the 900 square feet or it's not and that's more common for my
3 Board.

4 MR. KURLEY: I always thought that's when a kitchen
5 came into play and since we don't have a kitchen, it's not
6 inhabitable as an independent unit.

7 CHAIRPERSON HILL: Right. We've had, and Ms. Wilson
8 is about to say something, which is fine. We've had issues before
9 where we've asked that the sink get pulled, right, for the
10 kitchen; right? We've been like and I can't remember a washer
11 dryer before, but I know that we've pulled a sink before and so
12 that's something whether it's been one of Ms. Wilson's cases or
13 not, I don't remember. But I know we pulled a sink before.

14 But again, I'd rather the Board get some consistency.
15 Go ahead, Mr. Smith.

16 MR. SMITH: The case you're referring to was a case
17 that began in June, and it was regarding washer/dryer. Well,
18 part of it was washer and dryer. It was a concern raised by both
19 me and at that time Commissioner May. Yes, you're right. There
20 is a preponderance here or in certain cases of whether something
21 is an accessory dwelling unit or not and it's a multitude of a
22 combination of different factors from what I remember. Yes, it
23 can be the single, can be, you know, a wet bar that shows outlines
24 of dishwashers and refrigerators that indicate that it may be
25 some type of second kitchen. Like I said, it could have been a

1 washer dryer, it could be a full bathroom. It could be an area
2 that looks as if it could be a bedroom.

3 In this case there is therefore a confluence of factors
4 here, but I would just put it on the onus of the Applicant that,
5 you know, out of an abundance of caution, given the history of
6 questions that have been raised in Petworth of all neighborhoods
7 because of the thing, the application that you're referencing,
8 Chairman Hill, wasn't -- Petworth fairly close in proximity to
9 the property that they could remove their washer and dryer from
10 the set of plans and remove some of those concerns that may have
11 been raised by the neighbor. Yes, there's only a wet bar or
12 looks to only be a sink, but that is a long countertop counter
13 space.

14 So you know, I'd just put it back on the Applicant.
15 They could just remove the hook-ups for the washer and dryer.
16 Ms. Wilson, it looks like you're about to say something.

17 MS. WILSON: So I'm really -- I'm sorry for not jumping
18 in earlier because there is a DOB component that I'm not sure if
19 everybody is aware of. Once this goes through permitting the
20 minute DOB sees a wet bar or anything that could be considered a
21 separate unit from the main dwelling unit, they'll require what's
22 called a wet bar covenant, and I work on these probably once a
23 month. So there's an actual covenant that will be required once
24 DOB is like, hmm, there's a wet bar there, there's a second washer
25 and dryer. Those are things that are specifically called out in

1 the covenant and I'm happy to put that in the record essentially.

2 CHAIRMAN HILL: What does the covenant say?

3 MS. WILSON: Let me see if I can find one really quickly
4 here. But it effectively says the owner agrees and confirms that
5 this space is not a separate dwelling unit. That's the whole,
6 and that's the idea of the covenant, is this gets legally recorded
7 on the property saying I will not operate this as a separate
8 dwelling unit and so that's how they do enforce these things, and
9 we've done, gosh, I don't even know how many since 2017, I think
10 this became an issue, I think I have an updated form and it's
11 pretty standard. So we've done a number of these and they don't
12 you know, they don't miss --

13 CHAIRPERSON HILL: I guess, when I think about this.
14 Like, you know, even if it was like an in-law suite.

15 MS. WILSON: Yes, exactly.

16 CHAIRPERSON HILL: (Indiscernible).

17 MS. WILSON: In your basement for a single family home.

18 CHAIRPERSON HILL: Or a nanny suite, you know. I mean,
19 like, that's where it gets into this gray area where it's, you
20 know, are we enforcement, you know, and I'm not talking to my
21 Board also because, you know, we haven't specifically talked to
22 this because I know we pulled wet bars before and so, but I don't
23 want to get into the point where we're the enforcement arm.
24 That's interesting that there is a covenant there and then maybe
25 even legal could tell us later what happens where it's not really

1 us that has to enforce these things. You know, if it was an in-
2 law suite or it was a nanny suite, you know, but I remember that
3 last one. You're right. Commissioner May was on it and we
4 changed it, you know, and so I just want to understand what the
5 Board is trying to do.

6 MR. KURLEY: Let me just follow up on that. That
7 conveys to each subsequent owner of the property, too; right? So
8 if Ritesh signs the covenant, then that doesn't go away when
9 there is a new owner that the subsequent owners have to abide by
10 that covenant.

11 MS. WILSON: Exactly. And this happens for a lot of
12 by-right projects, too. So it's not just BZA projects, or most
13 of the ones I see are single family owners that are doing a big
14 basement renovation and they're trying to put in what looks like
15 a second kitchen and they'll make them pull, I think, stoves most
16 of the time. But if there's a wet bar, an extra fridge or a
17 washer and dryer, we still have to sign the covenant. So again,
18 I'm happy to put that in the record just for informational
19 purposes, since this is coming up more and more.

20 CHAIRPERSON HILL: Go ahead, Ms. John.

21 VICE CHAIR JOHN: So my understanding is that if there
22 is a kitchen, that DOB would absolutely consider this another
23 unit, another residential unit.

24 MS. WILSON: But there's a step, yes. I mean,
25 effectively, because you would -- it's the stove, that makes it

1 into the kitchen.

2 VICE CHAIR JOHN: Exactly. And I recall that we have
3 required stoves to be removed before. I don't recall having the
4 sink removed. So from my point of view, it's not the Board's
5 responsibility to enforce the building code and that I guess the
6 covenant is one way of doing that, and this is a self-certified
7 application. So if, you know, DOB decides that this is a
8 residential unit, then the Applicant would have to return to the
9 Board. So I would not belabor this point, not that we are, but
10 you know, there's no kitchen, so.

11 CHAIRPERSON HILL: Okay. Does anybody else have
12 anything else? Okay. All right. I guess we will deliberate.
13 So, Ms. Wilson, anything at the end?

14 MS. WILSON: No. Thank you all so much for your time.

15 CHAIRPERSON HILL: Okay. Thank you. Thank you, guys.

16 MR. MATTA: Thank you.

17 CHAIRPERSON HILL: We can close the hearing and the
18 record.

19 But, I mean, I guess I would like legal and they're
20 listening, to give us a little bit more background as to what
21 the covenant is or what happens, because I would just like to
22 finish this discussion. Mr. Miller was not on the last one that
23 that happened. Like, I know that, I can't remember when, but I
24 know we pulled a sink; right? And the washer dryer to me seems
25 weird; right? But I'm not DOB and I'm not enforcement. If

1 | there's a covenant, that is great and I know that in the
2 | regulations it says a kitchen and whatever a kitchen is, and I'll
3 | just make a joke. I've lived in homes for 15 years. I think
4 | I've used my oven twice. Okay. So you know. All right. So
5 | --

6 | VICE CHAIR JOHN: Speaking as the only woman on this
7 | panel.

8 | CHAIRPERSON HILL: Okay.

9 | VICE CHAIR JOHN: A separate washer dryer is not, you
10 | know, excessive. It's a luxury. So is another refrigerator. I
11 | can't tell you how many times my little refrigerator is so full,
12 | I have to find, you know, another one close by and, you know,
13 | it's easy to convert this into another residential unit by putting
14 | in a microwave. A lot of people never turn their stove on. So
15 | this is how the covenant comes into play, I would think. But
16 | this is what the regulations say. The regulations say if it's a
17 | kitchen, then it's another residential unit. But it's easy, as
18 | the witness said, to rent this place out to a student with a
19 | microwave, you know. Many, many people who would live in this
20 | place wouldn't cook. So it's an enforcement issue and I am wary
21 | of the Board getting too, you know, too much in the weeds on this
22 | one and pulling sinks and all of that. That's for the Department
23 | of Buildings to enforce and if they start enforcing this, there
24 | would be a critical shortage of accommodations in the City. Just
25 | saying.

1 CHAIRPERSON HILL: Okay. So I'm just, and I'm not
2 trying to interrupt, hold on Mr. Smith, and sorry, Commissioner
3 Miller, you're on this one, but I'm just trying to figure out
4 what we're going to do in the future and so I'm fine with where
5 we're going. Mr. Smith?

6 MR. SMITH: So I think in the past it was more of a
7 multiple confluence of factors. So I think some of the ones that
8 we have pulled, they were either full kitchens or they had
9 outlines of what is very clearly from an architectural
10 standpoint, a refrigerator, dishwasher, a sink. They obviously
11 because, you know, those type of outlines, and I'm getting into
12 DOB architectural planning evaluation of building plans. They
13 are standard outlines. So it's very obvious what they are. They
14 just deleted the names of them and, you know, hopefully the Board
15 doesn't look at it, you know, don't look behind that curtain type
16 of thing.

17 In this particular instance, it is just a sink. There
18 isn't a separate bedroom. Yes, there is a full bathroom. But
19 you have to have full kitchen, you have to have a full bathroom
20 for something to be considered a dwelling unit and not saying
21 anything about a bedroom, and a washer dryer, but I think it's a
22 confluence of factors.

23 In this particular instance I can't speak to larger
24 (phonetic) jurisdictions (indiscernible) D.C. has these covenants
25 when they see an accessory or what looks to be an accessory

1 dwelling unit space whether it's attached, inside of a home's
2 basement or it's in a garage, the back of a garage or in this
3 particular instance above a garage, and I was not aware that DOB
4 did have a covenant arrangement where it would run to the land
5 and has to be recorded in the Court, in the Court system.

6 I'm fairly comfortable with what's presented here. If
7 the Applicant says, and it's got to be caught by DOB or some
8 other offices since they're dismantled or split up DCRA, that if
9 this is recorded it will just become an enforcement issue. So
10 it will just be incumbent upon the neighbors to see if someone
11 is living in that particular space and it will be dealt with by
12 the appropriate agency or department.

13 So in this particular instance, and I'm not going to
14 say that I want to completely rely on that covenant arrangement
15 and I think that the enforcement agency would like for us to be
16 able to catch some of these cases, in essence. But in this
17 particular situation, given what is presented, I'm comfortable
18 with proceeding forward with what is shown and allow the process
19 to play out as far as enforcement on whether this will in the
20 future become an accessory dwelling.

21 CHAIRPERSON HILL: Okay. And I'll move to Mr. Miller
22 if he has any comments. I don't, and then we can talk about the
23 other issues, but I will note again, they've worked a lot with
24 the ANC to change this design to the point where they think the
25 ANC at least was comfortable with it.

1 Commissioner Miller.

2 ZONING COMMISSIONER MILLER: Thank you, Mr. Chairman.

3 I appreciate the dialog that you all have had amongst
4 yourselves and with the Applicant's team about that space and
5 it's clear I think to everyone that a fourth dwelling unit would
6 not be permitted without the area variance as it has been, as
7 you pointed out, Mr. Chairman, at the outset, and that it's an
8 enforcement issue if it is used as a fourth dwelling unit and I,
9 too, do not know about the covenant process that DOB has
10 established, which that seems to be a useful tool for them to
11 have, whether it's matter-of-right or whether it's a case, a
12 project that's come before us.

13 The only thing, and I also appreciate that the changes
14 that the Applicant has made, as long as you brought it up, Mr.
15 Chairman, because I was going to bring it up, in response to the
16 ANC's concerns, moving the accessory building from the middle of
17 the lot to the rear, reducing the proposed rear extension and
18 eliminating the penthouse structure on the roof housing, which
19 is going to have a separate stairwell, a different stairwell.
20 So, and that was able to garner the ANC's support, although they
21 did note their concern about the possibility of a fourth dwelling
22 unit.

23 And the only thing I'll say about that is that, I mean,
24 it's clear that it's not permitted without a variance. I tried
25 during ZR 16 to change that rule in a number of ways to either

1 | reduce the square footage requirement, the 900 square foot per
2 | unit, on land area for units and the other way was to just make
3 | it a special exception, if it only went a certain -- if it didn't
4 | meet the threshold. That that was rejected by the Zoning
5 | Commission, I think it was a three to two vote.

6 | So it's clear what the policy is, that a fourth dwelling
7 | unit is not permitted without a variance, area variance which has
8 | not been applied for in this case, so it's not going to be
9 | permissible and it becomes an enforcement issue. So I think the,
10 | I guess that's all I need to say at this point.

11 | Thank you.

12 | CHAIRPERSON HILL: Well, Commissioner Miller, I
13 | appreciate your input and I am discouraged that that happened in
14 | ZR 16, and I was not able to testify.

15 | All right. Yes. Okay. In terms of the issues for
16 | the zoning, I mean, the ten foot rule. I mean, I don't think I
17 | don't have any issues with the light, air and privacy. I don't
18 | have any issues with the character scale and pattern. The lot
19 | occupancy, again, going from 60 to 63.4, so an additional 3.4
20 | percent. Again, I'm not concerned about the light, air and
21 | privacy. I think that the conversion again, there's the 900 foot
22 | rule and they have enough square footage for the three units and
23 | so, I know now this has been helpful because I will now know
24 | where I stand with this discussion in the future and so I don't
25 | have any, I believe they're meeting criteria for grants the relief

1 requested. I appreciate them working through the ANC.

2 This has actually taken a little bit longer in terms
3 of the Applicant agreeing to reach out to one of the concerned
4 neighbors and concerning construction, which is really outside
5 of our purview but, you know, just to be transparent and help
6 with any kind of issues that they might have. So I'm comfortable
7 moving forward and voting in favor of this application.

8 Mr. Smith, I usually go next with you, but I don't
9 (indiscernible).

10 MR. SMITH: I agree with your assessment of this
11 particular case, Chairman Hill. I do believe that they've met
12 the burden of proof for us to grant the special exceptions given
13 everything that was presented by the Applicant. I do not believe
14 that any of the potential shade will have an adverse undue impact
15 on any of the adjacent property owners.

16 I'm comfortable with, there were some dialog earlier
17 on before the discussion about ADUs regarding (indiscernible)
18 good neighbor policy of concerns that there would be construction
19 trucks or vehicles blocking the alley, and while that's not
20 necessarily a zoning concern, it's more of a construction
21 management arrangement that will be managed by DCRA or DOB.

22 I'm comfortable with the arrangement that has occurred
23 where the Applicant will provide their number with Ms. Gutierrez.
24 The neighbor at 318 that had concerns about the blocking of
25 allies. Granted, yes, that's not a zoning concern but that was

1 a deliberation that did occur. I will note that the ANC is in
2 support of this application, and I will give OP's staff report
3 great weight and support the application as presented.

4 CHAIRPERSON HILL: Thank you. Commissioner Miller.

5 ZONING COMMISSIONER MILLER: I share all of the
6 comments that each of you have made and I'm ready, ready to move
7 forward.

8 CHAIRPERSON HILL: Thank you. Vice Chair John.

9 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree
10 with all of the comments so far, and I'm in support of the
11 application.

12 CHAIRPERSON HILL: Thank you. I'll make a motion to
13 approve application No. 20924 as captioned and read by the
14 Secretary and ask for a second. Ms. John?

15 VICE CHAIR JOHN: Second.

16 CHAIRPERSON HILL: Thank you. Mr. Hamala, if you can
17 go and take a roll call.

18 MR. HAMALA: When I call your name, please respond with
19 a yes or no or abstain. Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. HAMALA: Vice Chair John?

22 VICE CHAIR JOHN: Yes.

23 MR. HAMALA: Mr. Smith?

24 MR. SMITH: Yes.

25 MR. HAMALA: Commissioner Miller?

1 ZONING COMMISSIONER MILLER: Yes.

2 MR. HAMALA: Staff would record the vote as four to
3 zero to one to approve the application with the motion made by
4 Chairman Hill. Seconded by Vice Chair John with Mr. Smith and
5 Commissioner Miller in support of the motion.

6 CHAIRPERSON HILL: Okay. Great. Okay, yes. I hate
7 to do this to you, but I'm going to need the full hour for lunch
8 if this will work for you guys. Do you want to take a break now?
9 Okay. We'll see you at 2 o'clock.

10 MR. SMITH: All right.

11 CHAIRPERSON HILL: Thank you.

12 (Whereupon, there was a lunch recess.)

13 CHAIRPERSON HILL: Let's see. Mr. Moy, you want to go
14 ahead and call our next case?

15 MR. MOY: Yes. Thank you, sir. After a lunch recess
16 the Board has returned to its public hearing session and the time
17 now is at or about 2:15 p.m.

18 CHAIRPERSON HILL: Not bad.

19 MR. MOY: Okay. So the next case before the Board in
20 its public hearing session is application No. 20918 of Terrence
21 Allen Chavis, Jr. As advertised and noticed for zoning relief
22 pursuant to Subtitle X § 1002 for a use variance from the maximum
23 number of dwelling unit requirements of Subtitle U § 201.1
24 pursuant to Subtitle X § 901.2 for special exceptions under
25 Subtitle E § 5201.1 from the rear yard requirements of Subtitle

1 D § 306.2 and then lot occupancy requirements of Subtitle D §
2 304.1, and I'm going to come back to this in a moment, sir. The
3 property is located in the R-2 zone at 119 53rd Street, N.E.,
4 Square 5243, Lot 149.

5 Okay. So two things, Mr. Chairman. So let me start
6 with the caption. I'm going to ask, Mr. Chairman, if you wouldn't
7 mind when you call the Applicant to go through the zoning relief
8 that was requested because yesterday and today there have been
9 filings related to changes in the zoning relief.

10 No. 1, I believe there is perhaps a use variance, and
11 I believe under Subtitle U § 201.1 and also perhaps an area
12 variance for the side yard requirements 5201.1, these were filed,
13 I think, as early as yesterday and I believe is under Exhibit
14 No. 28A and today there was a filing for a new elevation drawing
15 as well as updated PowerPoint slide deck.

16 There is an ANC letter that was filed last night around
17 10:45 p.m., from the ANC 7C. There are four letters in opposition
18 that was filed within the 24 hour block and the Applicant also
19 filed updated revised burden of proof and revised plans and
20 drawings under Exhibit 28, 29 and Exhibit 30 and finally, six to
21 eight persons have signed up to give oral testimony. So I think
22 that's it for me, sir.

23 CHAIRPERSON HILL: Okay. Let me first go and ask the
24 Applicant if they can hear me, to introduce themselves for the
25 record?

1 MR. CHAVIS: I'm Terrence Chavis.

2 MS. JETER: The address.

3 MR. CHAVIS: 22 48th Place, N.E., Washington, D.C.

4 MS. JETER: Cherrye Jeter, on behalf of Terrence
5 Chavis, 1324 Leegate Street, N.W., Washington, D.C.

6 CHAIRPERSON HILL: Okay. And, Ms. --

7 MS. JETER: Jeter.

8 CHAIRPERSON HILL: Jeter. Thank you. Are you going
9 to be presenting for the Applicant?

10 MS. JETER: I am.

11 CHAIRPERSON HILL: Okay. Okay. All right. Let me
12 see. And is there someone with you? Mr. Harris?

13 MS. JETER: Yes.

14 MR. HARRIS: Yes. Hi, I'm Joe Harris. I'm the
15 architect for the project.

16 CHAIRPERSON HILL: Okay. All right. Let's see. Mr.
17 Young, is Antwan Holmes in the room?

18 MR. YOUNG: Yes.

19 CHAIRPERSON HILL: Okay. Could you put that person in
20 first place? Chairperson Holmes, if you can hear me, could you
21 introduce yourself for the record?

22 ANC COMMISSIOENR HOLMES: Yes. This is Commissioner
23 Antwan Holmes, chair of ANC 7C.

24 CHAIRPERSON HILL: Okay. Commissioner Holmes, well,
25 welcome once again.

1 ANC COMMISSIONER HOLMES: Thank you.

2 CHAIRPERSON HILL: All right. Let's see. Mr. Moy, if
3 you want to, unless the Board has any issues, I guess I'd rather
4 see everything that we're able to see and whether or not we need
5 to take a break in order to digest all of the new information
6 into the record, we can go ahead and do that at some point.

7 The PowerPoint presentation, Ms. Jeter, that you've
8 given me, it's not the one that's in 30A; correct? You don't
9 know?

10 MS. JETER: I'm not quite sure, I just sent it to BZA
11 submissions because I've been unable to upload it, maybe it's
12 because it's a Mac computer, to the database. So I've been
13 sending everything through BZA submissions.

14 CHAIRPERSON HILL: Okay. Well, I'll go ahead and let
15 staff go ahead and put everything into the record, including the
16 letters in support or opposition or whatever we have there and
17 then the Board will be able to take a look at it as we go through
18 this hearing.

19 Mr. Young, if you have, oh, Mr. Holmes, Commissioner
20 Holmes, it seems like there's several of, I think, your ANC
21 Commissioners that are also signed up. Is that correct?

22 ANC COMMISSIONER HOLMES: That is correct, sir.

23 CHAIRPERSON HILL: Okay. And you as the Chairperson,
24 I think you're representing the ANC; is that correct?

25 ANC COMMISSIONER HOLMES: I'm here to basically go over

1 the letter that we voted on at our emergency meeting. But I have
2 fellow Commissioners who still had concerns and wanted to address
3 that in their Single Member District capacity at the hearing.

4 CHAIRPERSON HILL: Got it. Ms. Naglehout, as I
5 understand it, so the Chairperson is representing the ANC and
6 then the other ANC Commissioners would come in during the public
7 testimony portion; is that correct?

8 MS. NAGLEHOUT: Yes. The ANC should have designated a
9 representative to present the ANC's position and then other,
10 anybody who's a person in support or in opposition can testify
11 even if they happen to be ANC Commissioners.

12 CHAIRPERSON HILL: So Chairperson Holmes, does that
13 make sense? I mean, is that clear to you?

14 ANC COMMISSIONER HOLMES: That's fine with me. I'm
15 assuming that everybody who sent a letter is going to be asking
16 for party status in this case anyway.

17 (Pause.)

18 CHAIRPERSON HILL: Yes, you're on mute, Commissioner
19 Holmes.

20 ANC COMMISSIONER HOLMES: Oh, sorry. Yes. I said,
21 yes, I agree with that process and I'm assuming that everybody
22 that has signed up is coming to ask for party status anyway.

23 CHAIRPERSON HILL: Okay. I didn't know there was
24 anybody asking for party status, but we can get them. Mr. Moy,
25 we didn't get a request for party status, did we?

1 MR. MOY: As of last night, there was no written filing
2 for a request for party status.

3 CHAIRPERSON HILL: Okay. And that's not in the -- I'm
4 waiting for the record to be loaded up.

5 MR. MOY: Yes. Staff is doing that as we speak.

6 CHAIRPERSON HILL: Okay. Commissioner Holmes, are you
7 aware of someone requesting party status?

8 ANC COMMISSIONER HOLMES: I believe the Capitol View
9 Civic Association was going to request party status since this
10 this is within their neighborhood boundary.

11 CHAIRPERSON HILL: Okay. And there's a process of
12 that, Commissioner Holmes, I just don't know whether or not they
13 adhered to the process yet.

14 ANC COMMISSIONER HOLMES: Okay.

15 CHAIRPERSON HILL: And I guess I'll wait to see whatever
16 the filings are that are put into the record as soon as I can.

17 ANC COMMISSIONER HOLMES: Okay.

18 CHAIRPERSON HILL: Ms. Jeter, I'll go ahead and let you
19 give us your testimony and present your case as to why you believe
20 you're meeting the criteria for us to grant the relief requested.
21 What the Secretary had asked is that you clarify what is the
22 relief that you're requesting.

23 MS. JETER: Yes. So the relief that we are requesting
24 is the four foot side yard setback, as well as a use variance
25 from the relief from the R-2 for a use variance to turn it into

1 a motor family unit.

2 CHAIRPERSON HILL: Okay. And have you worked with the
3 -- I mean, Ms. Jeter, just to let you know, I mean, a use variance
4 is the highest bar that we have here at the BZA to overcome, and
5 you have worked through that with the Office of Planning, I
6 assume; correct?

7 MS. JETER: We have yes.

8 CHAIRPERSON HILL: And you are aware of what the
9 criteria is for a use variance?

10 MS. JETER: Yes, we are.

11 CHAIRPERSON HILL: Okay. The extraordinary or
12 exceptional situation or condition and how that extraordinary or
13 exceptional situation or condition has led to an exceptional or
14 undue hardship and that there will be no substantial detriment
15 to the public good. There are three prongs to the test; right?
16 And you need to get through the first prong in order for us to
17 even get to the other prongs. Okay?

18 MS. JETER: Yes.

19 CHAIRPERSON HILL: So, and you are aware that the Office
20 of Planning is in denial of your argument?

21 MS. JETER: Yes, we are aware.

22 CHAIRPERSON HILL: Okay. All right. Then I will let
23 you go ahead and give your testimony and you can begin whenever
24 you like.

25 MS. JETER: Okay. We do have a PowerPoint that goes

1 along with this testimony. I believe you said that it's Exhibit
2 30. That sounds about right because it was one of the latest
3 filings. Okay. Thank you. And please bear with us. So I'm
4 going to start and then I'll turn it over to our architect, Joe
5 Harris, who will give more in-depth information on the project.

6 So good morning, sorry, it's not even morning anymore.
7 Good afternoon, Board of Zoning Adjustment. Thank you for your
8 consideration in the development of the multifamily building at
9 119 53rd Street, N.E.

10 CHAIRPERSON HILL: Just to interrupt you. The updated
11 PowerPoint seems to be in Exhibit 37, if that's the one that you
12 brought up, I don't know.

13 MS. JETER: Yes, it was done, yes, that's probably
14 right. It was just a small typo, but yes.

15 CHAIRPERSON HILL: Okay.

16 MS. JETER: That's correct. If you could switch it
17 that would be great.

18 (Pause.)

19 CHAIRPERSON HILL: Okay, Ms. Jeter. Just so you know,
20 at the end of the hearing, you'll have to provide an updated
21 self-certification --

22 MS. JETER: Yes.

23 CHAIRPERSON HILL: -- for the relief that you're
24 requesting.

25 MS. JETER: Yes, I have, I've already completed that

1 and will shoot it over to you guys.

2 CHAIRPERSON HILL: Okay.

3 MS. JETER: Is this the updated one, do you know?

4 CHAIRPERSON HILL: I believe if that's in 37, then
5 that's the one that we have.

6 MS. JETER: Okay. So good afternoon, Board of Zoning
7 Adjustment. Thank you for your consideration in the development
8 of the multifamily building at 119 53rd Street, N.E. It is an honor
9 to present before this Board and the City that I was born in and
10 currently raising my family.

11 It is bittersweet to look at my City grow and become
12 an urban oasis with bustling retail, beautiful green spaces and
13 opportunities for so many. However, it has been unfortunate to
14 see so many of my friends and family have to move to nearby
15 counties to accommodate their growing families. We have been
16 fortunate to have literally won the lottery. I acquired my home
17 through a HUD Teacher Next Door program in 2003. Having purchased
18 the house at 50 percent off the listed rate for the dilapidated
19 home and I was able to build equity. This equity allowed the
20 opportunity to live a middle class lifestyle and make investments
21 along the way.

22 Freelance Development was established in 2022 during
23 the Covid-19 pandemic to address home affordability in the
24 District of Columbia. We are on a mission to support others on
25 their journey towards attaining and sustaining a middle class

1 lifestyle and building generational wealth for their families.

2 Could you please change the slide? Our first project,
3 The Benn was part of the Mayor's initiative called Vacant to
4 Vibrant. The program was launched to transform inventory into a
5 vibrant and productive solution such as workforce housing. The
6 Benn is an eight unit condominium building located at 4442 B
7 Street, S.E. The Benn also required zoning relief as it was
8 zoned for a single family homes. The building has six two
9 bedroom, two bathroom units and two three bedroom two bathroom
10 units.

11 The program required 51 percent of the building be sold
12 as affordable housing. We chose to price every unit at the
13 affordable housing rate between 299,000 and 385,000. Most of the
14 units were pre-sold and the rest soon sold after they would
15 delivered. The materials used for the building were high quality,
16 such as stainless steel appliances, real wood floors and
17 engineered quartz countertops.

18 In fact, one commenter -- can you please change the
19 slide, in fact this slide was supposed to show images from that
20 but the PDF, that's not possible -- in fact, one commenter from
21 the article in The Washington Post on The Benn mentioned, "Nice
22 to see that good design does not have to be expensive, witnessing
23 people reach their goal of homeownership is so rewarding."

24 During the construction of The Benn, a passerby
25 inquired about the building one day and Terry encouraged her to

1 apply. She said she was exhausted from searching for affordable
2 homes in D.C. I took an excerpt from the Washington Post article
3 where Ms. Smith, a daycare center assistant director, indicated
4 they couldn't believe it for the price their dreams were coming
5 true. These are the stories that motivate us. Those are some
6 additional comments from that article, and we can go to the next
7 slide.

8 It is our intention to provide affordable housing to
9 the District of Columbia for middle income families. Not only
10 do we theoretically support the Mayor's Housing Framework for
11 equity and growth initiatives to increase housing in the City and
12 the Black Homeownership Strikeforce of the initiative to provide
13 housing to Black homeowners, but we also aim to practically
14 support these initiatives. As we all know, Black homeownership
15 is on the decline in the District of Columbia, dropping from 46
16 percent in 2005 to 34 percent in 2022. This trend is mainly due
17 to affordability and limited housing supply.

18 Slide 6, please. Therefore, many Black residents in
19 the District are renting. Renting is more expensive than
20 homeownership and makes it difficult to save for the purchase of
21 a home. Moreover, the majority of projects in the City are
22 highrise condominium apartment buildings. That is great for
23 some, but many people would prefer a family oriented
24 neighborhood. It seems that D.C. is a either single family
25 neighborhood or huge multifamily residential development.

1 Can we move to slide 7, please. We want to create
2 housing in the missing middle, a range of house-scale buildings
3 with multiple units comparable in scale and form with detached
4 single family homes located in walkable neighborhoods. The
5 majority of condos being delivered are in areas like NoMa, an
6 area that is vibrant and more suited for singles, couples and
7 small families. The proposed condo building in Deanwood will
8 provide comfortable living in a family oriented neighborhood.
9 During one ANC meeting, a community member asked us why here?
10 The answer to that question also comes down to affordability.
11 There are only a limited number of plots available and even fewer
12 plots of land in the City that are suited for development within
13 our price range. When we were presented with Lot 149 on Square
14 5243, we fell in love with the neighborhood, we immediately
15 noticed the school across the street. The metro is so close and
16 there's ample parking. We were happy to see DDOT also shared
17 our sentiment regarding the parking in the neighborhood. It's
18 walkable and feels like the perfect place to raise a family.

19 As indicated in the OP report, we also noticed the lot
20 was bigger than the other lots nearby, and it had a rectangular
21 shape. We calculated the cost of developing a house after the
22 initial investment and realized that it would be difficult to
23 build a quality home in the affordable range, which is our mission
24 and profit enough to acquire a new project.

25 Like The Benn this project is ground up construction,

1 | so no families will be displaced. Joe, our architect, was also
2 | inspired and got started right away on the design. We worked so
3 | hard to impress the community by creating a design that would use
4 | cues from the surrounding buildings, set it lower and we minimize
5 | the height of the building so it would look like it always existed
6 | there. We were aware the design would require the setback be
7 | reduced on the side yard so to minimize impacting our neighbors'
8 | privacy, we did not put windows on the back side of the building
9 | except the roof back towards the front out of view of the
10 | immediate neighbors. We reviewed the earth shadows from aerial
11 | views, and they revealed that the building reflects shadows on
12 | to Blaine Street and not on to the neighbor's property. Joe will
13 | share those images shortly.

14 | We were happy to get the support of the ANC for the
15 | construction of the eight unit condominium building. We attended
16 | multiple meetings, both ANC and Civic Association, and met with
17 | neighbors. Some conversations were fruitful, others not so much.
18 | But as stated in Commissioner Holmes' letter, in the end, the ANC
19 | supports the Applicant's relief request.

20 | It pleases us to know the ANC supports the project.
21 | However, we were very concerned about some community opposition.
22 | Most of the complaints we received were regarding the density of
23 | the project. It is our intention to enhance the neighborhood and
24 | streetscape and not upset the community.

25 | We are definitely in a tight spot with the bank on the

1 | brink of losing financing and close to 100,000 of invested funds
2 | but we want to make clear that we value the voices of the
3 | community. We have been in touch with Commissioner Williams over
4 | the past few days and decided in the last minute that we would
5 | adjust the building to a less dense model of four units despite
6 | already receiving the support of the ANC for the denser building.
7 | In the final hours, we worked double time to revise the property
8 | to a version that will please the community because we realize
9 | the BZA's decision is final. We took the recommendations of
10 | local community members like Ms. Anase (phonetic) who indicated
11 | she would be more amenable to a four unit building.

12 | With our latest revision, we are seeking less zoning
13 | relief than we initially requested with the eight unit building,
14 | I'm sorry, no.

15 | Slide 8, please. With the eight unit building, we were
16 | asking for multiple variances, including a four foot side yard
17 | variance, a four foot rear yard variance, an increase in lot
18 | occupancy from 40 to 45 percent, and a reduction in parking spaces
19 | from three to two spaces, as well as a use variance from the R-
20 | 2 zone. With the revised four unit version, we are only asking
21 | for two variances, a four foot side yard variance and a use
22 | variance relief from the R-2 zone to erect this four unit
23 | condominium building.

24 | Slide 9, please. The next one. That's just the zoning
25 | relief. So the revised version features four three bedroom units

1 with two and a half bathrooms and a shared roof deck. They come
2 in at 1,490 square feet. Each unit will have two large windows,
3 which lets in lots of natural light, a feature that contributes
4 to the buyer's wellbeing, as well as two balconies per unit.
5 Like The Benn, the units will feature high quality materials,
6 appliances and finishes as well as washers and dryers, everything
7 a family requires to enjoy a middle class living experience.

8 The units will be priced between 430,000 to 487,300
9 along with affordable dwelling units at or less than 120 percent
10 MFI. The City's 2020 Comprehensive Plan goals are as states,
11 accommodating the District's projected population growth without
12 displacing residents, creating more opportunities for affordable
13 living in high opportunity neighborhoods, fostering a diversity
14 of housing options across affordability levels, building types
15 and/or household types in all parts of the City, addressing
16 discrimination and practices that have led to segregation by race
17 or economic status, providing income streams and wealth building
18 opportunities for home owners willing and able to subdivide their
19 homes or lots to provide additional housing, reducing the
20 environmental burden of the built environment by locating more
21 housing near transit, creating more walkable neighborhoods,
22 respecting the character and scale of the neighborhoods within a
23 changing urban context, and finally promoting good design and
24 visual appeal of D.C. neighborhoods.

25 This project addresses many, if not all, of the

1 | aforementioned goals. The Brookings Institute 2019 report on
2 | restrictive zoning in D.C. indicates to meet its housing goals,
3 | the District must allow higher density redevelopment in its
4 | existing residential neighborhoods. In the absence of zoning and
5 | political barriers, developers could replace single family
6 | detached homes on large lots in neighborhoods with three or four
7 | story multifamily buildings with anywhere between four and ten
8 | apartments. Less restrictive zoning would bring better
9 | opportunities within reach for thousands of District families.

10 | We are proud of this project and we hope that the Board
11 | of Zoning Adjustment sees the value in allowing the requested
12 | variances to create equitable homeownership opportunities for
13 | District residents.

14 | I'm going to turn it over to Joe Harris of Measure
15 | Architects, to get more into detail about the specifics of this
16 | project and there are two, well, we want to pull up his
17 | PowerPoint, which is -- I don't know the exhibit -- it's the
18 | latest one that says, what was the date, Joe?

19 | MR. HARRIS: It's Exhibits 29A1 and 29A2.

20 | MS. JETER: Yes.

21 | MR. HARRIS: And then there's a third. It was just
22 | submitted. It's Exhibit 36 which is just a standalone drawing.
23 | While that's being brought up I'll just introduce myself.

24 | Esteemed Chair and Board. Thank you very much for your
25 | time today and letting us present. My name is Joe Harris with

1 Measure Architects. We are a Washington, D.C., based
2 architecture firm and it's my pleasure to help describe this
3 project today to the Board and to the community and after the
4 presentation, of course, we're open for any question and answer.
5 I can't see the slide yet myself, so I don't know. Is it showing?

6 MS. JETER: Not yet.

7 CHAIRPERSON HILL: No. Exhibit 47 I guess is what you
8 were saying; correct? Or at least it started with.

9 MR. HARRIS: Let's see.

10 CHAIRPERSON HILL: 47A, Mr. Young, I think.

11 MR. HARRIS: I don't have a 47. Let's see.

12 CHAIRPERSON HILL: I'm sorry. It's 29A1.

13 MR. HARRIS: Right. The main drawing says 29A and
14 there's two of them, one and two.

15 (Pause.)

16 MR. HARRIS: Okay. Thank you very much.

17 So just again to start, I wanted to mention that this
18 is a project that we believe that the City, certainly the Mayor
19 and the BZA all want to support. We know that it's a project
20 that people, that the City at large wants for the City in general.
21 We know that we need more missing middle housing, we need more
22 wealth building opportunities, particularly in parts of the town
23 like this far northeast where there aren't historically as many
24 opportunities for this. We know that it's a strong ask, but we
25 also know that this is a project that has a lot of support across

1 the City, projects like this.

2 So I'll start by maybe describing what we believe are
3 the sort of extraordinary parts of the project that bring it to
4 this level of discussion. The Applicant has already described
5 many of the reasons that we feel this type of housing is really
6 one of the most extraordinary and extraordinary difficulties, not
7 just at this site in particular, the whole city. We need to find
8 sites like this that are, No. 1, transitioning between an R-2
9 single family zone to a denser zone such as an RA-1. That's what
10 we have across the street from this project. We need to find
11 properties that have enough space where multifamily, small
12 multifamily buildings are created, sort of missing middle housing
13 can be created. That's something that this site offers. It's
14 large enough for multifamily development.

15 No. 3, I'm going to sort of go into, if you could go
16 to the next -- actually point at the, sorry, if you could go back
17 just one quick second. I should work off the slides here a little
18 bit. The top right image is the zoning map. You can see our,
19 the site is highlighted in the middle with the dark mark on it.
20 Again, right at the edge of an R-2 zone with an RA zone right
21 across the street.

22 We could go ahead and move forward to the next slide
23 and in fact, I think we can skip this slide and move on to the
24 next. This is an aerial view of the site. You can see the KIPP
25 school across the street on Blaine. It's been redeveloped since

1 the satellites took this picture so it's a larger building now.
2 But you can you can make out very clearly the sort of separation
3 in zoning here that has caused the smaller footprints to sort of
4 give way to the larger footprints to the north. In this image
5 it's to the bottom left.

6 Our site has a long south facade. So what that means
7 is that the shadows that are cast by this building are going to
8 be cast onto Blaine Street. In the morning they'll be cast
9 somewhat across the alley. I should say that the other way
10 around. In the afternoon, they'll be cast somewhat across the
11 alley to the right of the site there, which is to the east and
12 then, of course, in the morning they'll be cast across 53rd
13 Street.

14 The site has very large rights of way. If you can skip
15 to the next slide, please. This actually, let's zoom in on this
16 a little bit. The top right image here, shows the site in the
17 middle with the single family homes directly to our south and
18 slightly uphill from our site and then you can make out again
19 the KIPPS school across Blaine Street on the far left of that
20 image. That's one of the images that I think is the most
21 important to understanding the site. Some of the other images
22 will just give you a sense of the overall site and one thing I'd
23 like to point out next is another special attribute of this
24 particular site is that it has extremely large rights of way. So
25 as you see on the top left image, the right of way across 53rd

1 | it varies because there's a diagonal condition in the street, but
2 | it varies between I think 80 and 100 feet, the right of way, and
3 | the dimension from building phase to a proposed building is 115
4 | feet. Again, if you look at them, it's just below that. So the
5 | left column, second image down. You can make out our site on
6 | the right. We're looking down Blaine Street to the east. On
7 | the far left you can see again the school across the street.
8 | This is a 60 foot right of way and proposed building phase two.
9 | The school's building faces another plus or minus 115 feet.

10 | So these are extraordinary conditions that make this
11 | site when the City is trying so hard to find affordable housing,
12 | missing middle housing on these sites, these are in particular
13 | very strong attributes for making the site open for consideration
14 | for a use variance like this.

15 | Before we move to the next slide, I'd like to just
16 | point out again, in the top right slide, you can make out the
17 | topographical sort of contour change from, say, the plots
18 | (phonetic) that the row houses, the detached houses next door are
19 | built on down to our site, the sidewalk at the intersection of
20 | Blaine and 53rd, it dropped some five to seven feet, more or less
21 | from that point down to the sidewalk. So that's something that
22 | we want to take advantage of as architects to try to work to make
23 | this building. The most important thing about this use variance
24 | I think is to make this design of this building fit into the
25 | neighborhood.

1 So to go to the next slide, please, I'll describe that
2 in more detail and this image in particular, the top image is a
3 street section showing what I was just describing. You can see
4 the semi-detached row houses next door to our south, slightly
5 uphill from the sidewalk along Blaine street and so that gives
6 us the ability to build a by-right height for the building and
7 to let it fit in with the scale of the residential buildings. At
8 the same time from an architectural point of view, one thing that
9 we strive to do right from the very start is to work with the
10 language of both of those zones; right? So we have the single
11 family zone, characteristic D.C. semi-detached row houses in this
12 case with a sort of center gable, and across the street taking
13 cues from the school, from the brick and window patterns. This
14 is a building that nestles into the side because of the hill,
15 but also because of the size of the lot. But most importantly,
16 I think architecturally it works because we looked very carefully
17 at what's around and we tried to make this building just fit into
18 that.

19 If we, could we open the other, the standalone Exhibit
20 No. 36 because when we produced this image, there was sort of a
21 -- we forgot to show the row house. For some reason it doesn't
22 show. So if we're looking at Exhibit 36 we can actually see
23 that. Great. Thank you very much. So the same image that we
24 were just looking at appears in the top right. As you can see
25 the again, the attached rowhouse to the right of the image, the

1 right of the proposed building. The same thing on the far left.
2 This is a view along 53rd Street. You can sort of make out the
3 hill that that rowhouse sits on and then the proposed building.
4 There is no competition either. They're very compatible in
5 height. The only thing we've managed to do is with the cellar
6 is to create more density. So we're proposing four, three bedroom
7 condos, one on each floor.

8 The large view at the bottom is the view of the building
9 from Blaine Street, N.E. So you can see again the center gabled
10 dormer that we started working off, the architectural vocabulary
11 of the buildings in the area, use of brick, durable materials s
12 the Applicant mentioned, they've used on previous projects and
13 all in all, the building that just, it its in. It's a we think,
14 a great transitional type building. It has elements of single
15 family, it has elements of multifamily. We think it'll fit in
16 well with the neighborhood.

17 We can go back to the main exhibit and I'll wrap up my
18 presentation. That again was Exhibit 29A1 and 2? Yes. Great.
19 Thank you. Great. Thanks again.

20 We can move to the next slide. This is another
21 explanation of the large rights of way. This is, again, the view
22 at the bottom is along Blaine Street. This is a depiction of
23 the plus or minus 115 foot separation between building faces on
24 53rd. That's an 80 to 100 foot right of way. You see the 15
25 foot public alley on our east side, which is the left of the

1 drawing at 5315 and 5313 Blaine Street. That's a 15 foot public
2 alley. But we actually have more than 40 feet between building
3 faces there and then the pictures at the top just explain the
4 existing condition.

5 Next slide, please. Building elevations, we'll
6 probably come back to these. I will point out the back elevation,
7 which is the south elevation on the bottom left. We do have some
8 windows on the corner where we've set back between eight and nine
9 feet which meets --

10 CHAIRPERSON HILL: Mr. Harris?

11 MR. HARRIS: Yes, sir.

12 CHAIRPERSON HILL: Let me, I'm kind of going through
13 the slide deck. Like, what is it that makes this property unique
14 that you need the variance relief?

15 MR. HARRIS: Well, there's many things I've already
16 mentioned, just its position at the -- a large corner lot with
17 extraordinary large right of ways and a hill that we can use to
18 our advantage to get a little more density without overpowering
19 the neighborhood.

20 MR. SMITH: To expand on Chairman Hill's question with
21 that and the question about what makes it unique is also that
22 you have to make a hardship argument regarding being able to
23 construct anything on the property. The property you can
24 construct some type of residential unit on the property. Now it
25 may not be the scale that you're presenting here, these graphics

1 as, I think I speak for the Board is can you speak more to that
2 question?

3 MR. HARRIS: Yes.

4 MR. SMITH: Less so the architecture.

5 MR. HARRIS: Sure. I think to the point that you just
6 made, thank you for the question, to the point that you just
7 made, we could fit actually a larger single family house than
8 what we're showing here on this lot by-right. We're only asking
9 for a four foot side setback. In terms of area variances that's
10 the only area variance that we're talking about. So it's really
11 a question of use.

12 The mission of the Applicant is to provide affordable
13 housing to as many D.C. residents and future D.C. residents as
14 possible and so the question before you really is if you agree
15 with what we're saying, that this site -- there is not a hardship
16 to build a single family house here. There's a hardship across
17 the City that we have too many of those already. We need more
18 affordable housing and to do that we need more multifamily
19 housing, denser use. We see that this site in particular just
20 as where it sits and the size of the land and everything else
21 that I've mentioned, the shadowing, everything else, this is the
22 kind of project the City wants and so that's what we are proposing
23 here.

24 CHAIRPERSON HILL: Okay. Mr. Harris, let me do this.
25 I'm trying to see how many sides you have left on this particular

1 deck.

2 MR. HARRIS: We can sort of hurry through, I can finish
3 them.

4 CHAIRPERSON HILL: Go ahead and finish this deck. I
5 think we're going to have some questions.

6 MR. HARRIS: Okay. Sure. I guess the next slide,
7 please. Well, maybe this is all just supplementary at this point.
8 Okay. This is a roof plan.

9 Next slide.

10 Next slide. The cellar. First floor plan. I'll stop
11 here just briefly to show you the two parking spaces, regular
12 size nine by eighteen spaces that fit. The only area variance,
13 again, that we're asking for you can make out is the four foot
14 on the bottom of the sheet, four foot setback there. Everything
15 else is in compliance with the zone.

16 Next slide.

17 Again, next. Maybe it's the second, right, the second
18 version.

19 CHAIRPERSON HILL: Okay. That's all right, Mr. Harris.
20 I'm going to chop you on this one because I want to get back, I
21 mean the problem that we're having as the Board is that a use
22 variance is that you can't do something with the property that
23 is allowed within the zone; right? And so it's not that, I mean,
24 I don't think anybody here is going to disagree with anything
25 that has just been presented in terms of what the needs are, it's

1 just that the Board of Zoning Adjustment doesn't have the kind
2 of latitude to allow for something to be built outside of what
3 is allowed in the zone unless you're able to show that you can't
4 use the property, right, and so that's I think what you're kind
5 of coming up against.

6 I don't know what other alternatives there might have
7 been through the Zoning Commission or if there was a text
8 amendment kind of thing you could do. I mean, I just don't know
9 in that regard. But before I get to any questions that the Board
10 might have, I'm going to first really quickly turn to the Office
11 of Planning.

12 MR. KIRSCHENBAUM: So good afternoon, Chair Hill and
13 members of the Board of Zoning Adjustment. I am Jonathan
14 Kirschenbaum with the Office of Planning.

15 For this case we recommend that the Board deny the use
16 variance to construct a four unit apartment house in the R-2
17 zone. It's a zone that permits single family detached and semi-
18 detached houses and prohibits apartment houses like the one
19 proposed.

20 We do really commend the Applicant for doing a nicely
21 designed building and for wanting to provide missing middle
22 housing. We just unfortunately found that the use variance
23 requested did not meet the strict criteria for us to recommend
24 approval.

25 With regard to the existence of an exceptional

1 condition at the subject property, we do not find that there were
2 unique factors that pertain to this property that would have
3 resulted in undue hardship to develop the property. As provided
4 in Appendix 1 of our OP report the lot was newly and legally
5 subdivided in 2019 and based on the property's lot within a lot
6 area, a detached or semi-detached single family house could be
7 built as a matter-of-right.

8 Our analysis of the square found that the subject
9 property is one of the larger lots on the square and is neither
10 exceptionally narrow, shallow or steep. The shape of the lot is
11 generally rectangular and similar in shape to other lots in the
12 immediate vicinity. So therefore we cannot find that there was
13 an exceptional condition at the property that would result in
14 undue hardship to prevent development of a matter-of-right use.

15 The variance criteria also requires that the proposal
16 not result in substantial detriment to the public good and not
17 result in such substantial detriment to the intent of the zoning
18 regulations. OP is generally, so regarding that second part of
19 the test, OP is generally very supportive of in-fill development
20 and generally the provision of more housing on a lot would not
21 likely result in a substantial detriment to the public good.

22 However, apartment houses as the one proposed would be
23 out of character with the intent and purpose of the R-2 zone
24 which only permits single family detached and semi-detached
25 houses as residential uses. If the apartment house were to be

1 built to be the only apartment house on the subject square and
2 it would be contrary to the intent, purpose and integrity of the
3 zoning regulations. So that addresses the use variance criteria
4 and regarding the other areas of the relief, at this point we
5 cannot sort of comment or support relief because it is tied to
6 the use variance for which we have recommended denial.

7 This includes my presentation and I'm happy to answer
8 any questions. Thank you.

9 CHAIRPERSON HILL: So you also then, Mr. Kirschenbaum,
10 you looked at the four unit because, Mr. Harris, I was a little
11 lost as to where your, is this eight unit -- this is the four
12 unit version that you were showing us, Mr. Harris?

13 MR. HARRIS: Four units.

14 CHAIRPERSON HILL: Okay. And so the Office of Planning
15 reviewed the four unit version; correct, Mr. Kirschenbaum?

16 MR. KIRSCHENBAUM: We did and, you know, a four unit
17 building is still a use variance and at this point we still just
18 haven't gotten to the point of what is unique with the property
19 that would result in that hardship. So that requires the
20 Applicant to get past that one unit that's allowed matter-of-
21 right.

22 CHAIRPERSON HILL: Right. Okay. And, right. So in
23 that R-2 zone, again to clarify, it's just single family housing.

24 MR. KIRSCHENBAUM: So single family housing, detached
25 or semi-detached and an accessory apartment is allowed in this

1 zone. So you've got the principal building and an accessory
2 apartment somewhere on that property.

3 CHAIRPERSON HILL: Got it. Okay. All right. Let me
4 see. Go ahead, Ms. John. You're on mute, Ms. John.

5 VICE CHAIR JOHN: Thank you. So question for you. The
6 property was recently subdivided; right? So if the subdivision
7 had not occurred, the Applicant could have built two semi-
8 detached properties, I mean, units and an accessory structure on
9 each of those lots because it was a substandard lot which would
10 have been grandfathered. Am I getting that right?

11 MR. KIRSCHENBAUM: I don't believe so. I don't remember
12 the lot history. A lot of the lot lines here were shifted around.
13 I believe this lot, this newly created lot, was, I believe, part
14 of a larger lot next door.

15 VICE CHAIR JOHN: Oh, okay. I'm looking at your Exhibit
16 A.

17 MR. KIRSCHENBAUM: Right.

18 VICE CHAIR JOHN: And I guess I misread it. I thought
19 that what I'm seeing was the subdivision.

20 MR. KIRSCHENBAUM: So lot 148 already has that semi-
21 detached house on it and so that house is, it's like a pretty
22 old house, pre-war house and so that house, again I don't
23 remember. The lot configurations moved all around but the lot
24 that was created to create 148 already had a house on it. The
25 lots, like, shifted around.

1 VICE CHAIR JOHN: I see. So the subdivision was 148
2 and 149.

3 MR. KIRSCHENBAUM: Correct.

4 VICE CHAIR JOHN: Okay. I misread that. I thought
5 maybe lot 149 was subdivided into one large lot to accommodate
6 this apartment building. But I get it.

7 MR. KIRSCHENBAUM: Yes. So in other words, two sort of
8 record lots were created, one was vacant and one already had a
9 house on it.

10 VICE CHAIR JOHN: Okay. All right. Thank you.

11 CHAIRPERSON HILL: Okay. Anyone else have any
12 questions for the Office of Planning, from my Board?

13 Commissioner Miller.

14 ZONING COMMISSIONER MILLER: Thank you, Mr. Chairman,
15 and thank you to the Applicant for bringing forward this case and
16 for the Office of Planning for your report today and the written
17 report that we have.

18 Mr. Kirschenbaum, is the comp plan land use designation
19 for this square and the general area of low density, or is it
20 moderate density residential? What is the comp plan land use map
21 designation?

22 MR. KIRSCHENBAUM: Right. So the comp plan future land
23 use designation is residential low density. So had that been a
24 different type of land use designation, that potentially could
25 have been an option the Applicant at the Zoning Commission to

1 change the zoning at the property. But right now it is
2 residential low density, which the R-2 and the R-1 zones are
3 consistent with.

4 ZONING COMMISSIONER MILLER: And did anyone in the
5 public or did your office look at this area for any possible land
6 use map change to moderate density in the last comp plan cycle
7 just a couple of years ago to look at whether moderate might be
8 more appropriate given that RA-1, is a RA-1 that's across the
9 street, the school building where the school building is and did
10 anyone look at that or did you all look at that or it didn't come
11 up? Nobody suggested that at that time?

12 MR. KIRSCHENBAUM: Yes. I mean, you know, that would
13 have been part of the comp plan update that was done and approved
14 by the Council and I'm not sure if that was looked at or not.

15 ZONING COMMISSIONER MILLER: Well, I'm interested to
16 know whether it was considered by the Office of Planning. I know
17 you had a matrix or table at some point of all the comments that
18 have come in, that have come in from others, or that you initiated
19 yourself of land use map designations. I would be interested if
20 there was a conscious decision made to not do it in moderate
21 density or just wasn't even looked at by anybody and so it's
22 probably the latter that just wasn't looked, it wasn't proposed
23 or considered by anybody, I don't know.

24 Does the Applicant, if you have anything further on
25 that, Mr. Kirschenbaum, I'd be interested to know because I know

1 | there were a lot of proposals that were under consideration didn't
2 | go forward but, or Planning considered and maybe never even made
3 | it to the public arena that we knew the Office of Planning might
4 | have been considering.

5 | MR. KIRSCHENBAUM: So, you know, I really can't speak
6 | to whether or not that was considered. I did not work on the
7 | comprehensive plan update. I just, I do want to caution the
8 | Board that, you know, the comprehensive plan does not come into
9 | play for a use variance either, you know. This isn't at this
10 | point not really a planning issue. This is right now a sort of
11 | a zoning issue and the comprehensive plan will be updated, you
12 | know, starting soon and the Applicant, you know, could, you know,
13 | work with the community, the ANC or the Ward Council Member to
14 | potentially advocate for this land use map change in the future.

15 | But I think with regards to what may or may not happened
16 | with the past comprehensive plan just really isn't sort of part
17 | of the use variance tests at this point. You know, what we have
18 | here is a situation where the Applicant has a proposal that either
19 | meets this use variance -- that can only be done through a use
20 | variance. At this point there are no other sort of zoning tools
21 | available to do this type of use.

22 | ZONING COMMISSIONER MILLER: And I realize that it
23 | doesn't necessarily come into play with the use variance. I was
24 | thinking of alternative ways to get middle housing in the future
25 | at this site. Is the land area across the street also designated

1 as low density residential in the comp plan land use map?

2 MR. KIRSCHENBAUM: I'm not sure. I didn't look at
3 that.

4 ZONING COMMISSIONER MILLER: (Indiscernible)
5 obviously, similarly sized buildings are large, even though the
6 zoning permits higher density across the street. I just was
7 curious whether or not the land use map changes across the street
8 as well.

9 MR. KIRSCHENBAUM: I'm not sure.

10 ZONING COMMISSIONER MILLER: I would be interested in
11 having that information just for the record even though it may
12 not necessarily impact this case, it might impact the future
13 development of the site.

14 Does the Applicant have any comment on whether --
15 really the purpose of my question is whether you pursued
16 alternative ways of getting this middle housing in an area that
17 has, even though it's across the street in a different zone,
18 Similarly or bigger sized buildings, certainly less attractive
19 buildings than what you're proposing to be compatible with the
20 single family detached block that you're on. Do you have any
21 comment on whether you've considered pursuing different means of
22 getting this project at this site?

23 MS. JETER: Well, we don't know any other means. The
24 only way we know to go about it is to come to the BZA and ask
25 for a variance. You know, we had a similar issue at The Benn,

1 | you know, on B Street, S.E., where we were able to obtain the
2 | variance and that could be because, you know, it was on the same
3 | block. There was, you know, an apartment building is what I'm
4 | assuming the rationale for granting it was.

5 | But, I don't know. I mean, we're happy to listen to
6 | whatever, you know, if you guys have some suggestions on a way
7 | that we could get it done. But the only tool that we knew of
8 | was to, you know, approach the BZA and again, I think Joe
9 | mentioned, you know, when we talk about like what the burden is,
10 | I mean, I think we take the burden of, you know, Black homeowners
11 | on our shoulders. We would love to be able to present, to provide
12 | homeownership and if that's not an option, it is, you know, we'll
13 | be happy to make a home. You know, we told the ANC we could
14 | absolutely create a single family home with a, you know, a
15 | separate apartment and rent it out for several years. We could
16 | -- I can model \$4 million that's in my pocket -- but at the end
17 | of the day, our mission is to pay it forward, so.

18 | ZONING COMMISSIONER MILLER: No, no one's questioning
19 | the goals and the objectives that you're trying to achieve. It's
20 | the criteria that we have for the particular zone and the
21 | conditions that exist on that block right now and you mentioned
22 | that other, The Benn. Was that on Capitol Hill?

23 | MS. JETER: Well, East Capitol (indiscernible).

24 | MR. CHAVIS: Marshall Heights.

25 | MS. JETER: Marshall Heights, yes. It's Marshall

1 Heights.

2 ZONING COMMISSIONER MILLER: So yes. So you mentioned
3 that there was an existing apartment building on the block. There
4 isn't one on this side of the block. I don't know if the zone
5 is the same. Do you know, Mr. Kirschenbaum, whether, is it an
6 RF or RA zone up there?

7 MR. KIRSCHENBAUM: I'm sorry. Are you talking about
8 the other case --

9 ZONING COMMISSIONER MILLER: Yes.

10 MR. KIRSCHENBAUM: -- the Applicant was referring to?

11 ZONING COMMISSIONER MILLER: Yes. That apparently got
12 BZA approval.

13 MR. KIRSCHENBAUM: Right. So in that case, I was not
14 the case reviewer for that case. But from what I remember of
15 that case is that it was also R-2. That was a vacant to vibrant
16 property, and the District sold off that property through a, you
17 know, I guess through a tax sale; right?

18 MS. JETER: Correct. And there was an affordable, so
19 unfortunately what happened is that the District sold off
20 properties through Vacant to Vibrant and put an affordable
21 housing requirement on these properties and yet the zoning did
22 not allow for basically affordable housing to be built. So in
23 that case, I believe the Board in that case, the case had a
24 programmatic needs argument because they couldn't build anything
25 on that property because they had this requirement to do

1 affordable housing and that is why that was I believe a use
2 variance as well, and that's why that was approved.

3 This is a different situation where there is no
4 requirement on this property to do an affordable housing loan.
5 So that is, you know, that is sort of a fundamental difference
6 between property and this one.

7 MR. CHAVIS: Well, what happened is the District sold
8 us half a lot that wasn't able to be developed. We went out and
9 purchased the other half and then they rezoned them for us to be
10 able to do it and because we did that, we made the entire lot a
11 building lot. It was rezoned and they gave us the use variance
12 for doing that because the part, the portion of the property that
13 they sold us, we couldn't even build a house on it because it
14 would have only been eight feet wide, period. So nothing would've
15 been able to be built on the actual property.

16 ZONING COMMISSIONER MILLER: Well, thank you for that,
17 all the answers. So that there wasn't in that case of The Benn
18 both a zoning map amendment and a use variance, or just the use
19 variance?

20 MR. KIRSCHENBAUM: It was just the use variance, I
21 believe, to be able to build The Benn that was built, the
22 apartment house.

23 ZONING COMMISSIONER MILLER: Okay.

24 MR. KIRSCHENBAUM: I don't believe that case went to
25 the Zoning Commission for any other zoning action.

1 ZONING COMMISSIONER MILLER: I --

2 MR. HARRIS: Sorry. Go ahead.

3 ZONING COMMISSIOENR MILLER: No, go ahead. Who --

4 MR. HARRIS: This is Joe Paris, the architect again.
5 I was just listening to the conversation and thinking, well, what
6 is the Applicant supposed to learn from the first, you know, the
7 first thing. The first R-2 that was converted to this use other
8 than when the City wants it, the City can make it happen and here
9 we are asking to provide what the City wants. You know, so I'll
10 I'll mute again. But I just -- it's a confusing conundrum and
11 how do we solve it as a city?

12 VICE CHAIR JOHN: The BZA doesn't solve it. The BZA
13 has to live with the regulations that govern approval of these
14 types of developments and the regulation is that in an R-2 zone,
15 apartment buildings are not allowed unless there's some
16 exceptional condition and, as the Office of Planning said, this
17 lot, there is no exceptional condition affecting this lot.
18 Looking across the street, there's another lot which is almost
19 the same size and so it's very difficult to meet the burden of
20 the variance criterion.

21 So I don't want to speak to the other case because
22 sometimes there are facts that we're not aware of that may change
23 the outcome. But that's what the regulation requires. So as
24 the Office of Planning said, the Applicant can build a single
25 family with an accessory structure or accessory apartment in the

1 R-2 zone.

2 CHAIRPERSON HILL: So I guess Mr. Harris, is it Harris,
3 I'm sorry? That you know, it sounds what she said was that you
4 couldn't do something with the previous property and again, I
5 don't know, you know, we can get into another case and another
6 case but like, you know, this property can be developed as per
7 the zoning regulations and that's where we're coming into a
8 problem. It's not that we don't want to do it, it's that we
9 can't do it, you know, and so, but before I get too far down the
10 line here, Ms. Jeter, do you have any questions of the Officer
11 of Planning? I assume you talked with the Office of Planning
12 for all of this --

13 MS. JETER: Yes (indiscernible).

14 CHAIRPERSON HILL: == and I doubt you have any more
15 questions on them, but do you have any more questions of the
16 Office of Planning?

17 MS. JETER: No.

18 CHAIRPERSON HILL: Okay. All right.

19 Commissioner Holmes, can you hear me? Do you want to
20 give your testimony, Commissioner?

21 ANC COMMISSIONER HOLMES: Yes. So basically, at our
22 regular scheduled meeting on July 6th, the ANC 7C, we had a quorum
23 with eight out of nine Commissioners voting to approve this, to
24 support this project with a vote of four to two to two for the
25 relief that was described for the eight unit apartment complex.

1 The Applicant did meet with the Capitol View Civic Association
2 in Capitol View. So on the ninth they had concerns about the
3 ballot, the validity of the justification for the request to
4 change the zoning to R-2 to infringement on surrounding
5 properties, traffic and safety considerations, undeveloped plan
6 to address the impact of a large building in an R-2 zone, impact
7 existing neighbor character and design and unaddressed concerns
8 of directly impacted properties.

9 We had a special meeting on the 6th and to where CVCA
10 submitted a letter of opposition. Their Single Member District
11 Commissioner, Ms. Williams, asked for more time for the project.
12 However, we needed to do a vote that day and as such we ended
13 with supporting the Applicant based on the designs that were
14 shown at the time. Yes.

15 CHAIRPERSON HILL: Okay. Thanks, and Commissioner
16 Holmes, I mean, you know, the ANC is tasked with doing all kinds
17 of different things and so, you know, the ANC, your ANC, in this
18 particular case, again, you're looking at it as if you like the
19 project, if you think that it fits within the neighborhood. I
20 mean, you're not necessarily looking at the criteria that the
21 Board has to look at for the prongs of the variance test; correct?

22 ANC COMMISSIONER HOLMES: Again, and that's the
23 majority of the Commissioners are looking at it like the project.
24 In terms of the other considerations, those were brought up before
25 from the from the community about the R-2. But again, I would

1 say that that the Commission voted based on liking the project
2 for what it was supposed to, what the project was shown to be
3 do.

4 CHAIRPERSON HILL: Okay. All right. If you all
5 wouldn't mind, I apologize. If we can just take a really quick
6 break and I'll be, just a really quick few minutes, five minutes
7 break. Thank you.

8 (Whereupon, there was a brief recess.)

9 CHAIRPERSON HILL: So Ms. Jeter, what I'm going to do
10 is we're going to go through public testimony here and everything
11 and then get back to where you might have any kind of rebuttal
12 on anything that's been said and then we'll see if any of the
13 Board Members have any final questions for you.

14 Mr. Young, who is here to speak?

15 MR. YOUNG: Ten people.

16 CHAIRPERSON HILL: Okay.

17 MR. YO9UNG: I could start by bringing up members of
18 the ANC if you want?

19 CHAIRPERSON HILL: Sure. Just give me the names as
20 they come in.

21 MR. YOUNG: And I have Patricia Stamper, Patricia
22 Williams, Anthony Lorenzo Green, and Carrie Brown.

23 CHAIRPERSON HILL: And these are all Commissioners, as
24 you understand it?

25 MR. YOUNG: Yes.

1 CHAIRPERSON HILL: Okay. Commissioner Stamper, can you
2 hear me?

3 ANC COMMISSIONER STAMPER: Yes, I can hear you.

4 CHAIRPERSON HILL: Okay. Great. Could you introduce
5 yourself for the record, please?

6 ANC COMMISSIONER STAMPER: Yes. My name is Patricia
7 Anduha (phonetic) Stamper, Commissioner for Advisory Neighbor
8 Commission 7C 06. I'm also the president of the Deanwood Citizen
9 Association but this testimony today will be given in my capacity
10 as ANC Commissioner.

11 CHAIRPERSON HILL: Okay. Thanks, Commissioner. Again,
12 so as I think you heard at the beginning, you'll be here even,
13 even though you are here as a Commissioner, you'll be a member
14 of the public because Chairman Holmes was here representing your
15 ANC. So that means you'll get three minutes to present your
16 testimony. You're not the SMD for this project, are you
17 Commissioner?

18 ANC COMMISSIONER STAMPER: No, that's Patricia
19 Williams. I'm Patricia Stamper.

20 CHAIRPERSON HILL: Okay. Great. Okay. So
21 Commissioner, you can go ahead and begin whenever you like.

22 ANC COMMISSIONER STAMPER: So I'm going to be very
23 simple and to the point. What they presented to the ANC was at
24 eight, I thought they were condos. You guys keep describing them
25 as apartments. I was under the impression they were condominiums

1 and that they were meant for home ownership opportunities for
2 middle income people such as teachers, paraprofessionals,
3 firefighters and police officers. That was the impression that
4 I was given, this that was presented today to the BZA was not
5 what the ANC saw at our last meeting. It's different only because
6 it was eight before and now it's four three bedrooms, which still
7 is 12 bedrooms for a possible for four different families.

8 I went and spoke to neighbors. Their biggest concerns
9 were about parking, that it would bring more parking and then
10 they were complaining about speeding and about traffic. When I
11 voted with the ANC, I abstained from a vote because it just, it
12 didn't affect my SMD but I saw the positive in the project. So
13 that's it.

14 Thank you.

15 CHAIRPERSON HILL: So you're here, Ms. Stamper, in
16 support or opposition or either one?

17 ANC COMMISSIONER STAMPER: I'm undeclared.

18 CHAIRPERSON HILL: Okay. That's fine. All right.
19 Commissioner Williams, can you hear me?

20 ANC COMMISSIONER WILLIAMS: Yes, sir. I can hear you.
21 Can you hear me?

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

24 ANC COMMISSIONER WILLIAMS: Yes. I am Commissioner
25 Patricia Williams, Single Member District 7C 02.

1 CHAIRPERSON HILL: Okay. Great. So this property is
2 in your SMD; correct, Commissioner?

3 ANC COMMISSIONER WILLIAMS: Yes. Yes.

4 CHAIRPERSON HILL: Okay. So Commissioner, you also
5 have three minutes to give your testimony and can begin whenever
6 you like.

7 ANC COMMISSIONER WILLIAMS: Yes. Yes. This project
8 was presented to us as Commissioner Stamper just stated for, you
9 know, educators, firefighters, police officers who had the
10 opportunity to buy into the community and to buy housing for them
11 and it was presented very well to us. I know the drawings that
12 we are looking at today because the Jeters were trying to meet
13 the concerns of the community members. They were trying to, when
14 we had our emergency meeting, we had asked them to continue
15 working towards a solution for the community and so that's what
16 they did and pretty much we, I did, you know, I liked the project
17 as a whole because of the mission that they had, that they
18 currently had.

19 CHAIRPERSON HILL: Okay. So Commissioner, are you in
20 support, undeclared or in opposition?

21 ANC COMMISSIONER WILLIAMS: I want to see this project
22 go forward. But I understand that the planning, Office of
23 Planning, was just saying it doesn't look too good maybe. But I
24 am in support of this project because they have worked so hard
25 to meet the concerns of the community, and I'm just not sure,

1 | you know, which way to go but I have already supported this.

2 | CHAIRPERSON HILL: Okay. Thank you, Commissioner
3 | Williams. Commissioner Green, can you hear me?

4 | ANC COMMISSIOENR GREEN: Yes, I can.

5 | CHAIRPERSON HILL: Could you introduce yourself for the
6 | record?

7 | ANC COMMISSIONER GREEN: I am Commissioner Anthony
8 | Lorenzo Green, representing Member District 7C 04 in the Deanwood
9 | community. Also serve as the Vice Chair of ANC 7C and I'm
10 | testifying in support of this project.

11 | I do want to just give a little more context to our
12 | special meeting in regards to this and how some Commissioners may
13 | have felt when we had our special meeting. The letter of
14 | opposition from Capitol View Civic Association didn't arrive
15 | officially to us until the meeting itself and I actually had to
16 | step in to ensure that 1), we analyzed this letter and, 2) to
17 | give the Association the opportunity to actually speak before we
18 | leaned in it to a vote.

19 | When we analyzed the letter, there was concerns that
20 | the letter was vague and those concerns were brought up by myself,
21 | Commissioner Richardson and Commissioner Williams and I believe
22 | Commissioner Glover were the four who voted in support at the
23 | meeting. The two who voted in opposition were Commissioner Holmes
24 | and Commissioner Martin. The two who voted to abstain were
25 | Commissioner Stamper and Commissioner Brown.

1 My concern was concerns that were brought up in this
2 meeting was the high standard for use variance only because I've
3 dealt with a lot of zoning cases myself. I know that it can be
4 pretty tough, especially when trying to build property on our
5 side of town. I also raised concern that it was important for
6 community members and our Commission to find developers that
7 crossed our path who actually want to work with us and the Jeters
8 actually tried to address the concerns that were raised. That's
9 why we went from eight unit to four unit. They were just trying
10 to appease the concerns that were brought up by the Capitol View
11 Civic Association.

12 The thing that I expressed to my colleague,
13 Commissioner Glover, who was one of the four who voted in support,
14 who addressed concerns about changing their vote. He was just
15 one of the four. What I advised him to do was to have a
16 conversation with Commissioner Williams and the constituency that
17 she has to answer to in 7C 02 who wanted to see these two Black
18 developers who were very intent on trying to build homeownership
19 opportunity and rental opportunities for people in our community.
20 Even the presentation today outlined part of their plan trying
21 to address the missing middle.

22 I even brought up last night at a separate hearing
23 about how what was called affordable is no longer affordable
24 because the standard line just keeps rising every year. But we
25 have two developers who are actually intently trying to work with

1 Capitol View, work with the Commission to try to build on this
2 vacant lot, and it's a vacant lot. We're not tearing down a home
3 to build apartment houses. This is a vacant lot, and I'm not
4 one of those people who feel that we need to exclude apartment
5 houses completely from certain areas where we feel that it can
6 actually fit well. We feel that it can fit into the neighborhood.

7 Some of the concerns that I felt a little gaslight was
8 some of the classism that seeped into the conversation. For some
9 reason, there was this concern about, oh, they're going to rent
10 section eight renters and all that, and how that kind of just
11 really made the conversation a little too toxic.

12 But I wanted to state clearly here that I was in support
13 of this project. I'm still in support, and I do understand the
14 zoning issues that were brought up by the Office of Planning. I
15 even raised that in the meeting about the Office of Planning
16 report and how, and it just isn't this case, it's in other cases,
17 where we may have to get to a text amendment to try to figure
18 out certain ways where we can build on this vacant lot, try to
19 meet the housing crisis we have in our City, the changing
20 landscape of affordability across the City and how outside of
21 town is the last fashion forward and trying to give people who
22 have big growing families an opportunity to own their property
23 or be able to stay in a neighborhood, get into this building,
24 possibly to support their families so they don't have to be
25 lowered out of the City.

1 That's what we've been seeing and we've also been
2 seeing how single family homes that are built up in our
3 neighborhoods are not really being mostly bought by people that
4 look like me. Let's be clear. They are being swallowed up like
5 this via tax sales, and you all see it, and it's very difficult
6 for people that look like me to get these opportunities.

7 So I'm hoping that those who are supporting the small
8 group at the Association and not listening to the broader
9 community, I hope they will take a chance to review the record
10 and listen to the concerns raised by the Commission that
11 represents that area so that we can move forward with this project
12 and move forward with these developers, in trying to figure out
13 how we can meet the needs of the housing prices in our City.

14 CHAIRPERSON HILL: Thank you. Commissioner Lorenzo
15 Green. Commissioner Brown, can you hear me?

16 ANC COMMISSIONER BROWN: I can, Chairman.

17 CHAIRPERSON HILL: Can you please go ahead and
18 introduce yourself for the record?

19 ANC COMMISSIONER BROWN: Good afternoon. My name is
20 Carrie N. Brown. I am the ANC Commissioner for Single Member
21 District 7C 09. I've had an opportunity to listen to everyone's
22 thoughts and concerns expressed today, and there are a few things
23 that resonate with me.

24 Chief among them the community's concerns regarding the
25 building, the building project and their opposition to it and it

1 is for that reason that I cannot support the project. I voted
2 to abstain originally because I thought that there was a better
3 dialog that needed to take place between the developers and the
4 community. After careful thought and consideration, I also
5 realized because I am not a member of the community that would
6 be impacted by this project, that I should vote in line and lock
7 step with the community, thus acknowledging their concerns.
8 That's all I have. Thank you for the opportunity.

9 CHAIRPERSON HILL: Thanks, Commissioner. Thanks, you
10 guys for sticking around.

11 Let's see, does the Board have any questions of any of
12 the Commissioners? Go ahead, Commissioner Miller.

13 ZONING COMMISSIONER MILLER: Thank you all,
14 Commissioners, for your testimony today and for your work in the
15 community as a whole.

16 Commissioner Green, thank you for your work as well.
17 You said your initial pause was the use variance because you're
18 familiar with that high bar that's there for use variance and in
19 this particular zone. How were you able to overcome? What do
20 you see, either how were you able to overcome that pause or
21 concern about, that we share obviously, the Office of Planning
22 states in their report that the prong has not been met. But you,
23 did you in the end with all the factors that are in play, the
24 large corner lot -- I apologize for the barking in the background
25 --

1 ANC COMMISSIOENR GREEN: It's all right.

2 ZONING COMMISSIONE RMILLER: -- my grandson and his
3 dog is here, so it is a very large corner lot. It's a very, and
4 it's been vacant. How long has it been vacant for? Forever?

5 ANC COMMISSIONER GREEN: I would say, well, as it was
6 stated earlier, this was a lot that was connected to another
7 property and it was subdivided. So it's been vacant. So, and
8 we see that happen a lot in our area in 7C where they take a big
9 lot that's been vacant or been attached to another property where
10 nothing has been done on it and they'll just cut it in half and
11 say, okay, well somebody will build something on it, and it's
12 always a narrow lot or you know, a lot similar to their size,
13 but where it was stationed on the corner so that it wouldn't be
14 much of an issue, especially after the Commissioner for the area
15 shared her support for it and how it could fit into the community
16 and seeing most of the issues raised were about the setback and
17 how close to other properties and seem to be shading, and the
18 traffic concerns and garbage collection.

19 Of course, that predates this development. That's
20 always our issue on this end. Government service is always our
21 issue, trying to make sure that, you know, D.C government does
22 their part. But we don't, of course, want projects to exacerbate
23 the issue, but it is just underlining what we already deal with
24 here.

25 But I will say when it comes to use variance, I'm sure

1 | you remember the Deanwood Deli project and how high of a bar that
2 | was trying to get that approved for Sheriff Road and we literally
3 | had to cry some tears on that call for that, but it was necessary
4 | because it was a property that was vacant for a long time and
5 | you had people who had found a way to get some financing, which
6 | was always the big obstacle for developing properties on our side
7 | of town, getting financing and we had people who found a way to
8 | get some financing, to put money on the table to build on this
9 | vacant lot and I thought it would be unfair to deny them that
10 | opportunity to try to work through this process while at the same
11 | time stating that they want to work with the community, they want
12 | to work with the Board of Zoning, they want to try to figure out
13 | how they can build on this lot, while creating opportunities for
14 | Black homeowners to be able to take advantage. Because that's
15 | what now, well, we're not seeing any.

16 | ZONING COMMISSIONER MILLER: Thank you for that
17 | response. I appreciate it.

18 | The only other comment I would make in response to the
19 | Commissioner's, all of the Commissioners' testimony, was that
20 | there was some reference that it's no longer, well the Applicant
21 | will respond when they get their chance to respond as we go
22 | forward, but there was a concern raised that it's now an apartment
23 | house versus condominium. It's still, based on the presentation
24 | that I heard. Condominiums for working Black families, so that
25 | there were more affordable housing option for them. It's still

1 that. It's apartment house is the category in our zoning
2 regulation, whether it's an apartment or condominium. So that's
3 I think where the confusion came from zoning regulations
4 (indiscernible).

5 ANC COMMISSIONER GREEN: And some of it has come out
6 of this belief that there are people who will come and buy condos
7 and then just rent them out to section eight families and that's
8 what some of, I guess, the toxicity, you know, in maybe the
9 conversation. So sort of like not only are you trying to block
10 people from getting these opportunities, but you're trying to
11 dictate what they do with these opportunities and I think as our
12 area where we have public housing that's on the list to be
13 demolished, Lake Terrace in Lincoln Heights and Richardson
14 Dwellers, and that was brought up in the conversation because
15 that was down the street and I have to push back against that
16 thinking, you know.

17 We're still creating an opportunity for people, Black
18 people, to buy in our neighborhoods and giving them the
19 opportunity to decide how they want to use that property, use
20 that unit in that property and I don't want certain members, a
21 small group of members, to try to play, you know, granddaddy to
22 everybody that wants to buy property over here.

23 ZONING COMMISSIONER MILLER: Okay. They thank you very
24 much. Thank you, Mr. Chairman.

25 CHAIRPERSON HILL: Thank you, Commissioner Miller.

1 | Anyone else for this group of witnesses? Okay. Well, I would
2 | also like to thank all the Commissioners for taking their time
3 | to be here and I don't really know much about other options, I
4 | must say, about tax amendments and things that happen at the
5 | Zoning Commission because I've been here at the Board of Zoning
6 | Adjustment for my tenure and we have the criteria that we have
7 | in which to go through this process, and so I don't think that
8 | Commissioner Miller is necessarily advocating one way or the
9 | other for spending money to do something else. I don't know,
10 | you know, but anyway.

11 | So thank you all, Commissioners, for coming. Mr.
12 | Young, if you could please excuse this batch and tell me the next
13 | batch.

14 | MR. YOUNG: Okay. I have Gornayl Beliard, Cherie
15 | Basener, Leasia (phonetic) Clark-Artis, Rolda Need and John
16 | Wanji, and I'll stop there. We have four more after this group.

17 | CHAIRPERSON HILL: Okay. Great. Mr. or Ms. Beliard,
18 | can you hear me?

19 | MR. BELIARD: Yes, sir. I can hear you. Can you hear
20 | me?

21 | CHAIRPERSON HILL: Yes. Yes. Can you please introduce
22 | yourself for the record?

23 | MR. BELIARD: Yes. Hi. Gornayl Beliard, residence 117
24 | 53rd Street, N.E. So I'm the apartment that this property abuts
25 | up against.

1 CHAIRPERSON HILL: Okay. Mr. Beliard, you'll have
2 three minutes to give your testimony, and you can begin whenever
3 you like.

4 MR. BELIARD: Okay. Great. So to piggyback off of
5 Commissioner Green. I'm not trying to play granddaddy, but as a
6 Black homeowner, I look like Commissioner Green and the builders,
7 as an army veteran of two wars and as part of the missing middle,
8 I have concerns.

9 Some of the concerns are quite simple. Everything
10 changed at the last minute and we weren't aware of any of these
11 changes. The Civic Association wasn't aware, the neighbors that
12 I talked to were not aware of this. Recently, on Blaine Street,
13 caddy corner block, there was a fire. The fire started in one
14 home, single family residence, and it affected, negatively
15 affected the homes on both sides that were at least eight feet
16 distant.

17 One of my biggest concerns is the fire and life safety
18 of the residents and the utility closet would be butt up directly
19 underground with the access hatch, reportedly underground, the
20 access hatch would go directly to my property, my wife and I's
21 property line, which would mean it would go directly to our wooded
22 (phonetic) (indiscernible). So there are concerns with the
23 recent fire that happened in the past month that that could be
24 an issue. Also, obviously, the issue that it would be underground
25 and is going to butt up against that, how that affects my property

1 and the structure of my building.

2 So we have concerns with the area variance and
3 requesting just four feet natural light and air impact. There's
4 concerns about the water run-off. I know that there's been some
5 questions about the lot. So the lot was part of the previous
6 owner of my residence and my house and he decided to subdivide
7 it so it's only been vacant for four years because it was part
8 of the greater 148 and it was being utilized because there was a
9 little on-ramp and cars were being parked there from time to
10 time.

11 I'd also like to mention that, you know, the Office of
12 Planning, they did say that a single (phonetic) residence can be
13 built on this because the lot is not small or narrow. It's large
14 enough to fit a house that does not need variance or exemption.
15 So these are my major concern that I have. Personal is the,
16 obviously the fire and life safety with the house just being four
17 feet, the building structure physically being four feet from my
18 property and fence and things of that sort.

19 So thank you for the time. Any questions?

20 CHAIRPERSON HILL: No, just Mr. Beliard, you're in
21 opposition; correct?

22 MR. BELIARD: Yes. Yes, sir. Strong opposition.

23 CHAIRPERSON HILL: Okay. Ms. Basener or Mr. Basener?

24 MR. BELIARD: [Bazzener].

25 CHAIRPERSON HILL: Right. Basener. Thank you. Ms.

1 Basener, could you introduce yourself for the record?

2 MS. BASENER: Yes. My name is Cherie Basener. I
3 reside at the adjacent property at 117 53rd Street, N.E.,
4 immediately bordering the proposed project.

5 CHAIRPERSON HILL: Okay.

6 MS. BASENER: Thank you.

7 CHAIRPERSON HILL: Ms. Basener, you can go ahead. You
8 have three minutes to give your testimony and you can begin
9 whenever you like.

10 MS. BASENER: All right. Thank you. I appreciate
11 being able to speak on this matter. Certainly support increasing
12 affordable housing in the District. However, the proposed
13 pricing and salary requirements for this project don't
14 necessarily appear realistic in comparison to other housing in
15 the neighborhood.

16 One of my greatest concerns and why I'm opposing the
17 structure revolve around safety. Concern remains the same in
18 spite of the last minute changes and amendments that were made
19 regarding the size and occupancy of the proposed structure, which
20 were not discussed with the neighborhood association. As my
21 husband mentioned, the recent fire a block away, reminded us of
22 the grave danger of housing, close proximity, to each other. The
23 concern is asking for the amendment of four feet from the property
24 line and also with the utility closet directly abutting the
25 property is a concern.

1 It was stated that privacy would not be affected.
2 However, given the proposed height of the structure to include a
3 rooftop deck directly providing unobstructed view of their house
4 is a concern as well. Not as much concern with the lighting or
5 airflow necessarily, but I'm just concerned about that as well.

6 Another potential issue, certainly parking as it is
7 across the street. I wouldn't necessarily consider this a
8 walkable neighborhood as the metro is almost a mile away. There's
9 no nearby store shops, restaurants or other businesses in the
10 immediate vicinity so additional cars would most likely be in
11 addition to that, and parking would not be sufficient. Most
12 homes in the area do not have garages, so street parking is
13 utilized by the majority of the residents as well.

14 Certainly a concern of funding or labor isn't properly
15 accounted for as there are other half built structures that have
16 wide vacancies in the area. So increasing safety and security
17 risks in those unoccupied structures as in the case of other
18 locations within the ward.

19 That is the majority of my concerns at this time.

20 CHAIRPERSON HILL: Okay. Thank you, Ms. Basener.
21 You're in opposition; correct?

22 MS. BASENER: Correct.

23 CHAIRPERSON HILL: Okay. Mr. or Ms. Clark-Artis, can
24 you hear me? Mr. or Ms. Clark?

25 MS. CLARK-ARTIS: Yes. Can you hear from me?

1 CHAIRPERSON HILL: Yes. Yes. Can you introduce
2 yourself for the record, please?

3 MS. CLARK-ARTIS: Yes. My name is Leasia Clark-Artis.

4 CHAIRPERSON HILL: Okay. And you'll have three minutes
5 to give your testimony and you can begin whenever you like.

6 MS. CLARK-ARTIS: Good afternoon. My name is Leasia
7 Clark- Artis. I am a Capital View homeowning resident. I live
8 here with my husband, our two boys, elementary age, an infant and
9 our dog. We enjoy living here very much. We often take public
10 transportation since we're close to Capitol Heights, and the 96
11 (indiscernible).

12 CHAIRPERSON HILL: You're sort of breaking up, Ms.
13 Clark-Artis. Hello?

14 MS. CLARK-ARTIS: (Indiscernible). Can you hear me?

15 CHAIRPERSON HILL: Yes. I can hear you now. Or I
16 could.

17 MS. CLARK-ARTIS: (Indiscernible) two boys, elementary
18 and infant, and our dog. We enjoy living here very much. We
19 often take public transportation since we have (indiscernible)
20 96. However, we have been fortunate enough to have one car. A
21 car is crucial at times because we are often under time
22 constraints with work and our kids' school and extracurricular
23 activities.

24 With that being said, I do not support this project at
25 this location due to the significant impact the variances they

1 are asking for would have. Our streets are crowded enough with
2 cars and safety, whether we are walking to the bus stop, taking
3 the train or in our car is a top concern for a lot of us. Also,
4 the setback variances would drastically change the character of
5 Capitol View with the current R-2 restrictions. We should focus
6 on providing affordable housing in Ward 7 that will conform to
7 the current zoning restrictions and last, there are two homes
8 currently on the market priced at 434 and \$450,000, both on
9 (indiscernible) Street northeast, both semi-detached like a lot
10 of homes here in Capitol View.

11 (Indiscernible) lowered (phonetic) housing and while
12 lowered housing is nice, we must think hard about how we go about
13 it, especially when Capitol View and the rest of Ward 7 and Ward
14 8 do not have enough grocery stores and proper amenities to serve
15 all of us like those residents on the opposite end of the 96,
16 and I yield the rest of my time.

17 CHAIRPERSON HILL: Thank you. And you're here in
18 opposition; correct?

19 MS. CLARK-ARTIS: Correct.

20 CHAIRPERSON HILL: Okay. All right. Let's see. Is
21 it Ms. Rolda Nedd? Rolda Nedd, can you hear me?

22 MS. NEDD: Yes, sir. Hi. Thank you for the
23 opportunity, Chair and Members of the BZA. I am Rolda Nedd and
24 I live actually directly east of this property. I'm on the other
25 side of the alley.

1 What was presented to the Capitol Civic Association was
2 an eight unit property. So we, all my comments and I have
3 submitted my comments in writing to the Board, they are based on
4 the eight unit that that was presented to us. So we are actually
5 at a disadvantage not having the updated drawings to show what
6 four units would look like. But in any case, that is outside of
7 the R-2 zoning requirements call for so there is still that
8 concern.

9 If the Civic Association was to give consideration to
10 this proposal, it will set a dangerous, in my mind, precedent for
11 the neighborhood. We would then be moving towards allowing
12 greater densities on perhaps every vacant parcel in the
13 neighborhood and we really need to consider that in terms of
14 density overall.

15 I agree with all of the comments that were made about,
16 you know, the fact that the neighborhood and in fact, the wider
17 area has insufficient grocery stores, decent grocery stores,
18 restaurants or even a coffee shop that so increased density like
19 that, that is just certainly exacerbating that situation.

20 My concerns as an adjacent neighbor is for parking.
21 Two spots are being provided in this development when they
22 actually need, according to the zoning requirement, is either
23 three or four. So they are already below the required number
24 and then they are only providing two. That is going to
25 significantly affect parking in the area, traffic in the area

1 | because there's a school and with a school comes additional
2 | traffic. The school, you know, we are not able to park on the
3 | side of the school during the daytime so that's some additional
4 | concern in terms of traffic congestion.

5 | I was listening to the proposal as it apparently
6 | currently is, and we have four three bedrooms. So does that mean
7 | it's every level and it's now a four level property as opposed
8 | to three, which is what we expected? I have concern for the
9 | safety of my property not being able to see having proper clear
10 | sight views in addition to height, ventilation and Light. So I
11 | would certainly have concern about that.

12 | And I'm also a little concerned about a conversation
13 | that was taking place about, you know, Black families and Black
14 | communities and all of that. I do want to remind people that
15 | there is a fair housing law, a Federal fair housing law, and I
16 | assume the D.C. government follows that law as well. We cannot
17 | designate housing for specific demographic ethnicities. Okay?
18 | So that is -- be careful how that whole conversation goes.

19 | I think that's all, my time is up. But thank you for
20 | the opportunity.

21 | CHAIRPERSON HILL: Thank you, Ms. Nedd. Thanks for
22 | taking the time to be with us and you are in opposition; correct?

23 | MS. NEDD: Opposition, sir.

24 | CHAIRPERSON HILL: Okay. Let's see. Ms. Wanji. Mr.
25 | Wanji, can you hear me? Mr. Wanji? Mr. Wanji? Hi, Mr. Young.

1 | Leave Mr. Wanji there and let's see what happens. Does the Board
2 | have any questions for this batch of witnesses? Okay. I really
3 | appreciate you guys taking the time to stay with us. I hope that
4 | you learned something about the Board of Zoning Adjustment if
5 | nothing else. We're here every Wednesday.

6 | Okay. Let this batch go, Mr. Young. If you can bring
7 | our final group in and leave Mr. Wanji, if he appears, and tell
8 | me the names if you wouldn't mind.

9 | MR. YOUNG: I have Erica Buruca. Oh, sorry, the first
10 | one is Mandla Deskins, Deavie Louis, and the last one is Erica
11 | Buruca.

12 | CHAIRPERSON HILL: Okay. Thank you. Mr. or Ms.
13 | Deskins, can you hear me?

14 | MR. DESKINS: I can.

15 | CHAIRPERSON HILL: Okay. Good.

16 | MR. DESKINS: My camera is malfunctioning.

17 | CHAIRPERSON HILL: That's all right. That's all right.
18 | If you could introduce yourself for the record first, and then
19 | you'll have three minutes to give your testimony.

20 | MR. DESKINS: Sure. So my name is Mandla Deskins. I
21 | am here on behalf of the Capitol View Civic Association. This
22 | property resides in the Capitol View community. I am the
23 | president of the Civic Association. I think I actually submitted
24 | our original letter of opposition to you all so I don't really
25 | want to go through every step of that.

1 I just want to kind of hit a couple of things. So I
2 think before I get started, I just want to respond to something
3 that I guess Commissioner Miller was asking about the R-1 and R-
4 2 zoning. To be clear, the reason why we have R-2 zoning on that
5 one block is because of public housing. Now that public housing
6 is, you know, been slated to be torn down and redeveloped, there's
7 a whole lot of stuff and hopefully they put back enough housing
8 for all of the people that live there to not be displaced.

9 But I just want to be clear that it's not like there's
10 some like leaking over high density zone being built there. That
11 is what exists there and then on the B Street property, there
12 are other apartment buildings in the area. I can't see why zoning
13 chose to allow that there and our planning said that it was fine
14 there and had concerns here. But there are apartment buildings
15 surrounding that apartment building. It's nothing like this
16 community which is, you know, semi-detached, full detached houses
17 and there's an apartment building slated to go up on the corner.

18 So I think just one thing I wanted to just, there were
19 a couple of, we as requested by Cherrye and Terence, we dedicated
20 our June meeting to this variance request and you know, this
21 project to tell our community about what it is that they were
22 putting forward. There were a variety of concerns that came from
23 the members, which is what led to our board deciding to oppose
24 this project as it was an eight unit. There were several things,
25 traffic and safety infringement on surrounding properties. Some

1 of the stuff that you heard today by our community members who
2 were also at that meeting, there was one thing that I didn't hear
3 hit on yet that I just want to be very clear about why that was
4 a major point for us. The validity of the justification for the
5 request to change our zoning for this project.

6 Now, I am also, you know, somebody who could barely
7 afford to live where I live, so I definitely understand why we
8 need more housing. It's very expensive. It's unaffordable. We
9 need affordable housing. However, I'm concerned about the idea
10 that because the Mayor has put forward this charge that we need
11 to get more affordable housing and we need to make sure folks
12 are able to avoid displacement, that we can go to a neighborhood
13 that is R-1 and just say we're going to build an apartment complex
14 here because this will be for the good of the entire City and
15 therefore affordable housing goals.

16 My concern doesn't necessarily lie with Cherrye and
17 Terrance on this particular point. The concern there is if they
18 can use this justification, anyone can and this is not upper
19 northwest. We don't have you know, we have people that come to
20 our community developers all the time and create developments
21 that are predatory in nature, whether those are apartment
22 complexes or single family and we've seen in our neighboring
23 community northeast boundary which is in our same ANC, because
24 actually in a recent newspaper article, because developers were
25 buying up buildings, renting them out to people and then not

1 | doing anything to keep them up. The people were living in really
2 | inhumane conditions while looking nice on the outside while they
3 | were collecting as much money as possible from loopholes in our
4 | affordable, you know, our voucher laws in the City.

5 | So that was a major concern to us is are we creating a
6 | precedent and what are we creating this precedent for? So as I
7 | heard folks, you know, our Commissioners asked these questions
8 | that really resonated with one of the major concerns that we had
9 | overall about what precedent are we creating.

10 | Another thing that I just wanted to flag, again, I'm
11 | not going to go through our whole letter, but I wanted to flag.
12 | I'm also confused. If the proposal changed from eight units to
13 | four units, then what did the ANC approve? What are we opposing?
14 | I would argue that at a process level, what is the Zoning
15 | Commission deciding today? How can we vote on the four unit
16 | development that the ANC, the community and the Zoning Commission
17 | has never seen? So I'm not quite clear. Like if you all approve
18 | it today, does that mean that there's an eight unit or does that
19 | mean that there's a four unit that is approved, that we'll see
20 | what it looks like once it comes up? I don't really understand
21 | how this process is going to play out.

22 | I really appreciate the fact that, you know, that
23 | Cherrye and Terrence took a moment to really try to address some
24 | of those concerns raised by creating this four unit proposal.
25 | However, 24 hours, less than 24 hours, 48 hours notice that this

1 even exists while no one has seen it, it seems like it just
2 circumvents the entire point of a community process. So if it's
3 an eight unit, then we oppose it as a Civic Association for what
4 I sit here and in many of what our different members and community
5 members said before, we echo some of those sentiments. Traffic
6 infringement, underdeveloped plans to address the impact on
7 existing neighborhood character and design. But if it's a four
8 unit I don't think it's fair for me as a Civic Association
9 president to really speak on that while not allowing the
10 membership or the community at large to even know that this is
11 what it is.

12 So I think that's all I had and I'll stop there.

13 CHAIRPERSON HILL: Okay. Great. Thanks. Mr. Deskins.
14 Deskin?

15 MR. DESKINS: No worries. You got it. Deskins.

16 CHAIRPERSON HILL: Deskins. So just, as a member of
17 an organization, we gave you five minutes, just actually didn't
18 say it but just to let you know.

19 MR. DESKINS: Thank you so much. Sorry about
20 (indiscernible).

21 CHAIRPERSON HILL: And so yes, I mean, we're kind of
22 going through this public testimony part like we haven't even
23 gotten circled back around to the eight unit versus four unit
24 questions. So I think we're still moving through this process.
25 Mr. or Ms. Lewis? Lewis?

1 MS. LEWIS: Yes. I'm Deavie Lewis.

2 CHAIRPERSON HILL: Ms. Lewis, can you go ahead,
3 introduce yourself for the record, and then you'll have three
4 minutes to give your testimony.

5 MS. LEWIS: Okay. Thank you. I'm Deavie Lewis. I
6 live at 829 Division Avenue in the Capitol View neighborhood,
7 where the proposed building is to be built.

8 I'm a member of the Capitol View Civic Association, and
9 I'm glad that I was present at our last meeting last month where
10 Mr. Chavis presented his plans and as Ms. Nedd mentioned earlier,
11 my comments were directed at an eight unit project, which is what
12 he proposed at that time and as others have mentioned, I'm sorry
13 that at the last minute their plans have changed, but we weren't
14 allowed an opportunity to have that information presented to us
15 or to consider how we feel about that.

16 Normally, this is a quiet community of mixed single
17 family and semi-detached homes, churches and schools. I grew up
18 here and I take great pride in this community and it's been a
19 great place to live. But for purposes of land use, I agree with
20 the Office of Planning in that as we are zoned R-2 for low density
21 and residential development, we want to maintain the integrity
22 of that designation for our community and with that said, I feel
23 that the proposal, as Mr. Deskins just said, either eight units
24 or four units, it conflicts with the established zoning
25 designation for our neighborhood, and it creates variable

1 concerns for our residents, for all of us and as those of us that
2 have spoken earlier, parking is one of our big concerns because
3 there isn't sufficient parking for a multi-use property as is
4 being proposed, and Mr. Beliard also mentioned that fire safety
5 is another big concern that we would have.

6 Mr. Chavis's proposal is expected to request, or he had
7 mentioned an exception to Title 11 Subtitle C of 1002 modification
8 of development of standards and bonuses to incentivize
9 exclusionary zoning, which would allow up to 20 percent more
10 gross floor area than permitted as a matter-of-right or giving
11 bonus density. But this request is not consistent with or the
12 intent of Title 11 of Subtitle X § 901.2.

13 The Board of Zoning Adjustment is authorized to grant
14 special exceptions where, in the judgment of the Board of Zoning,
15 the special exceptions for eight will not meet adversely or
16 adversely affect the use of neighboring property in accordance
17 with the zoning regulations and zoning maps. As proposed, either
18 as an eight unit or a four unit building, the building would
19 certainly have immediate adverse impact on the neighboring
20 properties, including but not limited to those immediately on
21 either side, the property at 117 53rd Street and 5313 Blaine
22 Street across the alley.

23 CHAIRPERSON HILL: Okay. Ms. Lewis? You've run out
24 of time. Do you just want to kind of wrap up?

25 MS. LEWIS: Yes, absolutely. I don't disagree with the

1 fact that more housing is needed in our city. But, and I don't
2 want to say that we don't want to work with the Applicant in
3 building something. But for the reasons that I've mentioned
4 above, I don't support granting the exceptions that they're
5 looking for. What they're proposing is just not a good fit for
6 our community. Thank you.

7 CHAIRPERSON HILL: Thank you, Ms. Lewis. Ms. Buruca?
8 Can you hear me, or Mr. Buruca?

9 MS. BURUCA: I can hear you. Hello?

10 CHAIRPERSON HILL: Hello. Could you introduce yourself
11 for the record, please?

12 MS. BURUCA: I sure can. My name is Erica Buruca, and
13 I am actually the owner of the lot right across the street from,
14 of the house right across the street from this lot.

15 I just want to say that I have been a property manager
16 for the past 11 and a half years. I have actually managed a
17 property about seven minute drive from my home for the past three
18 years. So I've dealt with everything that has to do with
19 construction all the way to moving a person in and dealing with
20 everything after that. In D.C., it's very hard to actually manage
21 through construction and everything that has to do after, you
22 know, someone moves in. So I am, I know that a lot of people
23 said that there's actually our homes in our neighborhood that are
24 in the price range of, you know, the 400 to 485. There's one
25 right across the street.

1 Parking is another one of my concerns. Right now, I
2 want to say I've been living there since 2019. My lot is the
3 one that's actually almost as big as the lot that we are speaking
4 about today. The neighborhood is very peaceful. But I do think
5 that if it gets approved for something to be built there, I am
6 not in agreeance with being a, you know, or maybe a single family
7 home or a home, but not a multi-dwelling unit, so I am in
8 opposition of this construction.

9 CHAIRPERSON HILL: Okay. Thanks, Ms. Buruca. Yep. Is
10 Mr. Wanji there? Mr. Wanji, can you hear me?

11 MR. WANJI: Yes. Can you all hear me?

12 CHAIRPERSON HILL: Yes.

13 MR. WANJI: Oh, yes. Sorry. I got pulled into another
14 meeting.

15 CHAIRPERSON HILL: That's all right. Did you introduce
16 yourself for the record?

17 MR. WANJI: Yes. My name is John Wanji. My wife and
18 I, we are residents of the Capitol View community.

19 CHAIRPERSON HILL: Mr. Wanji, you have three minutes
20 to give your testimony, just so you know, and you can begin
21 whenever you like.

22 MR. WANJI: Yes. I won't be long. So regarding this
23 new development, the parking, like my previous neighbor
24 mentioned, the parking and the traffic and all of this concerns
25 that are mentioned before me is really what's driving us not to

1 | accept the project in the community because just in the area it's
2 | hard to park as we are right now. So having all the residents
3 | because you're talking about eight units, so considering a family
4 | of three people and that means we're talking about 24 more cars.
5 | Where are we going to park them in the neighborhood?

6 | So for those reasons, I'm opposed to the project.

7 | CHAIRPERSON HILL: Okay. Thank you, Mr. Wanji. All
8 | right. All right. Does the Board have any questions for this
9 | batch of witnesses? All right. Mr. Young, if you could please
10 | excuse the witnesses.

11 | Okay. All right. We're back here. Ms. Jeter and Mr.
12 | Chavis.

13 | MR. CHAVIS: [Chay-vis].

14 | Well, Ms. Jeter and Mr. Chavis, it's been a long day
15 | here now for you. I mean, you've waited a long time. You got
16 | through all this. You went through everything you went through.
17 | You went to the ANC. You changed the design. You went to the
18 | other group. You talked to them, whatever, and I hate to tell
19 | you, I mean, I'm saying, like, we're right here with the Office
20 | of Planning, not that they're the definitive answer on this, it's
21 | just that we as the Board of Zoning adjustment, we are only stuck
22 | with the regulations that we have and that first prong says that,
23 | can you do something with this property? And if the answer is
24 | yes, then you have a very big task upon you to change that use
25 | and the use is like the No. 1 difficult thing to jump through;

1 right? And I'm not trying to -- I'm just trying to tell you
2 where you are now. I'm so sorry that it's gotten this far that
3 I don't know what to tell you to do next. I mean, I, you know,
4 I don't know. I mean, everything you said and your presentation
5 was all based upon and was based upon what you had hoped and what
6 you hope to accomplish with your business, right, which I don't
7 think, again, anybody here has any issues with your mission
8 statement and what you're trying to do.

9 But I just don't know what to say at this point in
10 terms of this particular application and I don't even know if I
11 kept this open for you to continue to work with the Office of
12 Planning, like the Office of Planning already looked at your four
13 bedrooms, right, and you know, what you're able to build is a
14 single family home with an apartment, right, not an apartment, a
15 --

16 MS. JETER: Accessory unit.

17 CHAIRPERSON HILL: Thank you. It's been a long day,
18 and so accessory unit; right? And so, you know, if you wanted
19 to keep this application open or if there was something I could
20 do to keep this application open so that you can work with the
21 Office of Planning to see what, if anything, you might be able
22 to do to at least, like, you know, the rear yard requirements or
23 the lot occupancy, I mean, the side yard issues, like those are
24 things that are now, I don't even know -- the Board could
25 deliberate on those as well. But in this particular case, it's

1 | difficult for me to deliberate upon because we don't even know
2 | what we're necessarily deliberating upon; right?

3 | I got a four unit or I got an eight unit; right? I
4 | mean, now I got, I guess the plans are in there for the four
5 | unit; correct?

6 | MS. JETER: Correct.

7 | CHAIRPERSON HILL: Right.

8 | MS. JETER: Well, four unit was only put forth because
9 | there was opposition to the eight units. There was so much
10 | opposition. We, okay, we don't want to upset the community so
11 | the four unit.

12 | CHAIRPERSON HILL: Right.

13 | MS. JETER: But I mean (indiscernible) --

14 | CHAIRPERSON HILL: But the Board, I don't mean to
15 | interrupt. I'll let Mr. Smith go next because he's got his hand
16 | up. Mr. Kirschenbaum, you guys reviewed the four unit; correct?

17 | MR. KIRSCHENBAUM: That would be correct.

18 | CHAIRPERSON HILL: And I'm shocked Mr. Kirschenbaum is
19 | still there. Way to go, Mr. Kirschenbaum. So, all right. So
20 | that means the four unit's already been denied, right, in terms
21 | --

22 | MR. KIRSCHENBAUM: We have recommended denial to you.

23 | CHAIRPERSON HILL: Recommended denial, sorry. You're
24 | correct. Recommended denial to us based upon the criteria of the
25 | three prong test, which is a very high test for us and this use

1 variance; right?

2 MR. KIRSCHENBAUM: Correct.

3 CHAIRPERSON HILL: So, you know, Mr. Kirschenbaum,
4 there's not an area variance or a different way to kind of go
5 about this that you can see. Is that --

6 MR. KIRSCHENBAUM: Not that we can see and, you know,
7 we have spoken to Ms. Jeter several times and we certainly would
8 have, you know, we would have suggested, you know, if there was
9 an alternative we would have presented that to her given, you
10 know, this is a well-designed building. It's very honorable what
11 want to do but first we would have, you know, discussed with them
12 other alternatives.

13 CHAIRPERSON HILL: Right. And you've got, and again,
14 what they are able to do is the house with the accessory dwelling
15 unit?

16 MR. KIRSCHENBAUM: Correct. They can do it either
17 detached or semi-detached.

18 CHAIRPERSON HILL: Right.

19 MS. JETER: Yes, absolutely. We did speak to Mr.
20 Kirschenbaum and he did give us all the options and we talked to
21 it extensively. It was my understanding that the Office of
22 Planning had, you know, a report to give, the ANC had a report
23 to give, DDOT gave their input and it would be at the hands of
24 the BZA to make a decision about what this was about. So that's
25 what, you know, had we known this to be something different we

1 wouldn't even proceed. Like the Office of Planning is the end
2 all be all would have said, okay, you know what? I think we have
3 our answer.

4 CHAIRPERSON HILL: The office of --

5 MS. JETER: (Indiscernible).

6 CHAIRPERSON HILL: -- I'm just trying to, the Office
7 of Planning is not the end all be all. The argument that you
8 guys made -- and Mr. Kirschenbaum, you can mute yourself, whoever
9 is not muted -- the argument that you gave, Ms. Jeter, is not
10 necessarily the argument to the prongs of the test; right? The
11 argument you gave was just how great the project is and why we
12 should give the, you know, why we should do the project. You
13 didn't really tell us. I'm just telling you, I don't see how
14 you guys are going to get there. So I'm not trying to lead you
15 down the road again; right?

16 MS. JETER: No, I appreciate that. I appreciate that.

17 CHAIRPERSON HILL: That first prong, and I'm going to
18 let Mr. Smith go because he was a zoning administrator in another
19 place --

20 MS. JETER: Okay.

21 CHAIRPERSON HILL: -- and so that first prong is a
22 problem; right? You can do something with your property; right?
23 You have to show us that you can't do something with your property
24 based upon all the extraordinary conditions and that's why
25 whatever that other thing was that you did, and I don't know the

1 case, but it sounds like you couldn't do something with the
2 property which is how you got past maybe the first prong, I don't
3 know; right?

4 Mr. Smith, you had a comment it looked like.

5 MR. SMITH: I think you took the words out of my mouth.
6 Honestly, Chairman Hill, that is essentially the situation that
7 we're up against and I'll just state this, you know. I understand
8 your argument. I understand what you're presenting. I understand
9 that. I understand the issue of displacement, especially as an
10 African American male I understand your position on that. But
11 as Chairman Hill stated, it is not the job of the Board of Zoning
12 Adjustment to legislate the aims of, directly those particular
13 aims. Those type of equity considerations are not necessarily
14 embedded within the zoning regulations. We are tasked with
15 adjudicating the regulations and the main question is not a
16 question about some of those arguments that you were making.

17 The question is that, first of all, can you construct
18 anything on the property? And the answer is yes, based off of,
19 you know, the interpretation of the zoning regulations. It's not
20 a question about four units versus eight units. Both require a
21 use variance. So I understand the concerns that are raised by
22 the Civic Association, the ANC and some of the residents there.
23 The crux of our argument is even before that question about four
24 versus eight and can you build something on the property? And
25 you know, based on what you presented, I don't see how you can

1 get to that argument given that something can be constructed on
2 the property.

3 So I think it's what Chairman Hill was alluding to.
4 I'll be honest with you. I don't know. I mean, Chairman Hill
5 did speak to keeping the case open. The crux of the case is
6 whether you have met that first prong with an apartment building,
7 I don't think you have. So I don't see necessarily the point of
8 belaboring or dragging this out that if the majority of the Board
9 has not been convinced that that you meet that first prong.

10 There may be other avenues. Mr. Miller alluded to
11 waiting for, having more of a discussion about the FLUM and the
12 potentiality of a rezoning which also has its own host of
13 questions and concerns that will have to be played out with the
14 Office of Planning and also the ANC and the Civic Associations
15 out there. But at this particular point, I don't know how we
16 can get there with this proposal (indiscernible).

17 CHAIRPERSON HILL: So, Ms. Jeter and Mr. Chavis, so
18 what I think, and Mr. Kirshenbaum, you're there, right?

19 MR. KIRSCHENBAUM: I'm here.

20 CHAIRPERSON HILL: So you can talk to him one last time
21 and see if there's anything to do. Like, the only thing I'm
22 trying to help out is they've gone down this road for as long as
23 they've gone down this road and if there's, like, you know,
24 keeping this alive so that they don't have to start again if they
25 wanted rear yard or lot occupancy, if there is like a different

1 | you know, single family with ADU on that piece of property, you
2 | know, I don't know; right?

3 | MS. JETER: (Indiscernible).

4 | MR. SMITH: Chairman Hill, can I --

5 | CHAIRPERSON HILL: Yes, go.

6 | MR. SMITH: I understand. I understand your position
7 | on that and I understand you, I understand the position of the
8 | Applicant is in if it's denied. But if there was a change it
9 | would require a whole scale change in the design, reduction in
10 | the size of the building. This thing would be completely
11 | redesigned and I think it would be in essence an entirely new
12 | case that probably needs to stand on its own as entirely the
13 | case.

14 | So if the Applicant wants to return with a different
15 | application that may not cause (phonetic a use variance, they may
16 | have that ability even if they are successful with us approving
17 | a variance at the time.

18 | MS. JETER: I'm not even sure what we're talking about
19 | right now. Honestly, it's like over my head. I guess it's zoning
20 | talk because I mean, I hear rear and I hear side and I hear
21 | building a single family. If that's by-right I don't think I
22 | even need to come before this Board, you know, to do something
23 | that's by-right.

24 | MR. CHAVIS: And we already out \$100,000 without the
25 | vote. So going back down this road again, I mean --

1 MS. JETER: Yes, we're not going to do that.

2 MR. CHAVIS: -- we're pretty much in the red now. So
3 it's going to be hard for us to recover. Like again, we're not
4 talking construction or somebody that's adding, we're building
5 300, 400 units and coming in the neighborhood. The fact that it
6 is like literally our money that's invested into it and there's
7 no way to recover the money so we can't go down this road twice.

8 MR. JETER: It's like 4,000 more dollars, you know.

9 CHAIRPERSON HILL: I know. What got me onto this Board
10 to begin with was that I had the experience of going through the
11 BZA process all by myself and so I know what everything's going
12 through, so I don't know, and this is where, again, all I'm trying
13 to say is that, you know, if you get -- you can do whatever you
14 can do by-right; right?

15 MS. JETER: Uh-huh.

16 CHAIRPERSON HILL: And so all I was trying to do, and
17 this is where my fellow Board Members might, you know, state that
18 it's unnecessary but, right, if there was like some way that,
19 like, I don't know, the Office of Planning thought that you can
20 get rear yard relief or lot occupancy relief for a single family
21 with an ADU, maybe there's something you get more out of because
22 you went through this process. I don't know. That's what I was
23 trying to say.

24 MR. CHAVIS: (Indiscernible).

25 MS. JETER: (Indiscernible).

1 CHAIRPERSON HILL: Because a special exception is a
2 special exception and once the case is dead, even if you do come
3 back completely with a new project, which it is a new project,
4 new drawings, new everything, whatever then at least I think
5 there's some timing benefit from not having to start at ground
6 zero again if the case is alive. But I don't know, Mr. Moy,
7 maybe you can help me with that.

8 Go ahead, Ms. John.

9 (Pause.

10 CHAIRPERSON HILL: You're on mute, Ms. John.

11 VICE CHAIR JOHN: Oh, sorry.

12 MR. MOY: You mentioned my name. That was rhetorical;
13 right?

14 CHAIRPERSON HILL: No, I had a comment. I had a comment
15 but Ms. John might have a different opinion.

16 VICE CHAIR JOHN: Well, no. I'm just suggesting a way
17 out because we seem to be going around in circles and you know,
18 it's a great design and it's a worthy mission, but we're stuck
19 with the regulations that we have and I'm really sorry that you
20 got this far without good advice on what you could do with this
21 property and that you spent money to come to the BZA. I'm really
22 very sorry about that and that happens sometimes when developers,
23 you know, they have good intentions but don't get the right advice
24 and you're not the only Applicant that I've seen this with since
25 I've been here and it really is very painful for me personally

1 | to not be able to move the project forward. But the regulations
2 | are the regulations and we try to use as much discretion as we
3 | can.

4 | Sometimes there really isn't a whole lot of discretion
5 | and what the Chairman has been telling you is that the exceptional
6 | condition is the hardest criteria for an Applicant to get, you
7 | know, to satisfy and the courts are very clear on what the limits
8 | of that, you know, proof is and so you've just, you know, you
9 | started off with good intentions, but you've come smack up against
10 | the regulations.

11 | Now, I think what the Chairman is saying in cases like
12 | this, the Board would continue the case to give you time to go
13 | back and assess where you are. Then if you decide you need to
14 | come back to the Board for some sort of relief, then you wouldn't
15 | have to start over. So that's the option I see where the Board
16 | could help you in this case and that's something you can consider.
17 | Otherwise the Board can probably vote. I know you don't have my
18 | vote as I was explaining, as much as I would like to say this
19 | application could go forward. Doesn't sound like you have Board
20 | Member Smith's vote either, and so it doesn't look as if this
21 | application will be approved today.

22 | So I think you have a choice to make. Do want us to
23 | continue the case and then you go back and look at your options?
24 | If you don't need to come to the Board, then you can ask to
25 | withdraw the application.

1 MR. CHAVIS: Yes, I guess. I mean, that leaves us in
2 the best possible position if there's any hope. But then we'll
3 just, you know, talk about, discuss this with Joe and see how we
4 can move forward.

5 VICE CHAIR JOHN: Yes. I mean, you know, it's a tough
6 life being a developer.

7 MS. JETER: Especially a developer trying do the right
8 thing (indiscernible).

9 VICE CHAIR JOHN: Well, you just, you know, you can do
10 the right thing, you know, but here we're stuck with an apartment
11 building --

12 MS. JETER: I understand (indiscernible).

13 VICE CHAIR JOHN: -- in an R-2 zone and this is not
14 something that, you know, that's required by legislation or
15 anything like that. So, you know, your option as the Office of
16 Planning says and, you know, they do a pretty good job of advising
17 applicants on their options, is the, you know, single family with
18 the ADU and that's what your option is and so if you decide to
19 pursue that road, you can probably -- such a large lot, you know,
20 you'd probably have to come to the Board for the ADU. I can't
21 recall if you do, and the Office of Planning is listening, but
22 in certain zones, the Board has to approve the accessory dwelling
23 unit. I don't know if the R-2 zone is one of those, but in any
24 event you can talk with the Office of Planning and confirm your
25 options.

1 MS. JETER: Uh-huh.

2 MR. CHAVIS: Okay.

3 CHAIRPERSON HILL: Mr. Kirschenbaum, do you know off
4 the top of your head?

5 MR. KIRSCHENBAUM: They can do the accessory apartment
6 as a matter-of-right. There are a number of sort of restrictions
7 on accessory apartments in terms of the property owner has to
8 live on the property. They can decide if they want to live in
9 the principal building or the accessory building. But then
10 there's certain restrictions on placements of doors and there are
11 some special exception relief available to get out of some of
12 those sort of restrictions. But if, you know, if the Applicant
13 were to just follow the requirements for an accessory apartment,
14 I mean, they theoretically could do a single family house, whether
15 it's detached or semi-detached with an accessory apartment as a
16 matter-of-right, you know. They have, you know, as part of this
17 proposal, they did request a variance relief for that side yard
18 setback. Technically speaking, they don't have like, if they
19 were to build a single family house, they could build right on
20 that side property line, and that would be considered a semi-
21 detached house.

22 So they could, you know, in theory do, you know, it's
23 you know, it's hard to design in the air like this, but, you
24 know, so, you know, until you see something on paper, it's hard
25 to fully comment, but in theory they could do, again, a house or

1 semi-detached house without any relief.

2 MR. CHAVIS: Right. So you said we can go all the way
3 up to the property line if we were doing a single family?

4 MR. KIRSCHENBAUM: Yes. So you know how you requested
5 relief to get setback by about four feet from that side property
6 line? You can build on that property line. The zoning
7 regulations were changed several years ago to reduce that
8 impediment. Prior you would have had to attach to an actual wall
9 on that same property line and that was removed by the Zoning
10 Commission to make the development of some of these lots easier
11 and not have to go to the Board for relief.

12 MR. CHAVIS: So that's like zero line; correct?

13 MR. KIRSCHENBAUM: Exactly. In other jurisdictions it
14 would be called like a zero lot line type of development.
15 Exactly.

16 MR. CHAVIS: All right.

17 MR. KIRSCHENBAUM: (Indiscernible) call it semi-
18 detached.

19 MR. CHAVIS: Okay.

20 MS. JETER: Okay. And so, yes I think we're going to
21 -- if we decide to keep it open now, we can, like, close it at
22 any time; right?

23 CHAIRPERSON HILL: Right. So this is where I want to
24 be careful as to what's happening now. I'm not offering any
25 advice. I don't know.

1 MS. JETER: Yes.

2 CHAIRPERSON HILL: I mean, I don't want you guys to
3 spend more money, throw good money at a bad whatever you want to
4 call it; right? Like, if you do have to come back again to the
5 Board of Zoning adjustment, you would probably have to go back
6 to the ANC with your new design, okay, because you would be asking
7 for special exception relief. If you were. If you're doing the
8 matter-of-right, you do the matter-of-right and that's what that
9 is, right, and Mr. Kirshenbaum can help a little bit more because
10 he's been, I guess, involved with this.

11 The apartment building thing, you guys got no case

12 MR. CHAVIS: Right.

13 CHAIRPERSON HILL: Like you're not going to get the
14 apartment building, the four, the eight, like you're not going
15 to get it at this point in time, right, and when I say at this
16 point in time, like, I don't even know if there's another way
17 but you're going to get no vote here for sure; right? And so,
18 you know, I guess you could leave it open until -- we'll leave
19 it open for two weeks.

20 Mr. Moy, when's our last hearing or I guess we could
21 leave it open until September. So we got an August recess, oh,
22 Commissioner Miller. Commissioner Miller, I don't know what he's
23 going to say but he might say something. So I'm going to leave
24 this thing open until sometime in September; right? And you guys
25 can pull it at any time --

1 MR. CHAVIS: Okay.

2 CHAIRPERSON HILL: == right? But at least then maybe
3 you're getting some benefit from having been through the process
4 already, the line and waiting, you know. But Mr. Moy, when in
5 September can we come back?

6 MR. MOY: I would suggest, Mr. Chairman, September
7 20th, because that's when Commissioner Miller is scheduled to sit
8 with the Board.

9 CHAIRPERSON HILL: So 9/20/2023. I am not ready for
10 the summer to be over yet. All right. So, okay.

11 Mr. Miller, do you have any comments?

12 ZONING COMMISSIONER MILLER: I share the frustration
13 that I think a lot of us feel.

14 CHAIRPERSON HILL: Okay. All right. Go ahead,
15 Commissioner -- Commissioner Kirshenbaum, go ahead.

16 MR. KIRSCHENBAUM: Definitely not Commissioner
17 Kirschenbaum. I just want to just clarify that under no
18 circumstance can a setback be done via special exemption. They're
19 in variance territory, because this is a conforming lot so they're
20 not eligible for 5201. So I just don't want, the Applicants have
21 been through a lot and I just want to be as up front as possible
22 with them but that would still, if they need any sort of rear
23 yard setback or side yard setback, that's still variance land
24 regardless if it's single family or an apartment house.

25 So that being said, again, as I discussed, they have a

1 fairly large lot. They can build on that side lot line and they
2 probably don't need any relief; right? I think that the Applicant
3 should talk to their architects and think about designing
4 something that's a matter-of-right and then go down to Department
5 of Buildings and try to get, you know, that project approved so
6 you know exactly what, you know, it's going to get approved
7 matter-of-right.

8 MS. JETER: Uh-huh.

9 MR. KIRSCHENBAUM: I just want to make sure that, you
10 know --

11 CHAIRPERSON HILL: Yes. I apologize. I thought --

12 MR. KIRSCHENBAUM: That's okay. You know, the
13 Applicants have really, as I think everyone acknowledges,
14 they've tried to do the right thing and I just want to make sure
15 that they're not further sort of led down a path that might not
16 be available to them.

17 MR. CHAVIS: So just for clarification, by-right we can
18 build to zero line and I don't have to discuss anything with
19 anybody else as we've been through this. We just draw up plans
20 and build on that property.

21 MR. KIRSCHENBAUM: And yes, go to the Department of
22 Buildings and get your permits for that and the caveat is the
23 Department of Buildings and Zoning Administration enforces the
24 code. They will enforce the code and tell you what exactly you
25 can do but as that is, generally speaking, that is what you can

1 do by zoning.

2 MR. CHAVIS: Thank you.

3 MR. KIRSCHENBAUM: I don't enforce the code, so I cannot
4 tell you for 100 percent.

5 CHAIRPERSON HILL: Okay. What's the situation with the
6 ADU though, again?

7 MR. KIRSCHENBAUM: They can generally do that as a
8 matter-of-right as well. There are certain restrictions for
9 accessory apartments that if an applicant doesn't want to comply
10 with those, they can get some of that relief from the Board.
11 Generally speaking, you can do an accessory apartment and if you
12 follow what the regulations say, you can assume that matte-of-
13 right.

14 CHAIRPERSON HILL: The regulations say somebody has to
15 live, either in the primary --

16 MR. KIRSCHENBAUM: Right.

17 CHAIRPERSON HILL: -- or in the ADU.

18 MR. KIRSCHENBAUM: Right. So --

19 MS. JETER: So we -- I'm sorry, go ahead.

20 MR. KIRSCHENBAUM: I was just going to say so this
21 applicant could (indiscernible) the principal dwelling and the
22 accessory apartment and they could sell it off to somebody who
23 will either live in the accessory apartment or the principal
24 building and they could rent out, you know, either the accessory
25 apartment or the main house. The property owner just has to be

1 | living somewhere on the property.

2 | CHAIRPERSON HILL: That's the caveat that sometimes
3 | people try to get with special exceptions from us. But you know,
4 | but that's, again, a whole thing, right, for a special exception,
5 | like, you know, somebody's got to live it.

6 | VICE CHAIR JOHN: But Mr. Chairman, that I don't believe
7 | can be waived.

8 | MR. SMITH: But, so we're going down, I'll be completely
9 | honest --

10 | MR. KIRSCHENBAUM: That one cannot be waived. Correct,
11 | Vice Chair John.

12 | MR. SMITH: But before we get too far into the
13 | discussion, I don't, given what Mr. Kirschenbaum stated, I
14 | understand the Applicants are trying to do the right thing. My
15 | recommendation instead of, you know, dragging it out and having
16 | this discussion on the Board amongst the members that do not
17 | regularly see these types of applications regularly, my
18 | recommendation is set up a meeting in the Department of Buildings
19 | with the zoning administrator to talk with him about certain by-
20 | right options that you can pursue. Just going that route and
21 | speaking, Chairman Hill, said it -- I was an administrator. I
22 | was in a different jurisdiction -- do that first and then come
23 | through with different scenarios of development that you can
24 | pursue that may be a matter-of-right. So I don't want to
25 | necessarily debate this, our discussion here, because we may be

1 saying something that may cause an issue when you get to the
2 zoning administrator's office. So I just wanted to put that out
3 there so we don't have this discussion back and forth right now.

4 CHAIRPERSON HILL: We don't want to harm you any more.

5 MR. SMITH: Yes, right, Exactly.

6 CHAIRPERSON HILL: And so we don't know, okay? So you
7 have to take that under consideration. We'll leave it open.

8 MR. CHAVIS: Please.

9 CHAIRPERSON HILL: You may end up pulling it in a week.

10 MS. JETER: Okay.

11 CHAIRPERSON HILL: Okay?

12 MR. CHAVIS: Yes.

13 CHAIRPERSON HILL: Commissioner Miller, are you good
14 with everything that's happened so far?

15 (Pause.)

16 CHAIRPERSON HILL: Did I lose, Commissioner Miller?

17 ZONING COMMISSIONER MILLER: I didn't hear you call my
18 name outside. There's a lot going on around here. I appreciate
19 you leaving it open to see if there is some alternative that
20 might save some time and I'm not hopeful, but I think that's
21 appropriate.

22 CHAIRPERSON HILL: Okay. Yes, right. And this is the
23 last thing I'll say because I want to put this on the record
24 again because I know legal right now is probably telling me to
25 shut up. But we are not experts in this area and we're giving

1 no advice; right? So do not, you know, make sure you know what
2 you're doing before you spend any more money.

3 MR. CHAVIS: Oh, please believe me we are. We take it,
4 I mean, after this \$100,000 ration I don't -- I don't have any
5 more money to spend. So I'm going sit in the corner and lick my
6 wounds and figure out how to recuperate it, but we'll come up
7 with something.

8 CHAIRPERSON HILL: There you go. You take the evening
9 off then, you relax.

10 MR. CHAVIS: Will do.

11 CHAIRPERSON HILL: Okay. All right. Well, I'm going
12 to close this portion of the hearing and we will or won't see
13 you on 9/20/23.

14 MR. CHAVIS: Absolutely.

15 MS. JETER: Thank you.

16 CHAIRPERSON HILL: Thank you. You all have a nice
17 evening.

18 MS. JETER: Thank you.

19 CHAIRPERSON HILL: Bye-bye.

20 VICE CHAIR JOHN: Bye.

21 CHAIRPERSON HILL: Okay. I guess we're going to take
22 a break.

23 VICE CHAIR JOHN: Yes.

24 CHAIRPERSON HILL: Okay. All right. We're going to
25 take a break and we'll be back. Want to do 15 minutes? Okay.

1 VICE CHAIR JOHN: Are we having dinner tonight?

2 CHAIRPERSON HILL: I don't know. We'll be done. We'll
3 be gone in a couple hours.

4 VICE CHAIR JOHN: Just checking to see if I could, you
5 know, if I need to call Uber Eats.

6 CHAIRPERSON HILL: You might want to think about it,
7 but I won't know more until -- I hope we're done in a couple
8 hours.

9 VICE CHAIR JOHN: Just kidding, Mr. Chairman.

10 CHAIRPERSON HILL: Okay.

11 (Whereupon, there was a brief recess.)

12 CHAIRPERSON HILL: All right. Mr. Moy, are you there?

13 MR. MOY: Yes, sir. I am here.

14 CHAIRPERSON HILL: You want to call our next case?

15 MR. MOY: Yes, with pleasure. The next case before the
16 board is application No. 20919 of William Huffman and Colleen
17 Bevins. This is a case that's a self-certified application
18 pursuant to Subtitle X § 1002 for a variance from the lot
19 occupancy requirements Subtitle E § 304.1 and pursuant to
20 Subtitle X § 901.2 for special exception under Subtitle E § 5201
21 from the rear yard requirements under Subtitle E § 306.1. The
22 property is located in the RF-1 zone at 1005 Quebec Place, N.W.,
23 Square 2902, Lot 65 and a little bit, Mr. Chairman. The Applicant
24 did attempt to submit their PowerPoint presentation which was
25 within the 24 hour block, and that's all I have for you.

1 CHAIRPERSON HILL: All right, Mr. Moy. I got -- are
2 they, they're applying for a variance though; right?

3 MR. MOY: Yes, sir. So that's what has been advertised.

4 CHAIRPERSON HILL: No, because I just I only heard you
5 read the special exception. Maybe I missed it.

6 MR. MOY: Yes, maybe I spoke too fast.

7 CHAIRPERSON HILL: Okay.

8 MR. MOY: But I did mention that. That's the variance
9 from the lot occupancy requirements.

10 CHAIRPERSON HILL: Okay.

11 MR. MOY: Their proposal is over 73 percent.

12 CHAIRPERSON HILL: Okay. All right. Can the Applicant
13 please introduce themselves for the record?

14 MS. BEVINS: Colleen Bevins, homeowner.

15 MR. HUFFMAN: And William Huffman, homeowner.

16 MS. BEVINS: For 1005 Quebec Place, N.W.

17 CHAIRPERSON HILL: Okay. Great. And you guys are
18 representing yourselves; correct?

19 MR. HUFFMAN: Correct.

20 MS. BEVINS: Yes.

21 CHAIRPERSON HILL: Okay. So. Mr. Huffman and Ms.
22 Bevins, did you see the last one that we just did?

23 MS. BEVINS: Yes.

24 CHAIRPERSON HILL: Okay. So you all are here. I don't
25 know if you're here for a similar situation, but we'll see just

1 | what is about to happen before us. You have a new slide deck?

2 | MS. BEVINS: A PowerPoint deck we submitted yesterday
3 | but it was after 9:30 so it wasn't able to be entered into the
4 | record.

5 | CHAIRPERSON HILL: That's fine. Unless my Board has
6 | any issues I'd like to see it. So if the staff could please
7 | upload it, and then, Mr. Huffman and Ms. Bevins, you can go ahead
8 | and Mr. Young will pull it up, and you can begin whenever you
9 | like.

10 | MS. BEVINS: All right. I'll start and then I'll send
11 | it over to Bill.

12 | So good afternoon and thanks again for your time and
13 | consideration. This is our application for a special exception
14 | and a variance for a back deck for our home at 1005 Quebec Place,
15 | N.W.

16 | Next slide, please. Our project is to add an eight
17 | foot four and three quarters inch deep deck that's also 13 feet
18 | and one and a half inches wide and eight and three quarter eight
19 | feet, three quarters inches high that abuts our kitchen which is
20 | located in our bump-out at the rear of our row home, that as you
21 | can see from the picture on the left, is open air and underneath.
22 | It will be below the kitchen and extending ten feet toward the
23 | alley and underneath that is, as you can also see, a sloping
24 | deck.

25 | Currently, the kitchen sink and dishwasher are on the

1 wall that is the rear of the home and the water lines and waste
2 lines run underneath the exposed kitchen floor. Two out of the
3 three years that we've lived here, our pipes of frozen and burst,
4 causing well over \$3,000 in damage to repair and I would just
5 also note our next conversation got denied, and that rear stairway
6 is our rear exit. We do have an exit below in the basement. If
7 we move that stairway, we lose our lone -- pardon the spelling
8 error, L-O-N-E, our lone parking spot, which as you know from the
9 prior hearing and probably many, that parking is at a premium
10 here and everywhere in the District. But we are also by Raymond
11 Recreation Center so parking is also at a premium here.

12 Next slide, please. The design, and we have a photo
13 of our kitchen on the interior of the home, the sink and
14 dishwasher again are along the north wall, which is at the rear,
15 and I put an arrow where we are proposing the sink and dishwasher
16 to be moved to. Moving the sink and dishwasher to the east wall
17 will leverage the warmth from the main portion of our house, as
18 well as that from the adjacent row home, and also utilize the
19 current stack location of the waste lines, which will be almost
20 directly below where our proposed location was and was likely
21 where it was before it was moved.

22 That design requires that rear door, which you can see
23 in the photo to be moved to where that current window is and
24 since we can't move the stairs, having that deck will allow us
25 to connect the door to the stairs without displacing our parking

1 space.

2 Next slide, please. Moving the door while keeping off
3 street parking did, and being an interior row home, did leave us
4 with very few design options that were cost conscious and that
5 will accommodate the current location of the stairs while
6 allowing us to move the door and retain the parking spot and we
7 as you can see here, we have our current photo of our current
8 where it is now and then on the right is our proposed design,
9 which is that back deck with the staircase being in the same
10 location, and then I'll turn it over to Bill.

11 MR. HUFFMAN: Yes. And just, and then I'm going to
12 talk about the specific, you know, variance and special exception
13 criteria. But I just wanted to point out that the burden of
14 proof that we, you know, submitted kind of goes into more detail
15 than what we have here and, you know, so this is we set this
16 slide deck up to just to kind of help everybody go through this
17 and see some of the pictures, you know, that we've attached to
18 that. But the burden of proof has a lot more pictures attached
19 to it.

20 MS. BEVINS: It was amended on Monday, July 10th.

21 MR. HUFFMAN: So (indiscernible).

22 MS. BEVINS: And then I guess we'll go to the next
23 slide, please.

24 MR. HUFFMAN: And so first I'll talk about the special
25 exception and my understanding is, well first, we did have the

1 ANC approve the project as a whole, the Office of Planning. It
2 just -- they approved the special exception. But they have a
3 problem with the variance. So that's kind of why I left that
4 last. We have had some discussions with them and that's why we
5 submitted the updated burden of proof.

6 So just as far as the special exception, we're looking
7 for a special exception from Subtitle E § 306.1 and that's needed
8 because technically there is a 20 foot standard requirement for
9 a setback in RF-1 zone. However, because where our house was
10 built before 1958, it's actually, we were kind of I suppose
11 grandfathered in under section, I think it's 205.3 that only
12 requires us to have a ten foot back setback.

13 However, with this deck, the deck would extend out
14 eight and half feet essentially, a little less than that from the
15 house, and that would put us at about 19 inches of setback. So
16 a little bit less than two feet on that.

17 MS. BEVINS: Next slide, please.

18 MR. HUFFMAN: Next slide. You could actually go to the
19 next slide too. Thanks.

20 So under Subtitle X § 901.2 there's are the, you know,
21 the three requirements being that the special exception will be
22 in harmony with the general purpose and intent of the zoning
23 regulations and maps. It will not tend to adversely affect the
24 use of neighboring property in accordance with the zoning
25 regulation and maps, and it will meet such special conditions as

1 may be satisfied by the title.

2 As far as the first criteria, the property is the, and
3 I guess that's referred to just under Subtitle E 203.1, the
4 purpose of an RF-1 zone is to provide for areas predominantly
5 developed with row houses on small lots, within which no more
6 than two dwelling units are permitted. Our property is a single
7 dwelling unit and adding a deck we're not changing that. So it
8 will remain a single dwelling unit. The deck will be in harmony
9 with the zoning regulations as they are for the reason that the
10 zoning regulations, as they're now enforced in our area, because
11 along the north side which is basically in the back of our house,
12 is an alley and, you know, along the entire side of our street
13 there is multiple houses have very similar decks or other
14 structures that really go all the way to their property line.
15 We're not going up quite as far and so in that sense, it's really
16 going to be, you know, very consistent with the other, with our
17 neighbors.

18 The neighbors across the alley, their properties are a
19 little different. They're built a little lower to the ground
20 where our property has, you know, a deck that's on the second
21 floor essentially. So you need steps from the alleyway to get
22 up to the second floor and that's why a lot of the houses already
23 have second floor decks. So again, I think that just based on
24 the way the application of the zoning laws have been enforced in
25 our area we believe that it our deck would be in harmony with

1 that.

2 We don't believe that the deck would adversely affect
3 the use of neighboring properties. If this is a situation where
4 we get very little sun, if any, you know, essentially no direct
5 sun at the back. It all comes, because it's on the north side,
6 it's always when the sun comes up, it's all shaded by the building
7 and, you know, as the sun goes down it's shaded by the buildings
8 further up the road. So in this sense, we won't cause any
9 distraction to or impede upon the, you know, sunlight or anything
10 going to the other parties. In fact, you know, just underneath
11 the deck, you know, all the houses down our road have bump-outs
12 similar so the windows that are at the lower level already get
13 no sunlight.

14 MS. BEVINS: And both of our neighbors on either side
15 have submitted letters in support of our deck.

16 MR. HUFFMAN: And just as far as air goes, it will be
17 an open air deck. We're not planning to enclose it or anything
18 like that so again, that's another factor that I don't know think
19 our neighbors, you know, will be adversely affected.

20 As far as the third condition that will meet special
21 conditions as specified in the title, I think that that would be
22 referring to Subtitle E § 5201.4 in particular and to talk about
23 those --

24 MS. BEVINS: And next slide, please.

25 MR. HUFFMAN: Oh, and next slide, please. Yes. Thank

1 you. For criteria under 5201.4 that light and air available to
2 neighboring properties will not be unduly affected. The privacy
3 and use and enjoyment of neighboring properties shall not be
4 unduly compromised. The proposed addition or accessory structure
5 essentially will not substantially visually intrude upon the
6 character, scale, pattern of houses along the street or alley
7 frontage and the fourth criteria is basically that we provide
8 photographs or other evidence to support our position and, you
9 know, just as far as the light, I've already kind of addressed
10 the light and air adjacent to the properties, and we don't think
11 that those will be affected again because we don't get any, you
12 know, direct sunlight back there as it is and the duck will be
13 open air adjacent, and as far as like privacy will not be unduly
14 compromised.

15 The adjacent properties have similar lot size to ours
16 that invariably have concrete slabs on there, you know, just for
17 essentially parking and that's essentially that's all that's back
18 there down our whole alley row and it's really, it can't be used
19 for anything other than that. Some of have already had gone and
20 built structures. I don't know what they store in there, but
21 you know, just basically a storage structures of some type.

22 But the bottom line is that, you know, that ground
23 level is really not utilized by anybody, you know, and that's
24 why, again, why I believe that they felt the, you know, many of
25 them have their second story decks already to support their uses

1 of that back area and we don't think it's going to visually
2 intrude upon the character. Again, I think we go to the fact
3 that there's already, you know, a majority or at least, you know,
4 a good portion of our neighbors have those decks and the second
5 aspect is the, so that the parties along, adjacent neighbors
6 along our side have similar kind of decks and structures and
7 across the alley there's, you'll see from the picture next to,
8 you know, that there's essentially a ten foot high garage door
9 that's set back against us. So you know, they really can't see
10 us and we can't see them and the even the neighbors next door
11 have garages and things that would, you know, prevent, you know,
12 basically any contact or interaction there. So I think there's,
13 you know, very little to no intrusion upon their privacy or that
14 would visually intrude upon the back character of the alley.

15 As far as, again, and I guess as far as, so part D of
16 that § 5201.4, our burden of proof includes a lot more pictures
17 showing the back decks and structures on the alley and so on and
18 I think that supports our position there as well as the garage
19 bays across the street from our alley.

20 MS. BEVINS: And that's our commentary or defense on
21 our special exception request. I don't know if you would like
22 to stop for questions here related to the special exception or
23 the project or if you'd like us to continue on to the area
24 variance request?

25 CHAIRPERSON HILL: No, I appreciate it. I don't know

1 | if you guys, does the Board have any questions about the special
2 | exceptions? Okay. You guys can go ahead and continue on with
3 | your area variance argument.

4 | MS. BEVINS: Okay.

5 | MR. HUFFMAN: Can we have the next slide, please? Thank
6 | you.

7 | Yes. So the lot area, lot occupancy variance is needed
8 | and typically, in this RF-1 zone it's a 60 percent requirement
9 | for lot occupancy, 70 percent would be permitted by special
10 | exception. Technically, according to the Department of Buildings
11 | we're at 71 right now, and this would bring us up to 83 percent.
12 | So it is in excess of what is required and what technically would
13 | be allowed by special exception. You know, however, I think you
14 | have to keep in mind that the standard lot size in this RF-1 zone
15 | is 1,800 square feet, where we're only at 1,097.1. So we're
16 | about 61 percent of the typical lot size in the area. So we are
17 | a small lot.

18 | We can move on to the next slide.

19 | MS. BEVINS: Next slide. Yes. Thank you.

20 | MR. HUFFMAN: So basically, in looking at the
21 | requirements for a variance, according to Subtitle X, § 1001,
22 | basically for a variance we're looking at the strict application
23 | of the zoning regulations would result in a peculiar and
24 | exceptional practical, difficult, practical difficulties to the
25 | owner of the property and the courts have looked at that, and

1 | you probably all know, but there's three essential requirements
2 | that they look at for that. One, that there is an extraordinary
3 | or exceptional condition affecting the property. Two, practical
4 | difficulties will occur if the zoning regulations are strictly
5 | enforced, and three, the requested relief can be granted without
6 | substantial detriment to the public good and without
7 | substantially impairing the intent, purpose and integrity of the
8 | zone plan.

9 | Of course, you know, in analyzing that, we'll look at
10 | and consider, you know, that the particular lot basically is
11 | affected by those extraordinary or exceptional condition and in
12 | doing so they'll consider a substantial, or I'm sorry, a
13 | confluence of factors. In other words, that it doesn't have to
14 | be one factor it can be multiple factors that working together
15 | create that exceptional condition.

16 | In looking at that particular criteria for
17 | extraordinary exceptional condition, that may be satisfied,
18 | according to courts, that may be satisfied by among other things,
19 | the irregular shape of the lot, a characteristic of the land, a
20 | condition inherent in the structure built on the land or prior
21 | zoning actions.

22 | MS. BEVINS: Next slide, please.

23 | MR. HUFFMAN: So to kind of analyze that a little bit
24 | more closely and to explain why our property is unique or
25 | exceptional or extraordinary, the subject property, as we talked

1 about, is much shorter than the typical lots. Again, this is
2 we're an 18 foot wide lot, normally you have 1,800 square feet
3 of lot space. We're only at 1,097.1 square feet. So that's one
4 factor.

5 The second factor is that the rear entrance to our
6 building is the second floor. So we, you know, unlike the
7 neighbors across the street, we need a full set of stairs to go
8 up to that second story in order to access our main entrance in
9 the back. So that being a second factor.

10 Yes. I guess another contributing factor there is that
11 our building is the ground actually slopes down towards the house
12 from the alleyway. It's about a 20 degree drop there and so
13 that's, you know, in other words, we don't have a flat space so
14 it can't be used for a living area because, you know, because
15 it's on a slope. Also due to that slope and, you know,
16 significantly we get a lot of water accumulation. We've attached,
17 it's shown in some of those pictures at our burden of proof, just
18 the accumulation of water there. So the bottom line is that,
19 you know, as things are the only real use that that back lot can
20 have is just to park a car. So I mean, there's a lot of space
21 there that's wasted because we can't use it for living space
22 because of the slope and the water accumulation.

23 These cases are very similar to several, you know,
24 several other fairly recent BZA cases where the variance has been
25 granted in the past. In case No. 19032, I think that was back

1 in 2019, that was a small lot with nearly identical row houses
2 adjacent to it. BZA case 20663 was a small lot with a rear
3 entrance on the second story, very similar to ours and that was
4 with, you know, very similar row houses next to it. The third
5 case BZA 20227, again another small with a second story rear
6 entrance that needed, you know, needed the steps to get up and
7 that was again with a very small lot with similar row houses
8 adjacent to it.

9 MS. BEVINS: Next slide, please.

10 MR. HUFFMAN: One of the reasons that this, you know,
11 I think the primary reason that this whole came out and the reason
12 that we're doing this at this time is, as was mentioned earlier,
13 the last two, you know, the last two years we've had two pipes
14 burst. You know, basically the first time through I think it
15 was, you know, 20 \$2,500 worth of damage. Luckily, we caught it
16 right away and, you know, but we had to go in and get it fixed
17 and, you know, but shortly after that, you know, just due the
18 unreliable nature of the, you know, the way the plumbing is in
19 that back bump-out, we started planning for that project and then
20 last winter, again the same thing happened, you know, same, you
21 know, different locations, you know, of the pipes but they broke
22 again and, you know, again, part of it luckily was covered under
23 warranty with that one. But, again, it was still, you know,
24 another almost \$1,000 because I actually did the repairs to re-
25 insulate it afterwards because we knew the first time it didn't

1 work and then we say that the first time we had it done, it was
2 done by a plumbing company so we thought everything would at
3 least be good for a few years and, but that wasn't the case.

4 So just as far as going through this, we consider
5 multiple different layouts for our kitchen and attached to our
6 burden of proof we have a statement from our architect, it's
7 Exhibit G to that burden of proof, which kind of talks a little
8 bit more in detail about the alternatives that we considered.
9 But the first one was to leave the sink in the current location
10 and but, you know, and I mean, I guess let me take a little step
11 back. As part of this whole project, we're redoing our kitchen
12 and you know, so if that wasn't clear and you know, we've had,
13 you know, it's been difficult to get contractor pricing on this
14 so far just because we don't know about this variance issue and,
15 you know, many contractors didn't want to put the time. We've
16 had, the one we've had they came back at 93,000, not including
17 appliances and that didn't also include some factors like, you
18 know, that we were going to need like heated floors back there
19 and there was some other work that, you know, that would have
20 been included in that.

21 So bottom line is we would be way over, you know, or
22 at least a good ways over \$100,000 on this project. So to keep
23 that sink in the location that it is and just try to, you know,
24 re-insulate, you know, every few years or something like that,
25 it just wasn't a reliable option with that.

1 So the second option that we were considering was to
2 keep the door in the location that it is and move the sink to
3 the east wall. The east wall is the, I guess, the best wall
4 for this to put on for multiple reasons because the plumbing
5 stack is right below it, you know, so and that's where our current
6 plans that we've included a picture of that in our burden of
7 proof. But the current plan, that's where we want to put the
8 new sink and dishwasher if we could. But the problem with putting
9 that in that location and keeping the door there is that, you
10 know, basically with a little bit of counter space, you won't be
11 able to open the door.

12 So that's why that really wasn't, it just wasn't an
13 option that would work and, you know, also you'd be kind of, you
14 know, just pigeon holed in the corner with, you know, just, you
15 know, basically very little counter space and you know, not know
16 where to keep your dishes or things right above it. So just as
17 far as a functional kitchen, it just really wasn't a practical
18 layout for that.

19 The second option would have been to, I guess, actually
20 third option would have been to move it to the west wall, which
21 is the wall opposite the, you know, the proposed location and
22 with that one the problem is, is again we have the stack, you
23 know, where the waste lines go are on the east side so there
24 would be a much more expense to run those over to the west side,
25 along with running the water pipes over the west side and the

1 | problem there again is that basically with that, you'd have to
2 | run the water lines outside and the pipes outside, therefore --

3 | MS. BEVINS: So we're back to where we started, only
4 | moving it to the different side with the exposure of the pipes
5 | to, you know, in a way that is not able to be properly insulated,
6 | according to our architect and both the plumbers that came out
7 | to repair our broken pipes.

8 | MR. SMITH: Chairman Hill?

9 | CHAIRPERSON HILL: Yes.

10 | MR. SMITH: While we're on the topic of redesigning the
11 | kitchen and that seems to be your position on the extraordinary
12 | exceptional conditions, I'm still failing to comprehend how
13 | you're redesigning the kitchen affects a rear deck.

14 | MS. BEVINS: Do you want to --

15 | MR. HUFFMAN: Yes, absolutely. And let me take a step
16 | back. The door that we have is, it's on the east side, and that's
17 | where our stairs go down there. If we were to move the stairway,
18 | you know, to a place where we could have our preferred location
19 | of the sink, the best optimal location of the sink, that stairway
20 | would need to move and it would be right down in the middle of
21 | our parking space. So in other words, we would lose our parking
22 | space if we did that.

23 | MR. SMITH: So I have another question. Do you need
24 | to have a, because there are several properties in your square
25 | that also don't necessarily have doors with stairs leading to the

1 ground floor. Do you need that for any purpose?

2 MR. HUFFMAN: The stairway?

3 MS. BEVINS: This is the main entrance to our home and
4 my understanding from everyone on our side that has their main
5 entrance on the second floor, a whole story above the ground,
6 they all have stairs that go up to that door and the ones that
7 have not ever moved those stairs and also removed their parking
8 spot. But in our neighborhood, being so close to Raymond Red
9 and having a new apartment complex on the corner of 10th and
10 Spring, removing parking spots now is going to create an
11 additional parking problem for our area. So we are trying not
12 to do that.

13 MR. HUFFMAN: (Indiscernible).

14 MR. SMITH: Hold on. This is not a question about
15 removing a parking space, it's a question about needing and
16 wanting access. Do you already have access to the rear of the
17 property without the door from the second floor of the house? Do
18 you have a door from the basement?

19 MS. BEVINS: Yes, we do.

20 MR. HUFFMAN: From the basement.

21 MR. SMITH: (Indiscernible).

22 MR. HUFFMAN: Technically we do have a door out that
23 way. I can tell you it's a very narrow stairway going down the
24 stairs there and trying to bring things up and down it's, you
25 know, it's, you know, it's not a good situation.

1 MS. BEVINS: They're not great stairs.

2 MR. HUFFMAN: So I mean, that's a pain sometimes.

3 MS. BEVINS: Yes.

4 MR. HUFFMAN: It's not a very practical situation.
5 Obviously with our kitchen, you know, right there at the back of
6 the property, I mean, we use that all the time going down those
7 stairs because we're taking out the trash. We're, you know, just
8 and our car is right there, yes, you know, and that's, you know,
9 it's definitely the, you know, best optimal layout for this house.
10 That's why I think a lot of the houses, you know, if you can have
11 it --

12 MS. BEVINS: They need bigger stairs.

13 MR. HUFFMAN: Yes, so.

14 MR. SMITH: Okay. Continuing forward, but I'm still
15 failing to see the connection between having a large, a very
16 large deck and also regardless of where your door is located, the
17 size of the deck in conjunction with you moving the entrance
18 relief for a kitchen renovation, I'm failing to see the connection
19 here for the requested grant.

20 MS. BEVINS: So the size of the deck is not the maximum
21 like deck. It is what is required to keep one of the supporting
22 beams also away from the parking spot. But obviously, you know,
23 in an appropriate place to be able to fully support the deck to
24 keep the stairs in the current existing location. Does that help
25 understanding why we have the deck, the shape and the size that

1 we do?

2 MR. SMITH: I'm still failing to see the need for a
3 deck, just because you've moving the entrance (phonetic) to the
4 door. So continue, but I did want to speak to that because a
5 lot of your discussion, is your justification for a hardship is
6 based off of a redesign of the kitchen and moving the door when
7 I don't think that necessarily, one doesn't necessarily negate
8 the other. You can move the door. It's a question, if you're
9 requesting access, but you do currently still have access to the
10 rear of your property. It just may not be in the form of a deck
11 and an open stairs leading from the second floor of your home.

12 MR. HUFFMAN: Yes. You know, just from a safety
13 standpoint too I guess having a door on the main floor is, I
14 think that's very important. I mean, I know there are houses,
15 you know, in D.C. that don't have that, but to me that's, I think
16 that's a misstep if people don't have access from their main
17 story, you know, or main floor to the outside.

18 MS. BEVINS: For fire and all. But, okay, we'll
19 continue.

20 MR. HUFFMAN: Okay.

21 MS. BEVINS: Could you go to the next slide?

22 MR. HUFFMAN: Yes, just one other location that we
23 considered was putting it on the south wall which would be the,
24 you know, the wall opposite its current location. With that
25 you'd have to, you know, the plumbing and everything would have

1 to essentially go through what is, you know, about an eight foot
2 brick wall and, you know, it just, you know, that wasn't, you
3 know, a recommendation that our architect, you know, wanted to
4 do and it certainly would have cost a lot more to do that.

5 So those are the, I guess, the different location or
6 the different configurations of the kitchen that we discussed and
7 then, you know, just from a general standpoint, I mean, the fact
8 that, you know, a lot of the same neighbors, you know, have
9 similar decks or, you know, other structures already in their
10 backyards, you know, it would almost be, you know, it's almost
11 like an anomaly if we don't or aren't able to get one. You know,
12 just it seems consistent with the neighborhood the way things are
13 and, you know, in that sense, I think that makes our property
14 different from theirs in that sense.

15 MS. BEVINS: Next slide, please.

16 MR. HUFFMAN: Next slide. As far as practical
17 difficulties, you know, again, the subject property is smaller
18 than the other properties. Because our main floor is at the
19 second floor, you know, there's a separate full story above ground
20 level. You know, we're, you know, that makes it more difficult,
21 you know, in that the slope of the rear and the water
22 accumulation, we're not able to, you know, fully utilize the
23 ground level that we have there. So you know, as part of this,
24 I think it's, you know, it's a practical difficulty if we can't
25 get the deck, you know, because, again, if we can't get it then,

1 | you know, we're going to have to have a configuration of a kitchen
2 | that's really not workable and that's, you know, just it's a
3 | difficulty that I don't think that everybody else in this area
4 | is sharing and so we're trying to avoid that.

5 | MS. BEVINS: Next slide, please.

6 | MR. HUFFMAN: The relief can be requested without
7 | substantial detriment to the public and without substantially
8 | harming the intent, purpose and integrity of the zone plan.
9 | There's been no objections from the community, at least, other
10 | than obviously the Office of Planning does have a problem with
11 | the, you know, with the variance. But we think with our
12 | discussions that we've had and the fact that, you know, with the
13 | practical difficulties of our pipes freezing and, you know, and
14 | the fact that we, you know, we've got that sloping back, that
15 | grade of the property, I think that that may, you know, help them
16 | change their mind. At least we're hoping that that will do so.

17 | The ANC certainly has approved it, approved the
18 | project, as have our two adjacent neighbors, who are the ones
19 | that if there were going to be any parties affected it would be
20 | those two and they both granted, you know, given their letters
21 | of support. You know, keeping the parking space is an important
22 | factor to us. I mean, not only is that, you know, needed for
23 | our current use, but obviously with over time, it looks like
24 | everything's going to electric charging and, you know, part of
25 | our project is, you know, we can at least run the lines back

1 | there so our next car will have an electric charger back there.

2 | The, you know, I don't think this is going to be a
3 | detriment to anyone in the area. Again, we think it's consistent
4 | with the way the houses are now constructed, with the way the
5 | zoning is being enforced in our area, because, you know, similar
6 | houses have, you know, similar decks built. Yes. And I think
7 | just, you know, the fact that we've got very limited outdoor
8 | space, this would give us, you know, some living space.

9 | Again, I just, you know, point out again that this is
10 | very similar to BZA cases Nos. 19032, 20663 and 20227, all of
11 | which were, you know, granted in very similar situations, and
12 | that's our presentation.

13 | CHAIRPERSON HILL: Okay. Thank you. Does the Board
14 | have any questions of the Applicant at this time? Ms. John.
15 | You're on mute, Ms. John, maybe.

16 | VICE CHAIR JOHN: Oh.

17 | CHAIRPERSON HILL: There you go.

18 | VICE CHAIR JOHN: So I was looking at this case last
19 | night and for the life of me I still can't understand why you
20 | would need to build a deck to solve the bursting pipes issue
21 | because this is a development, it seems to me, and so if you're
22 | having bursting pipes, I think everybody else should be having
23 | bursting pipes if they're all constructed basically the same way.

24 | MS. BEVINS: They are.

25 | MR. HUFFMAN: Yes (indiscernible).

1 VICE CHAIR JOHN: Okay. So then there's there is a
2 problem with how the house was constructed. So I don't see how
3 building a deck solves that issue.

4 MR. HUFFMAN: And I think that the difference is, is
5 most of the properties here don't have their kitchens on the back
6 bump-out like we do. So with those they don't have their pipes
7 running underneath, we bought this house that's the way it was.
8 It's been like that for, you know, some time. We don't know
9 exactly when it was done but that's the way we bought the house
10 and so that's the difference is that a lot of them don't have
11 that, and what we're proposing and the reason that configuring
12 the kitchen a little bit different is because when we moved that,
13 if we're allowed to move that sink to the east wall that's
14 directly below where that the plumbing pipes are currently so
15 that the plumbing would be, you know, essentially right down next
16 to the main portion of our house, the part that has the building
17 so it will be essentially protected by the work of the building
18 and the adjacent neighbors.

19 VICE CHAIR JOHN: But it has nothing to do with the
20 deck.

21 MS. BEVINS: Well, that's where moving the --

22 VICE CHAIR JOHN: That's a different matter. That's a
23 different matter.

24 MS. BEVINS: (Indiscernible).

25 VICE CHAIR JOHN: That's a different matter. You're

1 saying that you want to build a deck to solve the problem of the
2 pipes. The two aren't related.

3 MR. HUFFMAN: Yes, they are.

4 VICE CHAIR JOHN: Zoning, in terms of zoning the two
5 (indiscernible).

6 MR. HUFFMAN: In terms of zoning. Yes, and I think
7 that -- there's a reason we say that because one of the criteria
8 to look at according to Achezawa (phonetic) case is the structure,
9 the current layout of the building. In fact it's a, I could go
10 through that again (indiscernible), the --

11 VICE CHAIR JOHN: We're familiar with that case.

12 MR. HUFFMAN: Yes (indiscernible).

13 VICE CHAIR JOHN: Anyway, I'll let you finish your
14 presentation. I think I got the answer to my question.
15 (Indiscernible) it's late and, you know, I've been listening to
16 you for the last half an hour. I still don't understand the
17 argument you're making in terms of exceptional condition that
18 prevents you from complying with the regulations.

19 MR. HUFFMAN: Yes. Well, I think the exceptional
20 condition is that the current layout of our kitchen has those
21 pipes, you know, going back to the back wall of the house and
22 that's the area that freezes. What we're doing by moving the
23 sink, you know, over would be too so that that water won't be on
24 the outside anymore. It'll be on our inside right up against
25 our house. So that will prevent the pipes from freezing. But

1 | in order to do that we have to, you know, we would need to move
2 | our stairway if we want to keep that door in our kitchen. We
3 | can't have the sink along the east side and that door in that
4 | same location. So, and if we were to move, you know, so if we
5 | move the door to essentially the center of our kitchen, there
6 | won't be a walk-out there. We would have, you know, we'd fall
7 | down to our second level. So that's why we need the deck to
8 | provide the access to the stairway to go down.

9 | VICE CHAIR JOHN: Do you have stairs there now?

10 | MR. HUFFMAN: We have stairs and that's where --

11 | VICE CHAIR JOHN: And you could move the stairs and not
12 | put in a deck.

13 | MR. HUFFMAN: No. If we move the stairs, the stairs
14 | would be right in the middle of our driveway. So we would be
15 | -- we would have to get rid of our driveway at that point.

16 | VICE CHAIR JOHN: So the issue is to solve the water
17 | problem which you say, I'm not sure I can buy that, I still can't
18 | buy that, and there's no architect here to explain to me why
19 | that's the only solution. So your testimony is that you want to
20 | keep your parking and to keep the parking, you have to move the
21 | pipes to the back wall. So I understand that.

22 | MR. HUFFMAN: Right. So, yes. We wouldn't be moving
23 | the pipes to the back wall, we'd be moving them from the back
24 | wall up or closer to --

25 | VICE CHAIR JOHN: Yes. Closer to the house.

1 MR. HUFFMAN: Right.

2 VICE CHAIR JOHN: So yes. that's helpful to me to
3 understand what you're saying.

4 MR. HUFFMAN: Okay. Thank you. Yes. And that's
5 basically it. The idea is that, you know, we can't move our,
6 you know, we can't configure the kitchen. That's why we went
7 through those four different configurations that we were talking
8 about and if you're looking for some architect testimony, we do
9 have Exhibit D, I'm sorry, Exhibit G to our burden of proof is
10 an architectural statement that kind of goes through those same
11 different options of the layouts and why each of them wouldn't
12 work except for the, you know, the proposed layout that we're
13 trying to do by moving the kitchen, the sink and dishwasher up
14 to the east wall closer to the house.

15 But again, that would, if we did that, there wouldn't
16 be space for the door where it is now, which means we have to
17 move the door to the center of the kitchen. But if we have a
18 stairway there, it'll be right in the middle of our parking lot.
19 But the deck would allow us, if we keep the stairway where it is
20 now, the deck would allow us to get there and that's the reason
21 that we're doing that.

22 VICE CHAIR JOHN: And did you consider having a narrower
23 deck, just a little landing to walk across --

24 MR. HUFFMAN: Yes.

25 VICE CHAIR JOHN: -- down?

1 MR. HUFFMAN: We did and it's, you know, let's put it
2 this way, if that was our only option, we would probably take
3 it. But the reality is, is if you have a shorter deck and so
4 it's, you know, currently it's about an eight foot, you know,
5 going out from the back of our house about eight feet, let's say
6 you shorten that to four feet. The problem there is that you
7 have a post on the west side of that thing that you just be
8 bumping your car door every time. So it would be very difficult
9 to get the door in. So if we were to go out just that extra four
10 feet that, you know, at least you're able to get in and out of
11 your car door, you know. But if that was an option, if it was
12 agreeable that we could only do it four feet, we, you know, that
13 would work for us. It's just not as optimal because of the
14 driveway situation and trying to open the doors.

15 VICE CHAIR JOHN: Okay. Thank you.

16 CHAIRPERSON HILL: Okay. Anyone else? No? Okay.
17 I'LL go to the Office of Planning.

18 MR. JESICK: Thank you, Mr. Chairman, and Members of
19 the Board. My name is Matt Jesick, and I'll be presenting OP's
20 testimony in this case, and I'll just say that this case generated
21 a lot of discussion within the Office of Planning, including with
22 our OP legal counsel and we tried to be frank.

23 We tried to find a way to have this case meet the three
24 part variance test. In the end, we concluded that we could not
25 recommend approval. We didn't find that this property had any

1 | circumstances that were exceptional relative to its adjacent
2 | neighbors. So therefore, we had to recommend denial of the
3 | variance.

4 | But I will say that the Applicant has submitted a
5 | significant amount of new information in the past couple of days
6 | and here at the hearing today, which we have not had a chance to
7 | fully analyze. We've read through it and it is a significant
8 | amount of information, whether that information would be enough
9 | to change our analysis to the point where we could recommend
10 | approval I can't say at this time. But just to be clear to the
11 | Board, our recommendation does not include the most recent
12 | information in the record. But as of right now, we are
13 | recommending denial of that variance.

14 | Should the Board consider approval of the variance, we
15 | would have no problem with the special exception. The deck itself
16 | should have no impacts to light or air, certainly no impacts to
17 | the character of the alley where there are a number of these
18 | decks already on similar properties. So I think the special
19 | exception is very straightforward.

20 | But again, unfortunately we cannot recommend approval
21 | of the variance at this time. Thank you.

22 | CHAIRPERSON HILL: Okay. Does anybody have any
23 | questions of the Office of Planning?

24 | Commissioner Miller.

25 | ZONING COMMISSIONER MILLER: Thank you, Mr. Chairman,

1 and thank you, Mr. Jesick, for your report.

2 I agree with you that, and I guess I might, well I
3 agree with you that there is significant new information that's
4 been presented today that I hadn't read in the record,
5 particularly at slides 12 and 13, about the location of the pipes
6 and the safety issues with where the door is currently located
7 to that accesses the backyard, the back area. So I think we need
8 your evaluation of that new information. If, well, it'd be
9 helpful to have your evaluation, a maybe more thoughtful
10 evaluation of that new information.

11 But that information did give me comfort enough to see
12 that they are meeting the first prong of the test of extraordinary
13 and exceptional conditions that would allow for this relief to
14 go forward.

15 Apart from that, though, I have a policy question for
16 the Office of Planning. This is the kind of case that drives me
17 and other District homeowners crazy. That to build an open air
18 deck on your own, on your house, when you want to just expand
19 -- I happen to be in the middle of a deck expansion project which
20 has disrupted my hearing of today's proceedings from time to
21 time. It's a matter-of-right, although it had to go through
22 historic preservation because we're in historic district.
23 Anyways, there's enough aggravation with living in an urban
24 environment, living with the regulations that we all live with
25 within the City that are designed to protect the public.

1 But really, Mr. Jesick, I really think the Office of
2 Planning needs to look at the issue of open air decks on homes,
3 on existing homes, and find a way to make it easier for homeowners
4 to enjoy the open space in their backyard that others are enjoying
5 along the same block in the neighborhood. It either should be
6 an open air deck, either shouldn't count towards lot occupancy
7 or better yet, or a more reasonable maybe position would be it
8 should be a special exception if it goes beyond 70 percent and
9 then we can evaluate adverse impacts on the neighborhood on the
10 zone of a simple open air deck expansion or in this case, a
11 creation, I guess. They don't have one at all.

12 So I would hope that the Office of, and here and when
13 you, if you look at adverse impacts on light and air, they have
14 the adjacent property owners' support in this case. They have
15 the ANC's unanimous support, no concerns.

16 You know, I struggled to find an alternative way that
17 when required years of comprehensive plan land use map amendments
18 and zoning map amendments and in the previous case where we were
19 talking about a use variance. A use variance is a much higher
20 threshold than an area variance. This is an area variance and
21 it's an area variance for an open air, a simple open air deck on
22 a simple townhouse in a neighborhood that has this everywhere
23 (indiscernible) the exceptional condition. But I think they did
24 present information today that both on the safety issue, you want
25 access out of your main floor to the backyard, to the back, in

1 addition to whatever access they might have from the basement or
2 whatever it's called, whether it's basement or cellar or
3 whatever. But you need that for safety reasons and I think the
4 whole pipe bursting thing, I think it does present a confluence
5 of factors that it can meet the prong and unlike the previous
6 case where I had concerns, as we all did, with the first prong.
7 There were concerns with the third prong, the zoning regulations.
8 That was, you know, an R-2 zone which is low density. Here
9 there's not concern. There's not a real concern with the
10 detriment to the public good or a detriment to the integrity of
11 the zoning regulations being the second and third prongs.

12 So I really would like the Office of Planning, apart
13 from this case, to look at open air decks on homes and make it
14 less onerous on homeowners to create that open space in a
15 congested urban environment in a smaller than usual lot area
16 where you need that open space. Anyway, I'm not sure if I -- is
17 the Office of Planning looking at that? Can you look at that
18 issue generally about open air decks? An area variance doesn't
19 require the higher threshold for a use variance that we had in
20 the previous case where you had almost prove that you couldn't
21 do anything other than what was being proposed. Here we're
22 talking about an area variance. It's back to the still high,
23 but not quite as high a threshold of a use variance. It's an
24 area variance because it's at 83 percent lot occupancy which
25 apparently most of the neighborhood has in this case it seems.

1 Can the Office of Planning look at this issue if you're
2 not already looking at this issue so that we don't make it so
3 difficult for homeowners to put a deck on their backyard so they
4 can enjoy open space in their neighborhood that everybody else
5 is enjoying.

6 MR. JESICK: Yes. Thank you, Commissioner Miller.

7 Yes. I personally agree with everything you just said
8 and I can pass along to Ms. Steingasser that as a request of the
9 Zoning Commission, that we take a look at those deck regulations
10 and see if we can create a mechanism by which homeowners can more
11 easily add decks to the rear of their property, and I noted your
12 suggestion of perhaps a special exception process as being
13 appropriate. So we can definitely take a look at that.

14 ZONING COMMISSIONER MILLER: Okay. I appreciate that
15 response. Thank you very much.

16 CHAIRPERSON HILL: One moment. Let me get through the
17 Board first. Ms. John, did you have a question first?

18 VICE CHAIR JOHN: Yes. A question for Mr. Jesick. So
19 if we were to grant this area variance to 83 percent for the
20 deck, could the homeowner then come back at another time to build
21 an addition of the size of the deck because they've already
22 expended the lot occupancy, and if you don't know the answer,
23 that's fine.

24 MR. JESICK: I don't believe they could because the
25 Board would be approving the plans for the deck. So, you know,

1 | if they want to propose in addition, in the future, they could
2 | propose that. But they would need to come back to the Board with
3 | those updated plans.

4 | VICE CHAIR JOHN: Right. It's something I'd like to
5 | consider because I'm not sure then if they have, they would have
6 | lot occupancy approved by a variance. So seems to me they could
7 | simply build within that area which has already been granted.
8 | But I, forget the question. I just wondered.

9 | MR. SMITH: Ms. John?

10 | VICE CHAIR JOHN: Go ahead.

11 | MR. SMITH: I agree with you. I think it's a relevant
12 | question because if we do grant it up to the 83 percent, unless
13 | there's some kind of language that explicitly ties to it being
14 | an open deck, then I think the lot occupancy is more so, not
15 | necessarily the deck and above, we're granting the variance for
16 | the area underneath the deck; am I right? So in theory, someone
17 | could come in and enclose it and to be honest with you, I think
18 | that's probably some of the concerns or I'll state one of the
19 | concerns that may occur because, you know, change in regulation,
20 | does have a positive and negative effect in some ways. There
21 | are situations where people build open decks that they enclose
22 | with screens, or in this particular case, for example, where
23 | people have open decks and they put six foot tall fences on the
24 | deck for privacy purposes that could impact light and air to
25 | adjacent properties.

1 So there are, you know, other unintentional
2 consequences of having that that may exceed the lot occupancy.
3 I just want to put that out there in light of some of the questions
4 that was raised or concerns raised by Mr. Miller. So it is a
5 sticky wicket.

6 But I take your point, Mr. Jesick. If you can in some
7 way shape or form provide the information or the powers that be
8 if we have an administrative meeting, have a discussion about
9 when we do grant these types of variances or there is some
10 unintended consequences to that effect, could somebody come in
11 and enclose the area and lease the space that we're granting a
12 variance for lot occupancy that's more enclosed? So, I'll just
13 leave it at that.

14 But I think it' a relevant question. That was my point,
15 Ms. John.

16 ZONING COMMISSIONER MILLER: I agree that it's a
17 relevant question.

18 CHAIRPERSON HILL: So there's a couple of things on the
19 table here. Mr. Huffman, you seemed to have your hand up at one
20 point.

21 MR. HUFFMAN: Yes. just a couple, I had one question
22 for Mr. Jesick and I just wanted to comment on the last issue
23 that was brought up about, you know, potentially enclosing the
24 deck.

25 I believe the Board's got the ability to put conditions

1 on this variance and just there's just a condition that we can't
2 enclose it, we have no problems with that.

3 MS. BEVINS: And not allowing us to build underneath
4 and not, I mean, and I understand. I understand the question
5 or the concern, but we definitely don't want to do that and so
6 do you want to add like special lines to say we can't build
7 underneath, we can't enclose the dock? We are good with that
8 because this is the plan that we are attempting, not some future,
9 you know, slippery slope situation.

10 VICE CHAIR JOHN: So to respond to that. I mean, I
11 don't know where everybody is, but I heard Mr. Miller asking for
12 a second opinion from the Office of planning to consider the new
13 information. So I would not be opposed to that.

14 As to the issue of putting conditions, I believe the
15 variance, and somebody can correct me again, I'm not giving legal
16 advice today. So if the lawyers are listening and want to correct
17 me, please feel free to do that. But I believe the variance runs
18 with the property so we can't bind owners as to what they will
19 do with the property by placing these additional conditions. So
20 either we approve the variance or not.

21 So I don't want to tip my hand on where we are. This
22 is not the strongest area variance that I've seen, and I agree
23 with the Office of Planning that they thought about it long and
24 hard. So that's all the question I have, Mr. Chairman.

25 CHAIRPERSON HILL: Okay. And Mr. Jesick, well, there's

1 a couple of things that's outstanding. I don't think this is
2 going to get decision today actually.

3 But so I have a couple of additional questions. Then
4 we're going to see if there's anybody here who's wishing to
5 testify. But I do have a question either, I guess it's, I guess
6 Mr. Jesick can answer the question or ask us, you know, does
7 conditions, they don't -- I thought conditions, I'm sorry, Ms.
8 John -- I thought conditions do carry with the thing; right?

9 MR. SMITH: They do.

10 CHAIRPERSON HILL: With the land, meaning that if we
11 granted the condition now it has to go to the next person that
12 buys it.

13 VICE CHAIR JOHN:: If you granted the variance.

14 CHAIRPERSON HILL: If you granted the variance with
15 the, I'm just trying to clarify. I don't remember either now
16 because I'm tired. But if you grant the variance and you tie a
17 condition to the variance it does carry with the variance.

18 VICE CHAIR JOHN: But you would be binding the future
19 property owners to that condition; right?

20 CHAIRPERSON HILL: I thought you could. I'm not arguing
21 with you. I just thought you could.

22 VICE CHAIR JOHN: The lawyers can chime in. I don't
23 believe so. I believe the variance stands on its own mistake.

24 CHAIRPERSON HILL: Ms. Nagelhout, do you know?

25 MS. NAGELHOUT: I would want to look into it a bit.

1 But I think in general, yes, the Board can put conditions of
2 approval on a variance as well as a special exception.

3 CHAIRPERSON HILL: Okay. They don't carry with it to
4 the next owner, but you can look into it. So that's one thing,
5 Ms. Nagelhout, if you can look into it.

6 Mr. Jesick, you're being asked to reevaluate with all
7 the new stuff that's been put forward and then there was a third
8 request? Did someone else --

9 ZONING COMMISSIONER MILLER: I requested them to look
10 at the whole policy issue, which is apart from this case, because
11 that will take a long time.

12 CHAIRPERSON HILL: Right. That's Zoning, that's Zoning
13 Commission stuff. So my question, Mr. Jesick, to you is how does
14 this, and maybe -- how does this go from or was there a way for
15 this to go from a variance to a special exception? They'd have
16 to knock down the size of the deck by something. Is that correct?

17 MR. JESICK: The existing house is already over 70
18 percent.

19 CHAIRPERSON HILL: Right.

20 MR. JESICK: So --

21 CHAIRPERSON HILL: And it doesn't matter whether it's
22 four foot or eight feet, it's still the same criteria; correct?

23 MR. JESICK: Exactly.

24 CHAIRPERSON HILL: Okay. So then you can take a look.
25 Mr. Jesick, as to the new information that's there and let me

1 first see if there's anybody wishing to testify.

2 Mr. Young, is there anyone wishing to testify?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Ms. John, you had your hand up again?

5 VICE CHAIR JOHN: Just to ask Mr. Jesick another
6 question which he might not be able to answer. So a landing
7 would not count in lot occupancy; is that correct?

8 MR. JESICK: That's my understanding. Yes.

9 VICE CHAIR JOHN: So they could do a landing which
10 allows them to open the door safely and still is attached to
11 that.

12 MR. JESICK: My only question about that would be when
13 you're moving the door over to the west, you're going to wind up
14 with a bigger area. So the stairs will still come up on the side
15 of the property. Then you have to bridge across to the door.
16 Would the zoning administrator then just consider that a deck
17 anyways just because of its size? I think they would typically
18 look at something that's more along the lines of, you know, 4 x
19 4 feet. So they may consider that a deck anyways.

20 CHAIRPERSON HILL: Okay.

21 VICE CHAIR JOHN: Thank you.

22 CHAIRPERSON HILL: All right. Go ahead. Mr. Huffman.

23 MR. HUFFMAN: On that very issue I have spoken with Mr.
24 Lawson from the Office of Planning, and basically and he actually
25 looked into that. My understanding is that we could have a 4 x

1 4 foot landing that came out. The problem with that is that the
2 way it would sit, it would be right in the middle of our driveway
3 again and that's so, that's why we're trying to find something
4 that straddles the driveway, essentially at a minimum and that's
5 the that's the answer on that.

6 CHAIRPERSON HILL: Okay. Well, just so I'm clear, Mr.
7 Huffman, again, that whole four foot thing that you had at one
8 point spoken about, that doesn't change any of the criteria that
9 you're -- you didn't talk to the zoning administrator or Mr.
10 Lawson about that four foot that you're speaking of where the
11 post would just be in the way of the door?

12 MR. HUFFMAN: We did. I did talk to him about that
13 and he actually came back to me with that information. He went
14 and conferred with the Building Department and found out that we
15 could only have a four foot landing. When I was talking
16 previously about shortening the deck from eight feet to four feet
17 it would still, we still needed a variance technically because
18 it would have straddled the whole driveway. So it would have
19 been about 8 feet or, you know, four feet by (indiscernible).

20 CHAIRPERSON HILL: I got you. Okay. So, Mr. Jesick,
21 how long do you think it would take you to kind of, you and your
22 colleagues, to chew over this?

23 MR. JESICK: To do an analysis and just kind of run it
24 through the process I would just say a couple weeks.

25 CHAIRPERSON HILL: Okay. So a couple of weeks gets me

1 to our last hearing, I think. Right, Mr. Moy? Before our August
2 recess?

3 MR. MOY: Yes, that's correct. Today's the 12th so in
4 two weeks we're up against July 26th.

5 CHAIRPERSON HILL: And that's, oh, and so in two weeks,
6 you're up against July 26. Right. And so, Mr. Jesick, you having
7 more time isn't necessarily going to be helpful or not for your
8 office?

9 MR. JESICK: I know we have a lot going on in the next
10 couple of weeks, but I think we could do an analysis in that
11 time.

12 CHAIRPERSON HILL: The reason why I asked is if you
13 think you're going to have more time to do an analysis, given
14 all of the discussion that you've heard from my Board Members,
15 then Mr. Miller is back on 9/20, okay, and Mr. --

16 ZONING COMMISSIONER MILLER: I can be here whenever.

17 CHAIRPERSON HILL: Okay. Well, the reason why I was
18 asking --

19 ZONING COMMISSIONER MILLER: You said that before when
20 you cited my dates. You know, that's the thing about virtual
21 meetings. You can be in Asia.

22 CHAIRPERSON HILL: Well, that's great. All I'm trying
23 to get at, Commissioner Miller, is that let's put it this way.
24 I don't know where we all necessarily are. I know where you are.
25 I'm kind of on the fence, so I can be swayed. I don't know where

1 Ms. John is or where Mr. Smith is, and they don't have to tip
2 their hand and so, well, he might want to tip his hand, it's just
3 the way he tips his hand, and then that's why I'm asking Mr.
4 Jesick if longer is more efficient for the Office of Planning
5 --

6 ZONING COMMISSIONER MILLER: That's a good question.
7 I just didn't want it based on my own availability.

8 CHAIRPERSON HILL: Right. Because I'm sure if Ms., if
9 the Applicant thinks that longer might be a better process, then
10 they might be willing to wait until 9/20. But I'm asking Mr.
11 Jesick if he thinks there's any benefit to the Office of Planning
12 having more time given their crunch?

13 MR. JESICK: I think we can make July work if we can
14 (indiscernible) the 26th.

15 CHAIRPERSON HILL: Okay. Okay. Then why don't, then
16 when can I get an Office of Planning report, Mr. Moy, and then
17 everybody gets their chance to say whatever they want to say
18 before we're back here for a decision?

19 MR. MOY: This would still be rather tight, Mr.
20 Chairman, because if you are thinking of allowing the Applicant
21 and then the other party to respond to OP's supplemental, then
22 to make enough time for Mr. Jesick to prepare his report, it will
23 be shorter than two weeks. So I would probably suggest if it
24 was possible, if OP could submit their supplemental report by
25 Friday, July 21st, and allow the parties, including the

1 Applicant, to respond to that report, say maybe even as late as
2 that Tuesday, July 25th. So that makes it really tight, do you
3 know what I mean? If you want to hear this on (indiscernible).

4 CHAIRPERSON HILL: Mr. Huffman and Ms. Bevins, is 9/20
5 problematic for you?

6 MS. BEVINS: It's not great but we started this process
7 in October of 2022 (indiscernible) --

8 MR. HUFFMAN: (Indiscernible) of 2022.

9 MS. BEVINS: Right when the OZ and whatever they split
10 off, so, hey, one more month ain't going to kill us.

11 CHAIRPERSON HILL: Right. I don't know if you're
12 reading the tea leaves on this one as much as I'm trying to sell
13 it, but you might get more of a concise report by 9/20 is what
14 I'm trying to get at.

15 MS. BEVINS: And we're okay with that as well, so.

16 CHAIRPERSON HILL: So I don't know if that, but at the
17 same time I don't know if that's going to change anybody's opinion
18 one way or the other. But, Mr. Jesick then, I don't have to
19 crush the Office of Planning to get, because I want everybody to
20 have a chance to respond and, Mr. Huffman and Ms. Bevins, you
21 all seem to have written a lot of good stuff already, like
22 somebody's a lawyer or somebody knows a lawyer and so, okay,
23 there you go, so than you can put your free law degree to good
24 use there for yourself.

25 So if we come back for a decision on 9/20 again, Mr.

1 Moy, or we might want to continue the case if we have further
2 questions. You know, we can do a continued hearing on 9/20. Am
3 I packed up on 9/20 yet?

4 VICE CHAIR JOHN: Maybe just set this for a decision
5 on 9/20.

6 CHAIRPERSON HILL: I can do either way. Do you all
7 like to talk to anybody or no?

8 VICE CHAIR JOHN: No.

9 CHAIRPERSON HILL: Okay. I got a no?

10 MR. SMITH: You've got two nos.

11 CHAIRPERSON HILL: Got two no's. Commissioner Miller?
12 Three decisions. Okay. We're going for a decision on 9/20.

13 VICE CHAIR JOHN: So the record is closed except for
14 what you're requesting?

15 CHAIRPERSON HILL: Yes. Whatever the, and then the
16 -- so supplemental from the Office of Planning looking through
17 all this stuff. Then what the other, what was the other thing?

18 MS. BEVINS: Response?

19 MR. HUFFMAN: (Indiscernible) must have a response.

20 CHAIRPERSON HILL: No, there was something else that
21 someone asked for.

22 MR. MOY: Can I suggest then that the Office of Planning
23 submit their supplemental Thursday, September the 7th and any
24 responses from the parties including the Applicant to reply by
25 the following Thursday which would be September 14th.

1 CHAIRPERSON HILL: Now I remember. It was Mr. Jesick
2 was going to see whether or not they can enclose the stuff Okay?
3 If we, you know, if the lot occupancy gets approved can somebody
4 enclose it, okay, and then legal was going to let us know whether
5 or not the conditions can carry over through on a variance to
6 another owner, and gold star for me because I remembered those.
7 Okay?

8 VICE CHAIR JOHN: But in terms of the record I think
9 we just really need, because the other issues I don't believe are
10 essential to our decision. I think we kind of went to the only
11 answers.

12 CHAIRPERSON HILL: So legal's going to let us know.

13 VICE CHAIR JOHN: Right.

14 CHAIRPERSON HILL: The record's open for the
15 supplemental. I guess the Office of Planning can let us know
16 whether or not it gets enclosed; right? You can tell us that;
17 correct, Mr. Jesick?

18 MR. JESICK: I can double check that for you, yes.

19 CHAIRPERSON HILL: Okay. So that's one, and then the
20 people can respond, and then Mr. Moy, what are our dates?

21 MR. MOY: Okay. Working backwards, the Board sitting
22 for decision on Wednesday, September the 20th and allowing
23 responses by Thursday, September 14th, that will give staff and
24 legal to review the material although I'm pushing the limit on
25 that., and allow Office of Planning to submit their supplemental

1 | by the week prior which would be Thursday, September the 7th.

2 | CHAIRPERSON HILL: Okay. I think I'm going to be off
3 | that day, Ms. John, I'll let you know.

4 | VICE CHAIR JOHN: No, you'll be here, Mr. Chairman, you
5 | just love it.

6 | CHAIRPERSON HILL: I got relatives coming in. I've got
7 | to pick them up. Okay. And then, all right. So any last
8 | questions, thoughts? Okay. All right.

9 | Okay. We're going to close the hearing and the record.
10 | Thank ou all very much.

11 | MR. HUFFMAN: Thank you.

12 | MS. BEVINS: Thank you.

13 | CHAIRPERSON HILL: Mr. Moy, I had a question for you
14 | before I forget. That 20918, that whole thing with the apartment
15 | building thing. That's a continued hearing on 9/20/23. Okay?

16 | MR. MOY: Yes, yes, yes.

17 | CHAIRPERSON HILL: Okay. All right. Do we want to
18 | take quick five minute break before whatever happens with the
19 | appeals? All right. Be back in five or ten minutes. Thank you.

20 | (Whereupon, there was a brief recess.)

21 | CHAIRPERSON HILL: Hi, Mr. Moy. So you can call our
22 | final case.

23 | MR. MOY: Okay. This would be appeal No. 20782 of
24 | Carol Howell. As advertised as an appeal from the decision made
25 | on August 9, 2021 by the Zoning Administrator to approve a minor

1 deviation for lot occupancy in connection with building permit
2 No. B2011821 and this is the relief that was advertised. The
3 property is located in the RF-3 zone at 316 Second Street, S.E.,
4 Square 763, lot 21.

5 For preliminary matters, Mr. Chairman, the Department
6 of Building DOB filed a motion to dismiss as moved under Exhibits
7 32 and 32A and subsequent to that motion, there were filings
8 submitted from the property owner under Exhibit 34 and from the
9 appellant under Exhibits 33 and 42. So that's all I have to
10 report to you, sir.

11 CHAIRPERSON HILL: Okay. Thank you. If the Appellant
12 can hear me, if they can introduce themselves for the record?

13 MR. HALL: David Hall for Carol Howell.

14 CHAIRPERSON HILL: Okay. Great. Mr. Hall, are you
15 choosing not to use your camera? I just would like to know.

16 MR. HALL: I'm trying to figure out how to use it to
17 share video.

18 CHAIRPERSON HILL: Okay. We'll let you take your time.
19 Okay. Great. There you go. And then I see Ms. Howell, and I
20 guess, Mr. Fuller, you're with the zoning administrator?

21 MR. FULLER: Yes, that's correct, Your Honor.
22 Department of Buildings, Or I'm sorry, Chairperson.

23 CHAIRPERSON HILL: Yes, that's all right. Your Honor,
24 it's late in the day. Okay. All right.

25 So, Mr. Fuller, you guys have a motion in front of us

1 to dismiss as moot. Can you explain your motion for the Board?

2 MR. FULLER: Yes, absolutely. And the motion by the
3 way has been consented to by the, actually the Appellant in this
4 case as well. I think the permit Applicant, they're no longer
5 participating because they have effectively withdrawn the need
6 for the minor deviation. I think I've submitted new plans that
7 do not require the minor deviation. But effectively this is a
8 property, as Mr. Moy indicated, is in the RF-3 zone.

9 The property owner sought a, and was granted, a minor
10 deviation pursuant to 11 DCMRA 304.2 because the lot occupancy
11 based on the plans at issue were for lot occupancy at 62 percent
12 versus 60 percent or somewhere in between those two numbers so
13 there was a review by the zoning administrator and he determined
14 after review and taken into account 304.3 that that minor
15 deviation request was justified and therefore he granted the
16 minor deviation.

17 Subsequent to that determination, the appeal was filed
18 by the neighboring property of the neighboring property owner,
19 Carol Howell, duly impacted the potential granting of the minor
20 deviation would have on her and her property. Subsequent to the
21 review, and I guess part of the review, Ms. Howell's appeal,
22 there was a conditional (phonetic) review done here internally
23 and ultimately that minor deviation was actually revoked and the
24 permit owner and Applicant was notified of the revocation of the
25 minor deviation.

1 Subsequent to that notification of revocation they
2 decided to basically (indiscernible) indicated they're not going
3 to seek any (indiscernible) of minor deviation and they've
4 actually submitted to the BZA and they filed concurrently with
5 our Motion to Dismiss basically a letter or motion concurring
6 with our motion that they are no longer seeking the minor
7 deviation.

8 Subsequent to that, the permit that was granted in
9 accordance with that minor deviation, that permit has expired.
10 Also subsequent to that, the boarder (phonetic) or owner that had
11 obtained the permit, they had filed for an extension of that
12 permit. That permit extension was denied and so effectively the
13 permit that was granted pursuant to the minor deviation is
14 effectively a dead permit.

15 At this point, and that's basically at this point, I
16 mean, again the minor deviation is moot. My understanding is
17 that the owner or the boarder has actually now submitted new
18 plans. Again, it's our understanding they've submitted them and
19 does not require a minor deviation. I think those plans are
20 currently under review.

21 But regardless, the submission of these new plans
22 whether or not they require a minor deviation, the minor deviation
23 that is at issue and ultimately the permit that was granted as a
24 result, that minor deviation is just sort of a dead permit at
25 this point.

1 So quite frankly, the entire issue seems moot and,
2 again, the Appellant actually consented to the Motion to Dismiss
3 I think understanding, saying they're (indiscernible) permit
4 owners (phonetic) and part of this appeal because they are seeking
5 a minor deviation.

6 CHAIRPERSON HILL: Okay. Well, I'll let Mr. Hall
7 respond to that. Go ahead, Mr. Hall, and if you could introduce
8 yourself for the record, please?

9 MR. HALL: Yes. David Hall, attorney for Carol Howell.
10 We filed a, Ms. Howell filed a consent to the Motion
11 to Dismiss reserving her rights to whatever objection she would
12 have under the new building permit that's been filed and is
13 currently under review.

14 CHAIRPERSON HILL: Okay.

15 MR. HALL: So I -- I'm sorry?

16 CHAIRPERSON HILL: No, I said okay.

17 MR. HALL: Oh, okay. Sorry.

18 CHAIRPERSON HILL: That's fine. And I guess, Mr. Hall,
19 the only thing that I want to be clear on, you know, whatever
20 your client's rights are about the other future building permit
21 or, like, that's not in our purview; right? That's, you know,
22 this appeal now will be closed. This appeal will be moot, and
23 anything you guys do with the other permit, that's now a new
24 issue and under her rights to do whatever she can do.

25 MR. HALL: That's why she consented to this motion

1 | because once the permit expired, the old permit, and then the
2 | renewal of that permit was denied and LeGrant withdrew his,
3 | revoked his minor deviation it kind of took everything out of the
4 | way, out of the hands, I think, of the Board and the District
5 | also says they looked at the expert reports that Ms. Howell
6 | submitted and it wasn't within Mr. LeGrant's authority to grant
7 | the minor deviation.

8 | So I'm sure that's why it was revoked and also my client
9 | spent, just for the record, a substantial amount of time through
10 | four (phonetic) year request and request for Mr. LeGrant's office
11 | to actually get the plans that were submitted to Mr. LeGrant, all
12 | to no avail. So she has never seen the original plans that were
13 | submitted to Mr. LeGrant but, again, that's I think a moot point
14 | now that his minor deviation is revoked. The building permit is
15 | no longer live and the Cargils (phonetic) have submitted a new
16 | building permit which my client just got made a notification on
17 | and is reviewing the plans under the new building permit and
18 | we'll take a course of action later that she deems appropriate
19 | to protect her rights.

20 | CHAIRPERSON HILL: Okay. All right. So does the Board
21 | have any questions of anybody before I close the hearing and the
22 | record on this issue, and then we'll go ahead and deliberate?
23 | Okay. All right. Well then gentlemen, sorry to take this long
24 | for the whole day but I hope you have a nice evening. I'm going
25 | to close the hearing and the record.

1 MR. FULLER: Thank you.

2 MR. HALL: You'll be coming out with a decision later,
3 Mr. Chairman?

4 CHAIRPERSON HILL: Yes. We're going to make a decision
5 right now which I think you know what it will end up being and
6 then whatever --

7 MR. HALL: Yes. (Indiscernible).

8 CHAIRPERSON HILL: -- and then whatever Mr. Moy does,
9 the Secretary, I guess he'll proceed to issue that.

10 MR. HALL: Okay. So --

11 CHAIRPERSON HILL: Mr. Moy, is that correct? I want
12 to make sure you're getting your answer, Mr. Hall. What is it
13 you're asking for again?

14 MR. HALL: Would you like us to hang -- I didn't know
15 if you were going to make a decision and you were closing out
16 now for us to leave or you want us to hang out here and wait for
17 the decision?

18 CHAIRPERSON HILL: I was closing out now. You guys can
19 leave, you can do whatever you want to do. We're going to
20 deliberate, make a decision and we'll probably need to agree to
21 what seems to be before us and then you asked a question about
22 whether we would issue something?

23 MR. HALL: Well, how are we going to know what your
24 decision is? I'm sorry, I'm misstating what I'm trying to say.

25 CHAIRPERSON HILL: Sure. Just hang out for five minutes

1 after we let you guys go.

2 MR. HALL: Excellent.

3 CHAIRPERSON HILL: Okay?

4 MR. HALL: Yes.

5 CHAIRPERSON HILL: Closing the hearing and the record.

6 Okay. Well, I agree with everything that they just
7 said. I think that there's nothing for us to deliberate upon
8 and so meaning I think this is actually moot. Everyone's agreeing
9 that there's nothing now before us and, do you have anything else
10 you'd like to add, Mr. Smith?

11 MR. SMITH: (Negative response).

12 CHAIRPERSON HILL: Ms. John?

13 VICE CHAIR JOHN: (Negative response).

14 CHAIRPERSON HILL: Vice Chair Miller?

15 ZONING COMMISSIONER MILLER: Nothing to add. Thank you,
16 Mr. Chairman.

17 CHAIRPERSON HILL: Okay. I'm going to make a motion
18 that we approve the motion by Department of Buildings to dismiss
19 this as moot and also that the Appellant has also agreed that
20 this should be dismissed as moot, and as ask for a second. Ms.
21 John?

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: Motion made and second. Mr. Moy,
24 can you take a roll all?

25 MR. MOY: When I call your name, if you'll please

1 respond to the motion made by Chairman Hill to grant the motion
2 to dismiss as moot. The motion to dismiss was second by Vice
3 Chair John.

4 Zoning Commissioner Rob Miller?

5 ZONING COMMISSIONER MILLER: Yes.

6 MR. MOY: Mr. Smith?

7 MR. SMITH: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: We have no other Board Members voting. Staff
13 would record the vote as four to zero to one and this was on the
14 motion made by Chairman Hill to grant the Motion to Dismiss. The
15 motion was second by Vice Chair John who also voted to grant the
16 Motion to Dismiss as well as voting to dismiss by Zoning
17 Commissioner Rob Miller, Mr. Smith, of course Vice Chair John and
18 Chairman Hill. The motion carries, sir, four to zero to one.

19 CHAIRPERSON HILL: Okay. Great. Commissioner Miller
20 pointed out. There's a clock at the top that says how long.
21 It's nine hours, 36 minutes. I didn't know that. If you all
22 notice, it's the top right hand corner.

23 ZONING COMMISSIONER MILLER: It made me feel more tired
24 when I realized the clock was there.

25 VICE CHAIR JOHN: Oh, I see it now (iniscernible).

1 CHAIRPERSON HILL: We've been doing this for, like, I
2 don't know how many years now, and there's a clock.

3 VICE CHAIR JOHN: I did not know there was a clock.

4 CHAIRPERSON HILL: I don't think that's a bad thing but
5 I don't now.

6 ZONING COMMISSIONER MILLER: Thank you WebEx I guess
7 for little things.

8 CHAIRPERSON HILL: Okay. All right. You guys, and Mr.
9 Moy, we're done; right?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON HILL: Okay. You guys have a nice evening.
12 It was wonderful, good job today.

13 VICE CHAIR JOHN: Thank you. You too. Good job. Thank
14 you for coming in.

15 CHAIRPERSON HILL: A pleasure. Thank you.

16 (Whereupon, the above-entitled hearing was adjourned.)
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C E R T I F I C A T I O N

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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 07-12-2023

Place: Teleconference

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

JULIE SOUZA