

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 4, 2019

+ + + + +

The Regular Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441
4th Street, N.W., Washington, D.C., 20001, pursuant to notice
at 9:30 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member (NCPC), Vice Chair

ZONING COMMISSION MEMBER[S] PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
PAUL GOLDSTEIN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
CRYSTAL MYERS
MAXINE BROWN-ROBERTS
KAREN THOMAS

The transcript constitutes the minutes from the
Public Hearing held on December 4, 2019.

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

(9:48 a.m.)

CHAIRPERSON HILL: All right. Good morning, everybody. The hearing will please come to order.

We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the December 4th public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, and Lorna John Board Members, and representing the Zoning Commission is Peter Shapiro.

Copies of today's hearing agenda are available to you and located in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you are finished speaking, please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor or in opposition, must have raised their hand and have been

1 sworn in by the Secretary. Also, each witness must fill out
2 two witness cards. These cards are located on the table near
3 the door and on the witness table. Upon coming forward to
4 speak to the Board, please give both cards to the reporter,
5 who is sitting at the table to my right.

6 If you wish to file written testimony or
7 additional supporting documents today, please submit one
8 original and 12 copies to the Secretary for distribution.
9 If you do not have the requisite number of copies, you can
10 reproduce copies on an office printer in the Office of Zoning
11 located across the hall. Please remember to collate your
12 copies.

13 The order of procedures for special exceptions,
14 and variances, and appeals are also listed as you come in
15 through the door. The record shall be closed at the
16 conclusion of each case except for any materials specifically
17 requested by the Board. The Board and the Staff will specify
18 at the end of the hearing exactly what is expected and the
19 date when the persons must submit the evidence to the Office
20 of Zoning. After the record is closed, no other information
21 shall be accepted by the Board.

22 The Board's agenda includes cases set for
23 decision. After the Board adjourns, the Office of Zoning in
24 consultation with myself will determine whether a full or
25 summary order may be issued. A full order is required when

1 the decision it contains is adverse to a party, including an
2 effected ANC. A full order may also be needed if the Board's
3 decision differs from the Office Planning's recommendation.

4 Although the Board favors the use of summary
5 orders whenever possible, the applicant may not request the
6 Board to issue such an order.

7 The District of Columbia Administrative Procedures
8 Act requires that the public hearing on each case be held in
9 the open before the public, pursuant to Section 405(b) and
10 406 of that Act.

11 The Board may, consistent with its Rules of
12 Procedures and the Act enter into a closed meeting on a case
13 for purposes of seeking legal counsel on a case, pursuant to
14 D.C. Official Code Section 2-575(b)(4) and deliberating on
15 a case pursuant to D.C. Office Code Section 2-575(b)(13) but
16 only after providing the necessary public notice and, in the
17 case of an emergency closed meeting, after taking a roll call
18 vote.

19 The decision of the Board in cases must be based
20 exclusively on the public record. To avoid any appearance
21 to the contrary, the Board requests that persons present not
22 engage the Members of the Board in conversation.

23 Please turn off all beepers and cell phones at
24 this time, so as not to disrupt the proceeding.

25 Preliminary matters are those which relate to

1 whether a case will or should be heard today, such as
2 requests for postponement, continuance, withdrawal, or
3 whether proper and adequate notice of the hearing has been
4 given.

5 If you are not prepared to go forward with the
6 case today or if you believe the Board should not proceed,
7 now is the time to raise such a matter.

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

9 SECRETARY MOY: Good morning, Mr. Chairman,
10 Members of the Board.

11 I do have a brief announcement attended
12 preliminary matters. First is Case Application number 20046
13 of DistrictProperties.com has been withdrawn by the
14 applicant.

15 Applications that have been rescheduled or
16 postponed to January 15th, 2020: These two cases are numbers
17 20117 of Glassman and Majara and 20136 of Christopher Hall.

18 Other than that, Mr. Chairman, there are some
19 smaller preliminary matters but I think the Staff would
20 suggest the Board address those when I call the case.

21 CHAIRPERSON HILL: Okay, good morning, everybody.

22 Let's see. If you're here to present testimony,
23 if you don't mind standing and taking the oath administered
24 by the Secretary to my left.

25 SECRETARY MOY: Or even if you think you might be

1 testifying, it doesn't hurt to stand.

2 Do you solemnly swear or affirm that the testimony
3 you are about to present in this proceeding is the truth, the
4 whole truth, and nothing but the truth?

5 (Chorus of I do.)

6 SECRETARY MOY: Thank you, ladies and gentlemen,
7 you may consider yourself under oath.

8 CHAIRPERSON HILL: Okay, great. Let's see.

9 All right, so we're basically going to follow the
10 agenda, I believe, except for one thing. I'm going to --
11 we're maybe going to play with one case.

12 Could everybody raise their hand if you're here
13 for Application 20135? Okay, so we're going to try to move
14 that up but it's not going to happen just yet.

15 All right, so Mr. Moy, you can call our first case
16 when you get a chance.

17 SECRETARY MOY: Okay, Mr. Chairman, thank you.
18 So that would be appeal number 20112 of ANC 1A. Captioned
19 and advertised as an appeal from the decision made on May 7,
20 2019 by the Zoning Administrator. Department of Consumer and
21 Regulatory Affairs to issue building permit number B, B as
22 in bravo, 1903000 permitting an addition and converting a
23 three-unit apartment house to eight units in the RA-2 Zone.
24 This is at 1435 Girard Street, Northwest, Square 2668, Lot
25 52.

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1 CHAIRPERSON HILL: Okay, great. Good morning.
2 If you could please introduce yourselves for the record from
3 my right to left.

4 MS. LORD-SORENSEN: Good morning, Chairman Hill
5 and Members of the Board, Adrienne Lord-Sorensen, Assistant
6 General Counsel with the D.C. Department of Consumer and
7 Regulatory Affairs.

8 MR. LEGRANT: Good morning. Matthew Legrant,
9 Zoning Administrator, DCRA.

10 MR. CLOCK: Good morning. Jason Clock, ANC
11 Commissioner 1A.

12 MR. SULLIVAN: Good morning. Marty Sullivan with
13 Sullivan and Barros on behalf of the property owner.

14 CHAIRPERSON HILL: Okay, great. So Ms. Sorensen,
15 DCRA has a motion to dismiss, since the permit is being
16 revoked. Is that still the case?

17 MS. LORD-SORENSEN: Yes, Chairman Hill. The
18 permit was officially revoked.

19 Just as a recap, back in September, on September
20 12th of this year, we issued a Notice to Revoke Building
21 Permit B1903000 and the revocation effective date was
22 November 12th of 2019. And so effectively, that permit is
23 revoked.

24 And on Monday, December 2nd, I filed a screenshot
25 showing that the permit is in fact revoked in our system.

1 CHAIRPERSON HILL: Okay, Commissioner Clock, you
2 are aware of the motion, correct?

3 MR. CLOCK: Yes, I am.

4 CHAIRPERSON HILL: And you don't have any
5 objection to the motion?

6 MR. CLOCK: We can probably talk about it a little
7 bit later but apparently a revised permit was submitted late
8 and I don't know if we can deal with that here or another
9 time because the permit was revoked and I understand that
10 but, at the same time, we were hoping for a revision to come
11 in before the 12th of November, which it did not. It came
12 in late. So I'm not sure if we can address that with DCRA
13 directly maybe not here today.

14 CHAIRPERSON HILL: Okay, so there is revised
15 permit, right? And so you're just trying to work with DCRA
16 to take a look at that revised permit?

17 MR. CLOCK: I just found out about that today.
18 So I'm hoping we can work with DCRA.

19 CHAIRPERSON HILL: Okay, so that is another issue
20 but so in terms of the revocation of this particular permit,
21 you don't have any issues with that, correct?

22 MR. CLOCK: Well I guess the idea would be to
23 hopefully not revoke the permit and be able to use the
24 revised permit. I think maybe the --

25 CHAIRPERSON HILL: Mr. Sullivan?

1 MR. SULLIVAN: So, they didn't get the plans in
2 or the revision in by November 12th but I don't know exactly
3 when the permit was revoked. There was a Notice to Revoke.
4 The plan revision I think was in before December 2nd so --
5 but I'm not sure that's properly before the Board in this
6 particular appeal. What the ANC and I talked about was if
7 the permit is revoked and they need to file again and pay
8 velocity fees, it's such a tremendous cost that they probably
9 will go the raze permit issue and build what they originally
10 intended.

11 So the ANC would prefer to see us build what they
12 had in mind and what we agreed to when we were here before.
13 So that's what we're talking about. I don't -- I really
14 don't know that it's part of this particular case because
15 this is an appeal by the ANC of that permit. If DCRA thinks
16 the permit is revoked, then I don't know that the Board can
17 do anything with that. We may need to appeal that separately
18 or we need to appeal to DCRA administratively to ask for
19 their leniency, which --

20 CHAIRPERSON HILL: Okay, that's fine. So in terms
21 of this permit, again, you don't have any issues with it
22 being revoked because it is revoked.

23 MR. SULLIVAN: Well, I have an issue -- I have an
24 issue with it being revoked but I'm not sure if the Board has
25 the ability to stay that revocation or not. If they do, then

1 we would request that because we want the application to be
2 revised without having to pay -- you know have the penalty
3 of \$150,000 in fees and costs that go with reestablishing
4 that permit application.

5 So to the extent that the Board could hear that
6 request here, then we would ask that this be continued and
7 it not be revoked, if the Board has that ability. And I
8 guess I would defer to OAG.

9 CHAIRPERSON HILL: Yes, I'm looking at OAG. I
10 don't even -- I'm trying to follow this along. I mean, OAG?

11 MR. GOLDSTEIN: Yes, that feels outside the scope
12 of this permit. The permit has been revoked that was the
13 subject of the underlying case. So whether that revocation
14 is proper or not, that doesn't seem to be before the Board.

15 CHAIRPERSON HILL: Okay, that's fine.

16 So well, Mr. Sullivan, it sounds like your client
17 is going to have to work with the ANC and also DCRA to try
18 to figure out what the next step is.

19 In terms of the motion to dismiss is moot, I mean
20 it seems like the permit is gone and now there is proof in
21 the record in terms of that permit being revoked. And I
22 guess, as DCRA has already testified that that has been --
23 the screenshot was put in the evidence, in the internal
24 evidence, I mean so I'm leaning -- going to grant the motion
25 to dismiss as it being moot because we don't have anything

1 before us.

2 Does the Board have any other questions?

3 VICE CHAIRPERSON HART: No.

4 CHAIRPERSON HILL: Okay. All right, so I'm going
5 to make a motion to dismiss -- I'm sorry -- approve the
6 motion to dismiss as moot that was submitted by DCRA and ask
7 for a second.

8 VICE CHAIRPERSON HART: Second.

9 CHAIRPERSON HILL: Motion made and seconded. All
10 those in favor, say aye.

11 (Chorus of aye.)

12 CHAIRPERSON HILL: All those opposed?

13 (No audible response.)

14 CHAIRPERSON HILL: Motion passed, Mr. Moy.

15 All right, good luck, gentlemen and ladies.

16 SECRETARY MOY: The Staff would record the vote
17 as four-to-zero-to-one and that's on the motion of Chairman
18 Hill to dismiss the appeal to the motion to dismiss -- to
19 grant the motion to dismiss. The second on the motion is
20 Vice Chair Hart. Also in support Ms. John and Zoning
21 Commissioner Peter Shapiro with no other Board Members
22 present.

23 CHAIRPERSON HILL: All right, thanks, Mr. Moy.
24 You can call our next case when you get a chance, Mr. Moy.

25 SECRETARY MOY: Okay, if we're going back to the

1 schedule as advertised on the docket, that would be
2 Application number 20151 of DistrictProperties.com Inc.,
3 captioned and advertised for a special exception under
4 Subtitle C, Section 703.2 from the minimum parking
5 requirements of Subtitle C, Section 701.5 to construct a
6 semi-detached principle dwelling unit RA-1 Zone at 4945 Fitch
7 Place, Northwest, Square 5184, Lot 53.

8 CHAIRPERSON HILL: Great. Good morning. If you
9 could, please introduce yourself for the record.

10 MR. SECK: Good morning, Chairman Hill. Good
11 morning, Board Members. My name is Saidina Oumar Seck,
12 representing DistrictProperties.

13 CHAIRPERSON HILL: Okay, Mr. Seck. Mr. Seck, we
14 haven't seen you in a while. How are you doing? Are things
15 going well?

16 MR. SECK: Doing great, Mr. Hill.

17 CHAIRPERSON HILL: Okay.

18 MR. SECK: And you?

19 CHAIRPERSON HILL: Very good. Thank you.

20 MR. SECK: Thank you.

21 CHAIRPERSON HILL: All right, so Mr. Seck, why
22 don't you go ahead and walk us through what you're proposing
23 and also kind of speak to the relief, as well how you believe
24 you are meeting the standard for us to grant that relief?

25 I'm going to put 15 minutes on the clock so I know

1 where we are and you can begin whenever you like.

2 MR. SECK: Thank you, Chairman Hill.

3 This case is for parking exemption. We are
4 proposing to build on property address 4945 Fitch Place,
5 Northeast, a single-family dwelling, semi-detached, on lot
6 width that is 26 feet three inches by 150 feet in a RA-1
7 Zone.

8 So according to zoning -- I'll just summarize this
9 -- in RA-1, for every single family dwelling, a parking must
10 be provided. This property is located at a corner of Fitch
11 Place and 50th Street, Northeast. And with the zoning
12 requirement, we are meeting everything else except a space
13 to provide access to a parking because of the lot being
14 situated at a corner. And with the DDOT requirements, we
15 must have 60 feet of clearance to the corner of an
16 intersection and we explored all options and couldn't meet
17 that.

18 And we are seeking, based on Subtitle 701.5
19 parking is required, as I said, and Subtitle 703 an exemption
20 can be granted if the lot does not have an alley access and
21 also if a curb cut permit cannot be obtained. And in this
22 case, this lot does not have an alley access to the rear or
23 to the side, except from 50th Street and from Fitch Place.

24 The 60 feet requirement by DDOT would not be met
25 and, based on the regulation, we will not be granted a permit

1 for that. So that is why we are here in front of the Board
2 to request a parking exemption for minimum parking
3 requirement and would like to get your support for that.

4 CHAIRPERSON HILL: Can you explain a little bit
5 more why you can't provide the curb cut on 50th Street?

6 MR. SECK: Okay. On 50th Street, I -- we have --
7 let me pull up the plan here real quick. Basically on 50th
8 Street there is -- the lot property line is on an angle and
9 it comes down to 50th Street, where there are three catch
10 basins located at the bottom. And between the property line
11 and the catch basin, it's basically an eight feet distance,
12 which we have to sit away from the catch basin in order to
13 do the flaring that is required for curb cut and apron, and
14 that will not be met there.

15 COMMISSIONER SHAPIRO: Mr. Chair?

16 CHAIRPERSON HILL: Sure.

17 COMMISSIONER SHAPIRO: Is any of this in the
18 record that we can look at?

19 MR. SECK: I don't think this probably was
20 recorded but I do have extra copies that I can pass on.

21 CHAIRPERSON HILL: Okay, give them to the
22 Secretary, please.

23 MR. SECK: Okay, sure.

24 CHAIRPERSON HILL: Is the ANC here by any chance?
25 Okay, thanks.

1 COMMISSIONER SHAPIRO: Can you orient us on this,
2 please?

3 MR. SECK: Yes. Looking at the plan on 50th
4 Street, we see three little circle when you continue that
5 property line to the bottom. Those are the catch basins that
6 are sitting there. And there is an electrical pole right
7 beside that property line to its left, as you are facing the
8 catch basins. And the distance remaining there, as we
9 measured it, is eight feet, which is not enough for an apron
10 and access to the rear of the property.

11 And if it wasn't the catch basin, the distance
12 there is met. We have about 83 feet two inches versus the
13 front, which was -- it is less than 60 feet.

14 CHAIRPERSON HILL: Okay, does anybody have any
15 more questions for the Applicant?

16 MEMBER JOHN: Mr. Chairman, I would just note that
17 DDOT's supplemental report discusses the curb cut on 50th
18 Street as well.

19 CHAIRPERSON HILL: Thank you, Ms. John.

20 Okay, I'm going to turn to the Office of Planning.

21 MR. COCHRAN: Thanks, Mr. Chair.

22 OP is recommending approval of the request. We'd
23 note that OP and DDOT have both looked at the surveyor's
24 plat. While there is 60 feet between the intersection -- the
25 property line on 50th Street, the width that is required for

1 a curb cut and driveway would likely intrude to within that
2 60 feet on 50th Street. And that's one reason that, while
3 the Applicant had very clearly demonstrated that they
4 couldn't meet the curb cut requirements on Fitch Place, when
5 DDOT and OP looked at it further, they also concluded that
6 they couldn't meet DDOT's requirement for distances on 50th
7 either but we didn't know about the catch basin. But even
8 without the catch basin, they just don't have the room for
9 a fully legal curb cut and DDOT has filed two reports now
10 stating that.

11 It's also a very peculiar geometry, offset roads
12 at the intersection and because of the curvature, DDOT also
13 felt that it was important to keep that 60-foot distance
14 because of the unusual way that you would have to go from one
15 street to another, especially as you were crossing Fitch
16 across 50th.

17 CHAIRPERSON HILL: Okay, great.

18 Does anybody have any questions for the Office of
19 Planning?

20 VICE CHAIRPERSON HART: I think I have just a
21 question for the Applicant but the -- and I may ask the
22 Office of Planning about this. The house is being put on
23 the, I guess, west property line on the --

24 MR. COCHRAN: That's correct.

25 VICE CHAIRPERSON HART: So they could put it on

1 the east property line and have a space between their
2 property and the -- you know to have the side yard between
3 their property and the property that is to the west of them.

4 MR. COCHRAN: That's --

5 VICE CHAIRPERSON HART: There isn't anything to
6 the east. So it's kind of --

7 MR. COCHRAN: That's true but the property isn't
8 60 feet wide on Fitch Place.

9 VICE CHAIRPERSON HART: No, no, no. I was saying
10 that they could move the house -- just shift it to the east,
11 I guess.

12 MR. COCHRAN: Yes, they could.

13 VICE CHAIRPERSON HART: And so it just seems like
14 you're -- they're putting the property on the property line
15 -- the building on the property line, whereas, they could
16 have actually done it on the other property line. There's
17 nothing on the 50th Street side. So that they would be
18 moving away. They would have a -- the window that you could
19 put on the west side wouldn't be an at-risk window.

20 MR. COCHRAN: That's true but that wouldn't have
21 any impact on the application. It wouldn't affect the --

22 VICE CHAIRPERSON HART: I know. I'm just asking
23 about that.

24 MR. COCHRAN: I would have to look again but I'm
25 not sure that it would meet the size requirements for the

1 lot, if they became detached, rather than semi-detached.

2 VICE CHAIRPERSON HART: I understand. Thank you.

3 CHAIRPERSON HILL: Okay, Mr. Seck, if you could
4 put this in the record, okay? Add this to the record, the
5 diagram that you gave us.

6 Is there anyone here wishing to speak in support?

7 (No audible response.)

8 CHAIRPERSON HILL: Is there anyone here wishing
9 to speak in opposition?

10 (No audible response.)

11 CHAIRPERSON HILL: Okay, Mr. Seck, one thing in
12 terms of the ANC, I mean they submitted a letter in
13 opposition and some of the issues that they raised are not
14 actually zoning-related and so they are not really within our
15 purview. And so I'm just noting that like they wanted
16 results of a parking study, plans for road remediation at the
17 site, and lack of visible tree removal permits. I mean the
18 road and the visibility issues, those are things that are not
19 necessarily within our purview.

20 However, you will do all that you can to make sure
21 you are a good neighbor there, correct?

22 MR. SECK: Yes, yes.

23 CHAIRPERSON HILL: Okay.

24 MR. SECK: Even the rodents, just to say I hired
25 a company called Triad Pest Control and they will install

1 some baits as the construction will begin --

2 CHAIRPERSON HILL: Okay.

3 MR. SECK: -- to control that, yes.

4 CHAIRPERSON HILL: Okay, great.

5 Does anybody have anything else for the Applicant?

6 VICE CHAIRPERSON HART: Just one quick question.

7 And I understand that this is kind of one car that
8 we're talking about, did you -- and I don't remember seeing
9 anything about the -- I hate saying parking study but the ANC
10 raised the issue about the parking study. And you're just
11 saying that it is not possible just physically to be able to
12 put this car -- to put a parking space for a vehicle in this
13 location.

14 MR. SECK: That is correct, Chairman Hart, because
15 of the requirement from DDOT. Those are basically the
16 studies we had to do to follow the requirements and we're not
17 going to meet that. So we presented it to them at the ANC
18 and I couldn't any other further studies that could be done
19 here.

20 VICE CHAIRPERSON HART: Thank you.

21 MR. COCHRAN: Excuse me. Could I just point out
22 that that study is not actually required by the conditions?
23 It's -- they've consulted with DDOT, so that meets the test.

24 VICE CHAIRPERSON HART: I appreciate it. Thank
25 you.

1 CHAIRPERSON HILL: Okay, anyone else?

2 Okay, I'm going to close the hearing. Is the
3 Board ready to deliberate?

4 Okay, I think that the Applicant has met its
5 burden. I mean they can't provide the curb cut. DDOT has
6 denied the application. And so I would agree with the Office
7 of Planning's recommendation and their analysis. And it's
8 under I guess Subtitle C 703.2(h) is what they've been -- is
9 what the Applicant was citing and I would agree with their --
10 the burden of proof and the argument.

11 I'm going to go ahead and make a motion to approve
12 Application Number 20151 as captioned and read by the
13 Secretary and ask for a second.

14 VICE CHAIRPERSON HART: Second.

15 CHAIRPERSON HILL: Motion made and seconded.

16 All those in favor, say aye.

17 (Chorus of aye.)

18 CHAIRPERSON HILL: All those opposed?

19 (No audible response.)

20 CHAIRPERSON HILL: The motion passes, Mr. Moy.

21 SECRETARY MOY: The Staff would record the vote
22 as 4-to-zero-to-one. This is on the motion of Chairman Hill
23 to approve the application for the relief requested. Second
24 on the motion is Vice Chair Hart. Also in support Ms. John
25 and Zoning Commission Peter Shapiro. No other members

1 present.

2 The motion carries, sir.

3 CHAIRPERSON HILL: Thanks, Mr. Moy.

4 Thank you, sir.

5 MR. SECK: Thank you, Chairman Hill. It was good
6 seeing you and the Board Members. And Happy Holidays, if I
7 don't see you.

8 CHAIRPERSON HILL: Thank you. Thank you very
9 much.

10 Mr. Moy, you can call our next one.

11 SECRETARY MOY: All right, thank you, Mr.
12 Chairman. So that would be, if I can have the parties to the
13 table, the case of Application Number 20152 of Susanna Chu
14 and Ariel David -- I want to get this right -- Adesnik,
15 captioned and advertised for a special exception under
16 Subtitle D, Section 5201 from the side yard requirements of
17 Subtitle D Section 206.2, rear yard requirements of Subtitle
18 D Section 306.1. This would construct a one-story rear
19 addition and a porch side addition to an existing detached
20 principle dwelling unit R-1-B Zone at 4600 45th Street,
21 Northwest, Square 1569, Lot 1.

22 CHAIRPERSON HILL: Okay. If you could, please
23 introduce yourselves for the record from my right to left.

24 MR. ADESNIK: Ariel David Adesnik.

25 MS. CHU: Good morning. Susanna Chu.

1 MR. FEENEY: Good morning, William Feeney.

2 CHAIRPERSON HILL: Okay, who is going to be
3 presenting to us today?

4 MS. CHU: I'll start off. Thank you very much,
5 Chairman Hill, Commissioners --

6 CHAIRPERSON HILL: Ms. Chu, just one second. I'm
7 sorry.

8 So I guess we did get your affidavit of
9 maintenance and -- okay. Yes, so if you could just again
10 kind of walk us through what you're trying to do and then
11 also speak to the criteria that we should grant the requested
12 relief. And there's 15 minutes on the clock. Ma'am, you can
13 begin whenever you like.

14 MS. CHU: Okay. Thank you, Chairman.

15 We are requesting a special exception from the
16 Zoning Regulations to add a front porch, a mud room, and
17 storage space to our home, which is a 1930s brick colonial
18 in the AU Park Neighborhood.

19 As reflected in the record, I believe, the ANC has
20 issued a resolution supporting the project. The Office of
21 Planning has issued a memorandum recommending approval. DDOT
22 has voiced no objection. And we have also submitted 15
23 letters of support from our neighbors, including our most
24 immediate neighbors, voicing support for the project.

25 So this is a relatively small project that is

1 completely consistent with the character of all the houses
2 in our neighborhood. It would be an improvement to our house
3 and to the whole block.

4 The special exception is needed because of the way
5 that the DCRA is applying the zoning regulations to our
6 house. Although our house is actually oriented towards 45th
7 Street and the front door is on 45th Street, the DCRA
8 interprets -- it has told us that it actually has determined
9 that the front is on Brandywine Street, which would make our
10 addition in the rear yard and it would make our front porch
11 in the side yard -- I mean the proposed structures.

12 Our architect, Bill Feeney, who is very
13 experienced in projects in our neighborhood, and I'll turn
14 it over to him shortly, you know in his experience and under
15 the zoning regulations, he's been able to designate a
16 particular frontage as the front of the house for zoning
17 purposes but, for whatever reasons, DCRA told us that in this
18 instance we can't designate a particular frontage as a front
19 and you know the front is Brandywine.

20 So for that reason, we are asking for the special
21 exception and it is relief of several feet on each side.

22 So with that, let me turn it over to Mr. Feeney
23 to walk you through and answer any questions that you may
24 have.

25 Oh, I'm sorry. I should also of course say that,

1 as reflected in the Office of Planning memo, we meet all the
2 requirements for a special exception. This does not
3 interfere with the light or air of any of our neighbors. It
4 doesn't affect the privacy of any of our neighbors and it
5 doesn't visually intrude on any of the appearance of any of
6 the frontages of our house.

7 CHAIRPERSON HILL: Okay, Ms. Chu, before you move
8 to the architect, I'm just trying to kind of work through
9 some things here today in order to get to something that is
10 going to take up more time later.

11 MS. CHU: Sure.

12 CHAIRPERSON HILL: Does the Board have any
13 questions for the Applicant?

14 (No audible response.)

15 CHAIRPERSON HILL: Okay, I'm going to turn to the
16 Office of Planning.

17 MS. THOMAS: Good morning, Mr. Chair. Karen
18 Thomas with the Office of Planning.

19 We will rest on the record of our report and based
20 on the Applicant's satisfaction of the criteria for the
21 relief requested. Thank you.

22 CHAIRPERSON HILL: Okay. Does the Board have any
23 questions for the Office of Planning?

24 (No audible response.)

25 CHAIRPERSON HILL: All right, does the Applicant

1 have any questions for the Office of Planning?

2 MS. CHU: No, thank you.

3 CHAIRPERSON HILL: Is there anyone here who wishes
4 to speak in support?

5 (No audible response.)

6 CHAIRPERSON HILL: Is there anyone here who wishes
7 to speak in opposition?

8 (No audible response.)

9 CHAIRPERSON HILL: Ms. Chu, is there anything you
10 would like to add at the end?

11 MS. CHU: No, but thank you for your
12 consideration.

13 CHAIRPERSON HILL: Okay, I'm going to close the
14 hearing. Is the Board ready to deliberate?

15 Okay, I thought this was relatively
16 straightforward. There was a little bit -- I thought the
17 drawings were a little bit confusing at times just because
18 of the orientation. However, I do believe that they meet the
19 criteria under D 52.01. I think that you know even though
20 they do have a lot of support from the community, it's not
21 -- so it's not an election but I do think that you met the
22 criteria for us to grant the application.

23 Does the Board have any other things they would
24 like to add?

25 (No audible response.)

1 CHAIRPERSON HILL: I'm going to make a motion to
2 approve Application number 20152 as captioned and read by the
3 Secretary and ask for a second.

4 VICE CHAIRPERSON HART: Second.

5 CHAIRPERSON HILL: Motion made and seconded.

6 All those in favor, say aye.

7 (Chorus of aye.)

8 CHAIRPERSON HILL: All those opposed?

9 (No audible response.)

10 CHAIRPERSON HILL: The motion passes, Mr. Moy.

11 SECRETARY MOY: The Staff would record the vote
12 as four-to-zero-to-one and this is on the motion of Chairman
13 Hill to approve the application for the relief requested.
14 Second on the motion was Vice Chair Hart. Also in support,
15 Ms. John and Zoning Commissioner Peter Shapiro. No other
16 members present.

17 CHAIRPERSON HILL: All right, thank you Mr. Moy.
18 Thank you very much.

19 MS. CHU: Thank you.

20 MR. ADESNIK: Thank you.

21 SECRETARY MOY: All right, if I can have parties
22 to the table to Case Application number 20153 of Andy Grimmig
23 and Sapna Mehta, M-E-H-T-A, captioned and advertised for a
24 special exception from the accessory building restrictions
25 Subtitle U Section 301.1(e). This would replace an existing

1 one-story detached accessory structure with a two-story
2 detached accessory structure comprised of a garage on the
3 first floor and a dwelling unit on the second floor in the
4 RA-2 Zone at 2322 19th Street, Northwest, Square 2539, Lot
5 214.

6 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
7 Could you please introduce yourselves for the record?

8 MS. GREER: Carmel Greer with District Design.

9 MS. MEHTA: Sapna Mehta, property owner.

10 CHAIRPERSON HILL: Okay, Ms. Greer, are you going
11 to be presenting to us today?

12 MS. GREER: Yes.

13 CHAIRPERSON HILL: Okay. So as I mentioned --
14 well, I don't really have a lot of questions actually about
15 this. I don't know if the Board has any particular things
16 they would like to hear about.

17 If you want to, kind of tell us a little bit about
18 the project and how you believe you're meeting the criteria
19 for us to grant the application. I did see that your
20 affidavit of maintenance, we did get that. I suppose as you
21 are kind of talking through your application, if you could
22 tell us a little bit -- there's like a heritage tree I guess
23 that DDOT had a question about and I guess maybe if you
24 could, speak to that.

25 I'm going to put 15 minutes on the clock so I know

1 where we are and you can begin whenever you like.

2 MS. GREER: Sure. The tree in question is
3 actually an invasive species. So Bartlett Tree -- an
4 arborist has come out and is working with DDOT for a tree
5 permit. So that is -- it's a Norway Maple, which is on the
6 District's list of invasive species. So the District would
7 actually like to see the tree removed.

8 I think the project is fairly straightforward.
9 There is an existing one-story garage, which we are razing
10 and replacing with a two-story garage. The proposed two-
11 story garage will provide two parking spaces and a dwelling
12 unit above. It is the dwelling unit that provokes the
13 special exception.

14 And the adjacent property owners are supportive
15 of the application and each have two-story garages
16 themselves. So we believe the proposed two-story garage is
17 in keeping with the character of the alley.

18 And Historic has reviewed the application and
19 approved it also.

20 CHAIRPERSON HILL: Okay. Does the Board have any
21 questions for the Applicant?

22 VICE CHAIRPERSON HART: No, sir.

23 CHAIRPERSON HILL: All right, I'm going to turn
24 to the Office of Planning.

25 MS. MEYERS: Good morning. Crystal Meyers with

1 the Office of Planning.

2 The Office of Planning is recommending approval
3 of this case and stands on the record of the Staff report.

4 CHAIRPERSON HILL: Okay, does the Board have any
5 questions for the Office of Planning?

6 VICE CHAIRPERSON HART: No.

7 CHAIRPERSON HILL: Does the Applicant have any
8 questions for the Office of Planning?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay, is there anyone here who
11 wishes to speak in support?

12 (No audible response.)

13 CHAIRPERSON HILL: Is there anyone here who wishes
14 to speak in opposition?

15 (No audible response.)

16 CHAIRPERSON HILL: Is there anything you would
17 like to add at the end?

18 MS. GREER: No, thank you.

19 CHAIRPERSON HILL: Okay, I'm going to go ahead and
20 close the hearing. Is the Board ready to deliberate?

21 VICE CHAIRPERSON HART: Yes.

22 CHAIRPERSON HILL: Okay. As I mentioned at the
23 onset, I thought this was relatively straightforward. I
24 didn't have a lot of issues with it. I was a little -- I
25 just wanted to make sure the affidavit of maintenance was in

1 there and then the questions that DDOT had about the heritage
2 tree.

3 However, other than that, I do believe that they
4 meet the special exception criteria under U 301.1, as well
5 as the special exception criteria under X 901.2 and I believe
6 that I will be voting in approval.

7 Is there anything anyone would like to add?

8 (No audible response.)

9 CHAIRPERSON HILL: I'm going to make a motion to
10 approve Application number 20153 as captioned and read by the
11 Secretary and ask for a second.

12 VICE CHAIRPERSON HART: Second.

13 CHAIRPERSON HILL: Motion made and seconded.

14 All those in favor, say aye.

15 (Chorus of aye.)

16 CHAIRPERSON HILL: All those opposed?

17 (No audible response.)

18 CHAIRPERSON HILL: The motion passes, Mr. Moy.

19 SECRETARY MOY: The Staff would record the vote
20 as four-to-zero-to-one and this is on the motion of Chairman
21 Hill to approve the application for the relief. Seconding
22 the motion is Vice Chair Hart. Also in support, Ms. John and
23 Zoning Commissioner Peter Shapiro. No other Board Members
24 present, sir.

25 CHAIRPERSON HILL: All right, thank you, Mr. Moy.

1 Thank you very much.

2 MS. GREER: Thank you, very much.

3 MS. MEHTA: Thank you.

4 CHAIRPERSON HILL: All right, Mr. Moy.

5 SECRETARY MOY: So next up is Case Application
6 number 2011 -- or rather 20155 of Paige Morimoto, captioned
7 and advertised, as amended, for special exceptions under
8 Subtitle D Section 5201 from the maximum building area
9 requirements of Subtitle D Section 5006.1 and from the
10 nonconforming structural requirements Subtitle C Section
11 202.2 to construct a second story addition to an existing
12 accessory building to be used as a second dwelling unit in
13 R-3 Zone at 418 Ingraham Street, Northwest, Square 3257, Lot
14 70.

15 CHAIRPERSON HILL: Okay, great. Can you please
16 introduce yourself for the record? You need to push the
17 microphone.

18 MS. MORIMOTO: Paige Morimoto, property owner.

19 MS. SCHINDER: Ileana Schinder, architect.

20 CHAIRPERSON HILL: Could you spell your last name
21 for me?

22 MS. SCHINDER: Schinder.

23 CHAIRPERSON HILL: Oh, Schinder.

24 MS. SCHINDER: Yes.

25 CHAIRPERSON HILL: Okay. If you could just have

1 one microphone on at a time down there because otherwise, I
2 get feedback.

3 Ms. Schinder, are you presenting to us?

4 MS. SCHINDER: Yes, it's a very brief
5 introduction.

6 CHAIRPERSON HILL: Okay. Okay, that's fine.

7 So if you could, kind of go ahead and kind of walk
8 us through what you're trying to accomplish and also speak
9 a little bit to the burden of proof, as to like you know the
10 standard as to how you're meeting the special exception
11 criteria.

12 And I'm going to put 15 minutes on the clock so
13 I know where we are and you can begin whenever you like.

14 MS. SCHINDER: The project is an application to
15 outfit an existing oversized parking structure that has been
16 in the property since the '90s. The existing structure was
17 there when Ms. Morimoto purchased the property.

18 She has retained my services to subdivide the
19 existing parking, which is oversized for regular parking, and
20 to create a parking space in the ground floor and a two-
21 bedroom additional dwelling unit. To accomplish these uses,
22 we are maintaining the footprint of the building and we are
23 adding four feet of height to comply with the limits of the
24 massing required by the zoning. However, the massing of the
25 existing building is compliant for parking but for some

1 reason it is not compliant for a dwelling unit. So we are
2 asking for an exception to allow us to move forward with no
3 modifications to the existing structure to modify the use of
4 it from a car storage space to an additional dwelling unit.

5 The character of the building will -- the height
6 of the building is as existing. So like I said, we are only
7 adding a few feet in height. It faces the alley. We're not
8 creating any opening. So we're complying with all the
9 requirements except for the existing footprint of the
10 building that is oversized. So that is what we're asking
11 for.

12 VICE CHAIRPERSON HART: You're actually adding to
13 the top of this?

14 MS. SCHINDER: We, in order to comply with the
15 building height requirements for parking and residential, we
16 are adding about four rows of brick to comply with the
17 highest point of the building. But even the total height of
18 the building will be within the allowable maximum height, per
19 the zone, which is -- it's like 20 feet, something like that.

20 So it's not -- we're not asking for an exception
21 on the height. We are asking for an exception of the
22 footprint of the building which is actually existing.

23 So it is a nonconforming footprint for a dwelling
24 unit but it was conforming for a garage, which is strange but
25 -- sorry.

1 CHAIRPERSON HILL: Okay, just a couple of things.
2 Did you submit your affidavit of maintenance?

3 MS. SCHINDER: Yes, we did. I have a copy right
4 here, actually.

5 SECRETARY MOY: Mr. Chairman, it's under Exhibit
6 48 I believe.

7 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
8 Moy.

9 MR. GOLDSTEIN: I'm sorry. This is Paul
10 Goldstein. Just to clarify, I think the affidavit of
11 maintenance may have been submitted a day -- one day too
12 late. So the Board may just want to address the submission.

13 CHAIRPERSON HILL: Okay, Ms. Schinder, did you
14 know that it was a day late?

15 MS. SCHINDER: We submitted it -- I didn't know --

16 CHAIRPERSON HILL: Got you. So the answer is no.

17 MS. SCHINDER: Okay, no. I didn't know it was a
18 day late.

19 CHAIRPERSON HILL: That's fine. It's nothing big.
20 It's nothing big.

21 MS. SCHINDER: It was -- I'm sorry. It was there.

22 CHAIRPERSON HILL: I understand. That's all
23 right. That's fine.

24 I mean you maintained the signage, correct?

25 MS. SCHINDER: Correct. So it was --

1 CHAIRPERSON HILL: And you are testifying to that,
2 correct?

3 MS. SCHINDER: -- we complied with it. Correct,
4 yes.

5 CHAIRPERSON HILL: Okay and I think that you've
6 already -- you know there seems to be a lot in the record in
7 terms of public outreach.

8 MS. SCHINDER: Correct.

9 CHAIRPERSON HILL: And so in terms of the
10 affidavit of maintenance, I don't have any issues with it
11 being a day late. Does the Board?

12 VICE CHAIRPERSON HART: No.

13 CHAIRPERSON HILL: Okay. All right, so we'll go
14 ahead and accept that affidavit of maintenance.

15 And then -- all right.

16 VICE CHAIRPERSON HART: If you could, Ms.
17 Schinder, talk a little bit about -- there are some letters
18 in opposition to this case.

19 We also received a letter from Councilmember
20 Brandon Todd about this case as well.

21 MS. SCHINDER: Okay. The owner has more direct
22 knowledge --

23 VICE CHAIRPERSON HART: That's fine.

24 MS. SCHINDER: -- so she's going to speak on that.

25 VICE CHAIRPERSON HART: Thank you.

1 MS. MORIMOTO: Yes, I received an email from
2 someone in the Zoning telling me that there had been a letter
3 received that was opposed to the height addition. And I,
4 having spoken with my architect, my understanding was the
5 opposition to the additional height wasn't actually an issue
6 for the Zoning Board to address directly because the height
7 wasn't the issue. It was the usage of the space.

8 I don't actually know the neighbor in question.
9 People who have spoken to me in person about it, I tried to
10 alleviate concerns to the extent that I could. But so that
11 is what I can sort of say to with respect the one letter that
12 I was told was submitted.

13 My understanding was some neighbors had also
14 written in favor as well. But and I am completely unaware
15 of the contents of Councilman Todd's email one way or
16 another, unfortunately. So I can't speak to that.

17 SECRETARY MOY: Mr. Chair, I can pass her a copy,
18 if she should be interested in reading it.

19 CHAIRPERSON HILL: Sure. Go ahead, Mr. Moy.

20 Okay, but so Ms. Morimoto, if you could go ahead
21 and -- so how did it go with the ANC? You went to present
22 at the ANC?

23 MS. MORIMOTO: Yes, I did and the vote of the ANC
24 was to be 3-2 and hold a neutral opinion. Some of the
25 neighbors expressed concern with it would be sort of a change

1 to -- it would be the first garage that would be an accessory
2 dwelling unit. And I think there is some nervousness about
3 sort of what that would entail. No one who had written a
4 letter in support was able to address. So it was more
5 dealing with the comments that were in opposition.

6 My understanding of the three people who spoke in
7 opposition, one was concerned about my intention to use it
8 as Section 8 housing. She was concerned it would have an
9 increase in crime.

10 One was concerned about the effect that
11 construction would have on her ability to access her
12 driveway. I had my contractor try and alleviate those
13 concerns and develop a strategy to mitigate that to the
14 extent as possible.

15 And my entire house was renovated when we moved
16 in and he was able to use as much of the garage as possible
17 when doing the renovations and intends to do so when he's
18 doing the work on the ADU. So hopefully, that would not be
19 -- I think her -- I understand her concerns. I don't know
20 that that should necessarily prohibit the project.

21 And my third neighbor has opposed the structure
22 since its inception, which predates my purchasing of the
23 garage.

24 CHAIRPERSON HILL: Okay, that's all right. I was
25 just kind of -- I mean I was interested as to what happened

1 at the ANC and then --

2 MS. MORIMOTO: Yes.

3 CHAIRPERSON HILL: -- we do have the letters in
4 the record on either side.

5 Again in terms of -- so I was just curious. I
6 mean you have -- it's three bedrooms in the main house,
7 right?

8 MS. MORIMOTO: Four, actually.

9 CHAIRPERSON HILL: Four in the main house and then
10 two in the -- in the garage?

11 MS. MORIMOTO: Yes, sir.

12 CHAIRPERSON HILL: So you're going to have six
13 bedrooms?

14 MS. SCHINDER: This is to clarify. This is not
15 an addition to the square footage of the main house. This
16 is an additional dwelling unit. So we operated under -- it
17 will be for rent. It was like different occupants.

18 It does follow the zoning by right allowance to
19 create a secondary dwelling unit for rent in --

20 CHAIRPERSON HILL: No, no, I understand all that.
21 I mean I was just curious. I was just trying to understand.
22 Sorry.

23 So there will be six bedrooms on the property.
24 That's all I was trying to understand.

25 MS. SCHINDER: Right.

1 CHAIRPERSON HILL: It has nothing to do -- I'm
2 just curious.

3 MS. SCHINDER: Right.

4 CHAIRPERSON HILL: Okay, that's fine.

5 MS. SCHINDER: Yes. If I could speak of -- I
6 could respond to Mister -- Councilmember Todd's letter.

7 CHAIRPERSON HILL: Okay.

8 MS. SCHINDER: I know he opposes it. The initial
9 -- his most important concerns about it says that -- says
10 that the residents of the block work very -- over the years
11 to ascribe to municipal regulations. I want to clarify we
12 are not breaking any municipal regulations with this project.

13 He says the visual livability of the neighborhood
14 intact. I want to clarify that by doing this project we are
15 actually improving the visibility and the usage of the alley.

16 The neighborhood apparently also have partnered
17 with DPW, Department of Public Works. We have not heard any
18 comments from the Department of Public Works opposing this
19 project, nor through DCRA, or any others.

20 DDOT, this project does not remove parking within
21 the property. We are not adding a parking issue burden or
22 any other issues that DDOT has raised concerns with.

23 DCRA also, we are addressing all their comments.

24 CHAIRPERSON HILL: Okay, Ms. Schinder, I'm going
25 to cut you off.

1 MS. SCHINDER: Sorry. I'm just going point by
2 point of his opposition and --

3 CHAIRPERSON HILL: I understand. That's okay.

4 So all right, I'm going to turn to the Office of
5 Planning.

6 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and
7 Members of the BZA. Maxine Brown-Roberts from the Office of
8 Planning.

9 So the special exception from under Section
10 Subtitle D 52.01 is that the building currently has a -- the
11 building area currently exceeds the 450 square feet maximum
12 that is allowed and is actually at 760 square feet. As the
13 Applicant said, that will be retained and the additional four
14 feet that they are adding will be within -- also within the
15 760 square feet. And so the -- what they're doing is
16 expanding a nonconforming accessory building.

17 And as outlined in our report, they have met all
18 the requirements under Section 52.01 and we recommend
19 approval.

20 Thank you, Mr. Chairman.

21 CHAIRPERSON HILL: All right, does the Board have
22 any questions for the Office of Planning?

23 (No audible response.)

24 CHAIRPERSON HILL: Does the Applicant have any
25 questions for the Office of Planning?

1 MS. SCHINDER: No, thank you.

2 CHAIRPERSON HILL: Is there anyone here who wishes
3 to speak in support?

4 (No audible response.)

5 CHAIRPERSON HILL: Is there anyone here who wishes
6 to speak in opposition?

7 All right, please come forward.

8 Were you all sworn in earlier?

9 MS. STEIN: I was not.

10 CHAIRPERSON HILL: Okay. Okay, well why don't the
11 people that were sworn in, please sit down? And if you could
12 please stand and take the oath administered by the Secretary.

13 And if I missed anybody, if anybody came in late
14 and they'd like to testify, if you could, please stand and
15 take the oath that is going to be administered by the
16 Secretary here to my left.

17 SECRETARY MOY: Thank you.

18 Do you solemnly swear or affirm that the testimony
19 that you are about to present in this proceeding is the
20 truth, the whole truth, and nothing but the truth?

21 (Chorus of I do.)

22 SECRETARY MOY: Thank you. You may be seated.

23 CHAIRPERSON HILL: Were you taking the oath?
24 Okay, it doesn't matter. We'll see if you come forward or
25 not.

1 Okay. All right, if you could please introduce
2 yourselves for the record.

3 MR. HASSON: Willie Hasson.

4 MS. CAULEY: Patricia Cauley.

5 MS. STEIN: Sharyn Stein.

6 CHAIRPERSON HILL: Your last name again. I'm
7 sorry, Stein?

8 MS. STEIN: Stein.

9 CHAIRPERSON HILL: Okay and where do you guys --
10 you need to tell us where you live.

11 MR. HASSON: I live next door to the property.
12 I have been there for 20 years --

13 CHAIRPERSON HILL: Okay.

14 MR. HASSON: -- on the -- facing the alley on the
15 left-hand side.

16 MS. CAULEY: Again, Patricia Cauley and I live
17 directly behind the property, 417 Hamilton Street, Northwest.

18 MS. STEIN: I live across the street, 415 Ingraham
19 Street, Northwest.

20 CHAIRPERSON HILL: Okay, so Mr. Hasson -- I'm
21 sorry.

22 MR. HASSON: Hasson.

23 CHAIRPERSON HILL: Hasson -- Mr. Hasson, so just
24 so everyone knows, so everyone gets three minutes to testify.
25 And so the time clock is there in front of you, I believe,

1 and also up on the ceiling. And you can begin whenever you
2 like.

3 MR. HASSON: Thank you. Thank you, Mr. Chairman
4 and Members of the Boarding Zone Administration.

5 I was going to take up some time dealing with the
6 architectural renderings which were started in January but
7 we only got them about a month or so ago. So I will go
8 directly into the heart of the matter of my opposition to the
9 building of this apartment building above this garage.

10 I oppose the granting of zoning variances for 418
11 Ingraham Street, Northwest and I live next door to the
12 proposed construction project. And I will list the benefits
13 and the harms of this proposal.

14 Granting the zoning variance for the addition of
15 a large apartment building over the top of the present garage
16 would create a bad precedent. The original plan for this
17 community, over 86 years ago when these houses were built in
18 1933, considering the size of the alley, which is 20 feet,
19 and the garage and the residential property at that time was
20 -- the house was considered residential property and the
21 garages were considered for garages only.

22 The original plan for this community, over 86
23 years old, coupled with the municipal regulations has served
24 the neighborhood well in the delivery of services, public
25 safety, and the original functionings of the residential and

1 garage purposes of the footprint, well thought out by the
2 planners in 1933, when we had the alley constructed, and the
3 garages constructed, and the residential properties
4 constructed.

5 As a matter of fact, DCRA did a great job in when
6 looking at the footprint of this and it met with the
7 municipal regulations, many of them as it relates to this
8 proposed were all discovered that that footprint would be
9 built beyond what the actual quota for the percentages for
10 the house and the garage and I could go through those.

11 A prolonged construction disruption, given the
12 utmost importance of the alley, would not benefit the 33
13 neighbors who rely upon the alley being available to them at
14 all times. That's our lifeline. The proposal to alter the
15 footprint of 418 Ingraham Street could have been avoided if
16 the municipal regulations had been consulted before and by
17 the designers -- that's the flaw in the designers with the
18 architectural renderings -- and an earlier notice given to
19 the nearest neighbors and others who would or may be affected
20 by the construction and had a feeling about a change on the
21 neighborhood's landscape.

22 I do hope in the future persons will consult at
23 the very earliest with the municipal regulations, which are
24 there and designed to help us as we inform other neighbors
25 when they come into the neighborhood, and the best solutions

1 can be met by having these conversations.

2 In closing, I would like to speak to -- oh, I have
3 11 seconds -- I would like to speak to the Housing section.
4 There was a question raised about Section 8 and they were
5 going to be for Section 8 people. The budgets for the last
6 two years go into the millions of dollars, and I sat on my
7 of those commissions about having money provided to build
8 housing for Section 8 people, and have been to many ribbon
9 cuttings over the last 15 years since I've lived in that
10 neighborhood, even longer.

11 Thank you, Members of the Board and Mr. Chairman.

12 CHAIRPERSON HILL: Thank you.

13 I'm going to go through everybody's testimony and
14 then if the Board has any questions, they can ask.

15 If you wouldn't mind turning off that microphone
16 --

17 MR. HASSON: Sure.

18 CHAIRPERSON HILL: -- just so we can go one at a
19 time. Otherwise, I get feedback. Thank you.

20 Please go ahead.

21 MS. CAULEY: Good morning. Thank you for
22 listening to my concerns.

23 My concerns are accessing my property. When this
24 construction was going up, they would move the trucks
25 whenever they felt like it. I had to find other ways of

1 parking. Parking in my neighborhood is very hard at times.
2 So that meant for me, as a senior citizen, finding parking
3 elsewhere, and walking blocks, and I don't want that this
4 time.

5 Security is another issue. With the property not
6 sitting back 12 feet, as required by the Zoning Law -- I am
7 understanding this -- I can see that as problematic and
8 causing security issues or safety issues here with people
9 accessing that property and traffic going up and down that
10 alley because we use this alley regularly. A lot of us park
11 there because of the parking issues.

12 I can also see closing this alley to do the
13 construction a problem. And as I said, those construction
14 trucks did not respect me at all when this construction was
15 going up. They moved those trucks whenever they got ready.
16 So that meant me having to find other parking to get into my
17 home.

18 Thank you.

19 CHAIRPERSON HILL: Thank you.

20 MS. STEIN: I live across the street from where
21 the construction will be happening, so it's not going to
22 affect me as directly, and I do believe that my neighbors
23 have more of a say in this than I do.

24 But I did want to come down here because I am
25 concerned about the precedent it could set for our

1 neighborhood. We live in a neighborhood that is already
2 having a great deal of trouble with illegal construction,
3 with semi-legal pop-ups that are going up, and with arguments
4 among neighbors over the changing face of the neighborhood.
5 And I am worried that allowing an exemption like this in a
6 neighborhood that has, for many decades now, been single-
7 family-only and with height restrictions. Allowing a pop-up
8 or a unit that can be separately rented out for the first
9 time would make it harder to address other problems that
10 might come up in the future.

11 I am here today, in part, because that is a
12 particular problem for me. The house next door to me has
13 been cited before for attempting to change from a single-
14 family unit into condominiums illegally. That construction
15 was stopped and the owner was cited. However, I know that
16 that is sort of an ongoing wish of some property owners in
17 our area.

18 I know that I just invested a great deal of money
19 in solar panels for the top of my house and I know that if
20 any of the houses around me do a pop-up that my solar panels
21 will stop working.

22 So again, this does not address this project. You
23 may be able to look at this project particularly and say that
24 this one is good for an exemption but I would ask you to
25 please take a look at any precedent that it might set,

1 anything that might make it more difficult for you to deny
2 other projects later, anything that might cause us problems
3 down the line for those of us who invested specifically in
4 a particular type of neighborhood -- single-family, no
5 extraneous units, and a certain height where we felt
6 comfortable investing in things like solar panels and other
7 construction that we needed.

8 Thank you.

9 CHAIRPERSON HILL: Okay, I just have a couple
10 quick questions.

11 Did you guys all go to the ANC meeting when they
12 were talking about this? You're nodding yes. And then you
13 all testified there as well, I would assume?

14 MR. HASSON: Yes, I did.

15 MS. CAULEY: Yes.

16 MS. STEIN: I did not.

17 CHAIRPERSON HILL: You did not? Okay. And so I
18 mean the reason why I mention that is because they did take
19 a vote and their vote was neutral. You know and so they
20 didn't vote one way or the other but you did have an
21 opportunity to go to the ANC meeting.

22 And then also, have you had an opportunity to read
23 through the Office of Planning's report and also the special
24 exception criteria that we have to look through in order to
25 grant or deny a special exception? You haven't had a chance.

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1 Okay, so just so you know, it's under Subtitle D
2 52.01, and then also the general criteria is under X 901.2.
3 So that's what we are looking at, as well as the Office of
4 Planning, when we are trying to determine whether or not this
5 one unit -- I'm sorry -- this one application actually can
6 be approved or denied.

7 I mean in terms of what we're responsible to do
8 is, again, just kind of look through the criteria. And if
9 it is something -- particularly if it is a special exception,
10 if it something that fits the criteria, then we basically
11 have to grant it. You know -- I shouldn't say have to grant
12 it. It's like you know we're burdened -- burdened with
13 looking at the criteria and determining whether or not we
14 think the criteria has been met. And if it has been met,
15 then it's within Zoning to be granted.

16 So I'm just kind of pointing those things out.

17 In terms of your concerns, or some of the concerns
18 that you rose in terms of construction, was that -- you said
19 there was the previous -- are you talking about the previous
20 property -- I mean when the home was reconditioned?

21 You need to push the button.

22 MS. CAULEY: Sorry. This was when this
23 construction was going up.

24 CHAIRPERSON HILL: Right, the original building,
25 not what's going on now. The original building.

1 MS. CAULEY: The original building.

2 CHAIRPERSON HILL: Is that what you're speaking
3 to? Okay.

4 Were you guys -- were you the property owner for
5 the original building?

6 MS. MORIMOTO: No. So I was not the property
7 owner when the garage originally went up, no.

8 CHAIRPERSON HILL: I'm sorry, I'm confused. I
9 thought there was -- didn't you redo the house?

10 MS. MORIMOTO: I did redo the house. I don't
11 think she's referring to when my house was reconditioned.

12 MS. CAULEY: I did have problems with that.

13 MS. MORIMOTO: You had problems with my --

14 CHAIRPERSON HILL: Hold on a second. That's what
15 you were testifying to, the construction for the original
16 home, correct?

17 MS. CAULEY: Both.

18 CHAIRPERSON HILL: Both, okay.

19 So I don't know if you have had an opportunity to
20 -- give me one second -- I'm just saying so you're aware of
21 their concerns or some of their concerns?

22 MS. MORIMOTO: Yes, I reached out to my contractor
23 to ask him to A) be aware of it and develop a mitigation
24 strategy to make sure that he's as minimally disruptive as
25 possible, which I thought that -- I knew that she was going

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1 to -- I was under the impression that I couldn't alleviate
2 entirely all of her concerns but I thought had helped address
3 them somewhat. And --

4 CHAIRPERSON HILL: So you guys are in touch with
5 each other?

6 MS. MORIMOTO: Yes.

7 CHAIRPERSON HILL: Okay, you have the email
8 address and such?

9 MS. MORIMOTO: Yes.

10 CHAIRPERSON HILL: And then how long would the
11 construction take?

12 MS. MORIMOTO: I believe it would be a maximum --
13 four months was my understanding.

14 CHAIRPERSON HILL: Okay. All right, does the
15 Board have any questions for the witnesses?

16 VICE CHAIRPERSON HART: Just one quick question.
17 There was something about a 12-foot setback. What was that?
18 I think that was Ms. Cauley.

19 MS. CAULEY: Yes.

20 VICE CHAIRPERSON HART: What do you mean by that?

21 MS. CAULEY: My understanding is that the garage
22 should be set back 12 feet from the actual alley and it is
23 sitting right on the alley there. And my concern is the
24 safety of the people that are exiting and entering that
25 construction.

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1 VICE CHAIRPERSON HART: Yes, I just wanted to
2 understand what you met by that.

3 Ms. Schinder?

4 MS. SCHINDER: Just to clarify the 12-foot
5 setback, the zoning rule in that neighborhood indicates that
6 when you create a new structure that faces the alley, the
7 setback from the rear has to be 12 feet from the centerline
8 of the alley. This alley exceeds that.

9 So the existing garage structure where this
10 particular project will be placed complies with the setback
11 that was required originally. This project that we are
12 presenting today will not alter the location of the rear wall
13 of the alley. We are contributing what is called eyes on the
14 street. So, instead of having a blind garage door, we are
15 contributing windows so people will be able to see into the
16 alley.

17 Also, the existing garage, from an oversized
18 structure, will accommodate one car still. So it won't be
19 an increase of traffic, of vehicular traffic for this project
20 in particular.

21 For when it comes to the Section 8 concerns, the
22 owner is committed to follow all the rental rules for the
23 District of Columbia for the safety of the neighborhood, the
24 owner, and the renters that come in. Of course, neighbors
25 or whoever sees a concern or a behavior that they deem

1 dangerous to the neighborhood, they are welcome to report it
2 officially to make sure that everything is mitigated during
3 the life of the building.

4 CHAIRPERSON HILL: Okay. So let's see --

5 COMMISSIONER SHAPIRO: Yes, I just want to make
6 sure but I don't think we were hearing any concerns around
7 Section 8 housing.

8 MR. HASSON: No, no.

9 MS. CAULEY: Not at all.

10 COMMISSIONER SHAPIRO: So I just want to make sure
11 that we're clear. That's not what I'm hearing from you all.
12 Okay, thank you, Mister --

13 CHAIRPERSON HILL: Okay, all right -- yes, sir,
14 would you like to say something else?

15 MR. HASSON: I would. Members of the Board, I was
16 there for the first construction of the present garage and
17 followed the construction footprint that was needed for that
18 garage. It started off being a very small garage. And the
19 dumpsters and all of the equipment that came in during the
20 time of the construction, literally shut us down.

21 We worked, after that garage built, and went along
22 with the neighbors who lived there for a while because they
23 had two boats, they had two cars, three motorcycles, and all
24 of that filled the size of the garage that they built -- that
25 structure is that large -- is that we did not want this to

1 happen again with additional construction that would close
2 us down and not have use of the alley at all. It literally
3 closes us down with trucks coming in and out, with dumpsters
4 that we've measured. And it would be more harm than benefit.

5 CHAIRPERSON HILL: Okay.

6 MR. HASSON: Thank you very much.

7 CHAIRPERSON HILL: Okay.

8 All right, I guess I don't know whether the Office
9 of Planning has any thoughts on any of the items that were
10 raised or they are still kind of all within the -- nothing
11 necessarily within the standard?

12 MS. BROWN-ROBERTS: Right. I think most of the
13 issues that have come up has been things that are outside of
14 the standards. And therefore, we would approve.

15 CHAIRPERSON HILL: Okay. All right --

16 MR. GOLDSTEIN: Mr. Chairman?

17 CHAIRPERSON HILL: Oh, I'm sorry, sure.

18 MR. GOLDSTEIN: My apologies. It may be worth
19 having the Office of Planning address the relief is not for
20 the use as the apartment, it is really just for the box,
21 right? So it may be worth any -- the Applicant is asserting
22 the residential use as a matter of right use in the zone.
23 The relief is for the box, the additional building area and
24 the expansion of a nonconforming structure.

25 So it may be worth having the Office of Planning

1 talk about that issue a little bit further.

2 MS. BROWN-ROBERTS: Uh --

3 CHAIRPERSON HILL: I guess we are just speaking
4 to -- I think what OAG is speaking to is we are not granting
5 the use, right?

6 MS. BROWN-ROBERTS: Right.

7 CHAIRPERSON HILL: We are just granting the relief
8 that is being requested. You're still going to have to go
9 get permit for what you believe is a matter of right, all
10 right? So that's the clarification that I believe the Office
11 -- the OAG is speaking to. So, I have just spoken to that.
12 Right? Okay, great.

13 All right, thank you all very much.

14 Okay, does the Board have any questions for the
15 Applicant?

16 (No audible response.)

17 CHAIRPERSON HILL: Do you have anything else you
18 would like to add?

19 MS. MORIMOTO: No.

20 CHAIRPERSON HILL: Okay. All right. I'm going
21 to close the record -- I'm going to close the hearing, I
22 should say.

23 Is the Board ready to deliberate?

24 VICE CHAIRPERSON HART: Yes.

25 CHAIRPERSON HILL: Okay, I can begin. I am you

1 know sorry that the neighbors are concerned about the
2 construction and I hope very much that the Applicant does
3 their best to keep the construction as minimal as possible
4 and have the contractors work with the neighbors, as
5 possible, to get the -- you know make sure it doesn't disrupt
6 their lives that much.

7 In terms of the relief, again as was stated
8 earlier, we're not granting the use. We are just here for
9 the relief that is being requested in terms of the structure
10 itself. And I believe that the Applicant has met the
11 criteria under D 52.01, as well as X 901.2 for the special
12 exception.

13 I do agree with the analysis that the Office of
14 Planning has provided. And also, the ANC has not taken a
15 position. However, I do believe, as I said, that they should
16 -- that they are meeting the criteria for us to grant the
17 application.

18 I do, again, hope that the Applicant will do their
19 best to be a good neighbor in terms of the -- not only the
20 construction but also the ultimate use, if it does get
21 approved through permitting, working with the neighborhood.

22 So does the Board have anything else they would
23 like to add?

24 VICE CHAIRPERSON HART: Only that I would agree
25 with you, Mr. Chairman, on this case.

1 Going through Subtitle D 52.01(3), the criteria
2 talk about the light and air available to neighboring
3 properties shall not be unduly effected. I don't think that
4 that's the -- I am -- I think that there may be some impact
5 but it's not going to be unduly.

6 Privacy of use and enjoyment of neighboring
7 properties should not be unduly compromised. Again, I think
8 that there is -- that the Applicant has provided information
9 saying that there will not be that unduly -- that are will
10 not be unduly compromised.

11 The addition or accessory structure, together with
12 the original building, as viewed from the street, alley, and
13 other public way shall not substantially visually intrude
14 upon the character, scale, and pattern of houses along the
15 subject street frontage.

16 I understand that this is a building that is
17 existing now. They are adding a fairly modest addition to
18 the height but that is within what is allowed under the
19 zoning regulations. So I didn't find that to be an issue.

20 And I would be in support of the application, as
21 well. I thought that they met the rest of the criteria as
22 well but I would also agree with the Office of Planning
23 report, you know which is recommending supporting of this
24 application -- or approval of this application.

25 MEMBER JOHN: Just a couple things, Mr. Chairman.

1 I also support the application and agree with the
2 Office of Planning's analysis in terms of the impact on the
3 neighbors.

4 I would note that because this is a special
5 exception, the Board ordinarily would grant the relief if the
6 application meets the requirements in the regulations. And
7 I just want to also note that the councilmember's letter
8 mentioned that this was a zoning variance and so we are not
9 granting a variance. This is an application for special
10 exception.

11 So based on the testimony today and, for the
12 record, I would support the application.

13 CHAIRPERSON HILL: All right, I am going to make
14 a motion to approve Application number 20155, as captioned
15 and read by the Secretary and ask for a second.

16 VICE CHAIRPERSON HART: Second.

17 CHAIRPERSON HILL: Motion made and seconded.
18 All those in favor, say aye.

19 (Chorus of aye.)

20 CHAIRPERSON HILL: All those opposed?

21 (No audible response.)

22 CHAIRPERSON HILL: The motion passes, Mr. Moy.

23 SECRETARY MOY: The Staff would record the vote
24 as four-to-zero-to-one and this is on the motion of Chairman
25 Hill to approve the application for the relief requested.

1 Seconding the motion is Vice Chair Hart. Also in
2 support is Ms. John and the Zoning Commissioner, Peter
3 Shapiro, with no other members present.

4 CHAIRPERSON HILL: All right, thank you, Mr. Moy.

5 Thank you very much. Thank you all.

6 All right, so everybody in the audience here, so
7 there's only one case left. And so what we're going to do,
8 actually, is take a break and then come back and hear the
9 case.

10 I also wanted to, for the Board, I was interested
11 in having an emergency closed meeting with the -- with OAG
12 so we can kind of like freshen ourselves prior to this case.
13 And so I'm going to go ahead and make a motion as chairperson
14 of the Board of Zoning Adjustment for the District of
15 Columbia, in accordance with Section 407 of the District of
16 Columbia Administrative Procedure Act. I move that the Board
17 of Zoning Adjustment hold a closed emergency meeting on
18 December 4th for the purposes of seeking legal advice from
19 our counsel on Case number 20135 and deliberate upon but not
20 make any decisions for the reasons cited in D.C. Official
21 Code Section 2-575(b)(13).

22 Is there a second?

23 VICE CHAIRPERSON HART: Second.

24 CHAIRPERSON HILL: Mr. Moy, as it seems that this
25 motion has now been made and seconded, would you mind taking

1 a roll call vote, please?

2 SECRETARY MOY: Yes, sir. I believe the roll call
3 vote is three-to-zero-to-two and this is on the motion of
4 Chairman Hill to --

5 CHAIRPERSON HILL: No, I'm sorry, Mr. Moy. We're
6 taking a roll call vote for the emergency meeting.

7 SECRETARY MOY: Yes. Oh, yes, yes, yes. I'm
8 sorry about that. I didn't get my second cup of coffee.

9 All right, so when I call your name, if you would
10 all reply with a yes or no.

11 Mr. Shapiro.

12 COMMISSIONER SHAPIRO: Yes.

13 SECRETARY MOY: Chairman Hill.

14 CHAIRPERSON HILL: Yes.

15 SECRETARY MOY: Vice Chair Hart.

16 VICE CHAIRPERSON HART: Yes.

17 SECRETARY MOY: And I am going to also ask for a
18 vote from Ms. John.

19 MEMBER JOHN: Yes.

20 CHAIRPERSON HILL: All right, Mr. Moy, it seems
21 like the motion is passed. I hereby give notice to the Board
22 of Zoning Adjustment we will recess these proceedings on this
23 date at 11:00 until the close of the emergency meeting in the
24 Office of Zoning Conference Room, pursuant to the District
25 of Columbia Administrative Procedures Act. A written copy

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1 of this notice would post in the Jerrily R. Kress Memorial
2 Hearing Room at this time.

3 All right. So, everybody, we are going to take
4 a break. We are going to talk a little bit and we will come
5 back. So, 15 minutes, hopefully. All right? Thank you.

6 (Whereupon, the above-entitled matter went off the
7 record at 11:01 a.m. and resumed at 11:27 a.m.)

8 CHAIRPERSON HILL: All right, Mr. Moy, we are
9 back. If you wouldn't mind calling our last case.

10 SECRETARY MOY: Thank you, Mr. Chairman.

11 For the record, the Board is back in session and
12 the time is at or about 11:30.

13 So if we can have parties to the table to Case
14 Application number 20135 of 3428 O Street LLC, captioned and
15 advertised for a use variance from the use permissions of
16 Subtitle U Section 201.1 to operate a prepared food shop on
17 the first floor and basement of an existing mixed use
18 building R-20 Zone at 3428 O Street, Northwest, Square 1228,
19 Lot 76.

20 And as the Board will recall, this was last heard
21 at its hearing on October 30 of 2019.

22 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
23 Moy.

24 Could you please introduce yourselves for the
25 record? You can start.

1 MS. PALMER: ANC 2E Commissioner Lisa Palmer.

2 MR. SULLIVAN: Marty Sullivan on behalf of the
3 Applicant.

4 MR. DANA: Andrew Dana, the Applicant, here with
5 Call Your Mother.

6 CHAIRPERSON HILL: Okay, is there anyone here
7 wishing to testify that was not sworn in earlier? Did
8 everybody get sworn in? I saw people coming in late.

9 So if you want to stand -- if you haven't been
10 sworn in, if you could please stand and get sworn in by the
11 Secretary to my left.

12 SECRETARY MOY: Okay, do you solemnly swear or
13 affirm that the testimony you are about to present in this
14 proceeding is the truth, the whole truth, and nothing but the
15 truth?

16 (Chorus of I do.)

17 SECRETARY MOY: Thank you. You may be seated.

18 CHAIRPERSON HILL: Okay, great.

19 So I know we are going to end up with Mr.
20 Sullivan, at some point, but Commissioner, you are the person
21 who has to leave early. Is that correct?

22 MS. PALMER: Yes, sir.

23 CHAIRPERSON HILL: Okay, so I guess, first of all,
24 in terms of -- you're representing your ANC. Is that
25 correct?

1 MS. PALMER: That is correct.

2 CHAIRPERSON HILL: And so the ANC had voted in
3 favor of this application, is that correct?

4 MS. PALMER: That is correct.

5 CHAIRPERSON HILL: Okay, so you're here to testify
6 in favor of the application?

7 MS. PALMER: Correct.

8 CHAIRPERSON HILL: Okay. The only reason why I'm
9 kind of confused is that I know there is other commissioners
10 here who have been here before and they are here to testify
11 in opposition. So I was little confused. All right?

12 MS. PALMER: Yes, sir.

13 CHAIRPERSON HILL: Okay. So, let's see.

14 Mr. Sullivan, can you tell us what happened since
15 the last time you were with us?

16 MR. SULLIVAN: Sure. The Board asked for
17 additional information and we submitted it. It's --

18 CHAIRPERSON HILL: Yes, we saw all that stuff.

19 MR. SULLIVAN: Yes --

20 CHAIRPERSON HILL: Can you just read through --
21 can you repeat what we had asked for and what you submitted?

22 MR. SULLIVAN: Sure. One thing you had asked for
23 was a plan showing a reconfiguration of the door. And as we
24 explained in our cover letter, we found a configuration that
25 didn't need to reconfigure the door. So we have photos of

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1 the interior line using the existing configuration of the
2 front door.

3 The other thing that was asked for was a specific
4 plan showing where the line might be and the diagram inside
5 and outside the building. And we did that, as well as
6 provide photos of a line with about 50 people in it that was
7 completely adjacent to the property.

8 You also asked for additional information to the
9 point of undue hardship on the property owner. And in
10 response to that, we submitted a letter from the property
11 owner explaining the undue hardship argument in finding
12 another retail tenant. And I think --

13 Oh, and more details on the operation of the
14 business in regard to specifically how it operates as
15 permitted as a retail use versus how it would operate as
16 proposed with the use variance.

17 CHAIRPERSON HILL: Okay. All right, Commissioner,
18 since you have to leave and you know -- you're with us as
19 long -- until like noon, at least. Was that correct?

20 MS. PALMER: That's correct.

21 CHAIRPERSON HILL: Okay, so we'll see where we get
22 but do you want to go ahead and give us your testimony?

23 MS. PALMER: Thank you. Yes, that would be
24 terrific.

25 Members of the Board, by way of introductions, my

1 name is Lisa Palmer and I am the Vice Chair of ANC 2E and the
2 author of ANC 2E's resolution in support of the zoning
3 variance in question, which passed six-to-two.

4 For your reference, the resolution dated October
5 17, 2019 simply states, quote: ANC 2E supports of the Board
6 of Zoning Adjustment application for a use variance from the
7 use permissions to operate a prepared food shop at 3428 O
8 Street, Northwest, unquote.

9 I am also the designated representative from ANC
10 2E on this matter and the northern boundary of my district
11 is located two blocks from this proposed establishment.

12 I understand that a number of my own constituents,
13 as well others from across ANC 2E, have shared letters of
14 support for this use variance with the Board of Zoning
15 Adjustment, including neighbors who live within one block of
16 the proposed establishment.

17 Considering that this is a limited scope continued
18 hearing, all comments should relate directly to the
19 Applicant's filings delivered on November 22nd, 2019. As
20 such, I begin by sharing that ANC 2E believes that the
21 documents included in the Applicant's submission are
22 persuasive to our commission. Specifically, I share the
23 following comments as support for ANC 2E's continued position
24 that, should the use variance be granted, the Applicant can
25 manage the store in such a manner that it would not cause

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1 substantial detriment to the public good.

2 Number one: ANC 2E believes that the information
3 diagrams provided by the Applicant related to line management
4 sufficiently demonstrate that any queuing outside of the shop
5 will cause no substantial detriment to the public good. Even
6 with up to approximately 50 people on the sidewalk, there
7 remains room for pedestrians to easily pass the store.

8 Furthermore, I spoke with ANC Commissioner Michael
9 Ray, who is the commissioner where the existing Call Your
10 Mother store is located. I asked Commissioner Ray to
11 characterize the line management system in use at the store
12 in his district, as well as describe what it might be like
13 for residents who live in the immediate vicinity of the shop,
14 based on his constituents' experiences.

15 He shared the following, quote: The line could
16 not any more quiet. Most people just stand there looking at
17 their phones. I have received zero noise complaints. End
18 quote.

19 Number two: ANC 2E takes seriously the concerns
20 about litter, which some of our constituents have noted as
21 part of this process. I also asked Commissioner Ray about
22 any issues his community has experienced related to litter
23 and rodents as a result of the operation of this business,
24 particularly considering concerns related to crowds of people
25 enjoying food while on the sidewalk by the shop.

1 Commissioner Ray shared, quote: Litter has never
2 been a concern. The area around the store is cleaner now
3 than before they moved in. Here, too, zero trash or rat
4 complaints. Unquote.

5 ANC 2E also notes that during our October 17th
6 public meeting, the Applicant shared his interest in working
7 closely with members of the community to ensure that the area
8 surrounding his shop is clear from litter.

9 Number three: ANC 2E paid close attention to
10 Exhibit C from the Applicant describing how the Applicant
11 would operate if it were to follow the permitted retail use
12 instead of the proposed use as a prepared food shop. ANC 2E
13 strongly prefers the option provided for should the use
14 variance be granted.

15 We believe that forcing the Applicant to operate
16 without the variance would likely increase the length of
17 lines, as customers wait to toast their own bagels, and could
18 also cause additional trash as patrons pack up to leave.
19 Furthermore, we believe significant efficiency-related
20 advantages will be afforded to our community of the Applicant
21 uses trained staff to make sandwiches, as would be provided
22 with their requested use variance versus encouraging
23 customers to do so themselves, as would be the case should
24 the variance not be granted.

25 In plain language, granting of the use variance

1 will mean shorter lines outside of the building and less
2 trash.

3 Finally, ANC 2E notes that multiple daily food
4 deliveries, as required should the use variance not be
5 granted, poses significant challenges for the tight streets
6 where this shop will be located. ANC 2E strongly prefers the
7 single delivery concept, as would be required should the use
8 variance indeed be granted.

9 In closing, ANC 2E believes that the Applicant has
10 demonstrated, through its filings as well as its past
11 operating history, that a prepared food shop at 3428 O
12 Street, Northwest would not cause a substantial detriment to
13 the public good and would not be inconsistent with the
14 general intent and purpose of the zoning regulations.

15 Therefore, ANC 2E continues to request that the
16 Board of Zoning Adjustment provide a use variance in the
17 matter of BZA Application number 20135 of 3428 O Street LLC.

18 Thank you.

19 CHAIRPERSON HILL: Okay, does the Board have any
20 questions for the Commissioner?

21 (No audible response.)

22 CHAIRPERSON HILL: Okay, I do.

23 So the two votes opposed, one was the SMD,
24 correct?

25 MS. PALMER: That's correct.

1 CHAIRPERSON HILL: Okay and then the other was an
2 adjacent SMD?

3 MR. SULLIVAN: That's correct. It --

4 CHAIRPERSON HILL: That's okay. You can testify
5 afterwards.

6 MS. PALMER: Yes.

7 CHAIRPERSON HILL: I'm just trying to understand.
8 Because what I thought was interesting by the vote it was
9 six-to-two. So I mean it wasn't necessarily close in terms
10 of what your ANC thought --

11 MS. PALMER: That's correct.

12 CHAIRPERSON HILL: -- of this particular relief.

13 MS. PALMER: That is correct.

14 CHAIRPERSON HILL: So okay, Mr. Sullivan, so we're
15 going to go ahead and let you present to whatever it was that
16 you gave to us, right, and then we're going to go ahead and
17 hear testimony based again upon the limited scope.

18 I know some people were here the last time and
19 they are going to present again or provide testimony to the
20 actual information that was presented to us.

21 As we were kind of talking with our staff and OAG,
22 some of the things that came up also was kind of a matter of
23 right use in terms of a corner store. And I was curious
24 during your testimony if you had -- or I mean I don't know.
25 Just have you kind of like you know looked into that area in

1 terms of then it would be area variance relief, rather than
2 the use variance, in terms of the corner store matter of
3 right?

4 So I would be kind of interested in hearing your
5 thoughts on that.

6 And then that would -- regardless of whether you
7 were here under that special exception criteria or whatever
8 -- it's either special exception or perhaps an area variance,
9 if you were here under that criteria, still the same issues
10 that the opposition has would still be the same. So it
11 doesn't matter. We're still going to take all the testimony
12 and figure it out.

13 But again, the issue that we've been having, I
14 believe that the Board's been having in terms of the previous
15 discussion again, was the first prong of that use variance,
16 right, and again, that you have submitted the information.

17 So again, the lesser standard, which would be
18 through the -- which the corner store -- I was just curious
19 if you kind of thought about that.

20 So you can go ahead and tell us about what you
21 submitted and then maybe you can even speak to the question
22 about the corner store even later, since I'm just bringing
23 it up to you.

24 Go ahead and speak to what you have presented to
25 us. Testify as to what you have presented to us in terms of

1 the limited scope and then we can kind of go from there.
2 Okay?

3 And Mr. Dana, thank you for wearing a suit today.
4 That's very nice of you. You know I'm sure that your --
5 okay.

6 All right, Mr. Sullivan, you can go ahead and
7 start whenever you like.

8 MR. SULLIVAN: Thank you, Mr. Chair.

9 The first question would be we do have supporters
10 here, too, ready to speak. And I don't know what the rules
11 were for non-party persons speaking again today. I thought
12 if it was going to be open to non-parties that --

13 CHAIRPERSON HILL: We're going to take testimony
14 from everybody that is here --

15 MR. SULLIVAN: Okay.

16 CHAIRPERSON HILL: -- on the limited scope issues.

17 MR. SULLIVAN: Okay, understood.

18 Regarding the matter of right as a corner store,
19 it was the 750-foot rule that we didn't meet. It wasn't
20 clear to me that it was area variance versus use variance.
21 I think that is in the Board's discretion to say what that
22 might be.

23 We're certainly -- I would like, if the Board
24 wants to explore that because they're uncomfortable with the
25 use variance test, then I would just like five minutes to

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1 make sure there might not be other sections of the corner
2 store regulations that we would need relief from because they
3 are very particular and there is a lot of restrictions on it.
4 So --

5 CHAIRPERSON HILL: Okay, that's fine. So I'm not
6 going to give you the five minutes right now. What I think
7 we're going to do is we're going to -- I'd like to hear from
8 Mr. Dana in terms of all the information that we've
9 submitted. And then I think again that the -- and then you
10 can go ahead and take a look at what it is because then,
11 basically, you'd be back before us again with a different
12 request if that were kind of the case.

13 And so I don't know how that would actually work.
14 However, I know that it is a lesser burden, after consulting
15 again with our Staff and OAG in terms of how we would process
16 this. And so you know I think that is something that you
17 should take a look at.

18 So but Mr. Dana, you want to go ahead and present
19 your testimony in terms of all of the information that you've
20 given to us that we requested the last time.

21 MR. DANA: Yes, thank you. Good morning.

22 So I'm just going to go through the bullets. The
23 first one was the information on the 2D scale and the line.
24 As you saw, we submitted photos. So we lined 55 people up.
25 There's a small portion inside the building, where we can

1 line up about ten people. And then outside, to add to that,
2 there is a flower box outside that is not historic that we
3 could remove that would add a whole other line. So we could
4 add a whole other row, which is roughly ten people. So we
5 could add to that space and get to almost 65 people before
6 it even starts to touch the sidewalk.

7 And I would like to work with the neighbors on how
8 we do the line control. I'm happy to do it.

9 CHAIRPERSON HILL: All right, let me state two
10 things, okay? First of all -- hello. Hello. Hey, Dana, Mr.
11 Dana, so just to let you know, we're going to just go through
12 this. We do this every Wednesday. And so just let's
13 politely listen, okay?

14 And then Mr. Dana, whatever you had to do with
15 other people, just ignore everybody.

16 MR. DANA: Sorry about that.

17 CHAIRPERSON HILL: Okay, you are only here to talk
18 to us. Okay?

19 MR. DANA: Got it.

20 CHAIRPERSON HILL: The suit looks nice, so stay
21 focused.

22 MR. DANA: Thank you. I appreciate that.

23 CHAIRPERSON HILL: All right, Mr. Dana.

24 MR. DANA: Now I'm buttoned up.

25 So happy to work with the neighbors, whether it's

1 temporary lines or having people out there. I'm happy to
2 come to a conclusion with them.

3 The second thing was the door configuration. The
4 door opens in and it does open flush with the wall. So on
5 nice days, the door can be open flush with the wall. It
6 doesn't affect the line at all. And on days where you open
7 and close, again, it opens flush with the wall. So it should
8 be no issue.

9 You all read the letter about the hardship from
10 our landlord. I just wanted to read one quote from that
11 letter. It says: Georgetown, like all other retail
12 districts in D.C. and around the country are suffering, are
13 feeling the effects of the change in customer behavior. More
14 people are shopping online. Younger people are buying
15 experiences in food, not things. This is a direct quote from
16 ANC Member Rick Murphy. Again, you can see this Georgetown,
17 retail is dying. The only retail that is surviving is food
18 and beverage.

19 The second thing about this location, it was a
20 flower shop. So there is giant walk-in fridge in the
21 basement. So basically, the landlord would have to find
22 either a flower shop or another business that needs a giant
23 walk-in fridge, besides a prepared food shop, which I think
24 would be hard to find.

25 And then lastly, commercial versus residential,

1 when you sign a commercial lease, typically, the onus is on
2 you to update utilities. So we have actually updated Pepco
3 there, whereas a retail resident would never be required to
4 update Pepco for a location. So again, that's a cost that
5 we, as the commercial tenant took on as opposed to the
6 landlord.

7 Talking about the difference between retail and
8 prepared food, last time you didn't get a chance to meet my
9 business partner and fiancée, Chef Dani, right there. Dani
10 is a James Beard-nominated rising star chef. She is a Forbes
11 30 under 30. For lack of a better word, she is a beast and
12 she is obsessed with speed and cleanliness. The amount of
13 chefs we have had come into our restaurant and say I have
14 never witnessed such a clean kitchen is through the roof.
15 And you should see the difference between somebody's first
16 day and after they've been through training with Dani -- they
17 can make sandwiches 15, 20, 30 seconds, depending on the
18 sandwich, where on their first day it take a minute, a minute
19 and a half.

20 So again, if you have people making their own
21 sandwiches, it is going to take a lot of time and there is
22 no way they even come close to the cleanliness that Chef Dani
23 instills through our kitchen.

24 And then lastly, we were asked to the walk the
25 neighborhood and sort of point out different retail

1 commercial shops. If you hear the defense, it makes it
2 sounds like this is a super-sleepy corridor, where there is
3 no business. To be clear, there is a major bus route on this
4 street. It is two blocks from the main entrance of a large
5 university. On our block alone, there are other retail
6 shops. There is a barber shop, a hardware store, and a
7 Saxbys. So just to be clear, this is a commercial corridor.
8 This was an existing commercial business. It is already
9 highly trafficked. We are not going to be changing the flow
10 of things there at all.

11 And lastly, there has been numerous coverage of
12 this issue in different publications throughout the city and
13 it is clear that the city and the neighborhood is largely
14 behind us. I think it is a small minority that happens to
15 be the loudest that is against us and, if given the
16 opportunity, we will win them over. But again, I believe the
17 majority is with us.

18 Thank you.

19 CHAIRPERSON HILL: Okay. Does anybody have any
20 questions for the -- well, first, does the ANC, since you're
21 leaving, do you have any questions for the Applicant?

22 MS. PALMER: No, thank you.

23 CHAIRPERSON HILL: Okay. Does the Board have any
24 questions for the Applicant?

25 (No audible response.)

1 CHAIRPERSON HILL: I've got a couple real quick,
2 while you guys are thinking.

3 So in terms of -- so what we're here for, I'm sure
4 your attorney, Mr. Sullivan, has kind of provided the
5 analysis that we need to go through in terms of the hoops.
6 So getting past that first prong, which whether or not we end
7 up doing that or not we will have to figure out, but the main
8 purpose -- or I'm sorry -- the main opposition tends to be
9 like community and like an adverse impact to the community.

10 So that line by the -- yes, the line. So you --
11 I was a little confused. Are you guys going to put -- this
12 is where I'm just confused. Mr. Sullivan can possibly help.
13 Are you guys putting stanchions -- you put stanchions out
14 there, I guess. And is that a public space issue, Mr.
15 Sullivan?

16 MR. SULLIVAN: I suspect we might need a -- well,
17 I don't think for something that is not attached.

18 CHAIRPERSON HILL: Okay, so you can put stanchions
19 out there, right?

20 MR. SULLIVAN: Yes.

21 CHAIRPERSON HILL: Okay. And then so your intent
22 would be to put stanchions.

23 MR. DANA: That's what I was saying is we're happy
24 to work with the neighbors. If we were allowed to put
25 temporary stanchions, I think that's a great solution. If

1 they are not into that, we would have a full-time staff
2 person outside organizing the line, if there is no better way
3 to do it, when there is a line.

4 And I forgot to mention last time we talked about
5 how we switched to Point-of-Sales to speed up the process of
6 taking orders. Since then, the line has been significantly
7 reduced. Even on weekdays, we don't -- weekends, we don't
8 have the line out the door as much as we used to. So that
9 has really helped throughputs.

10 CHAIRPERSON HILL: Right, okay. So we review
11 these cases on the weekends. And so where did you get the
12 people for the line?

13 MR. DANA: We just emailed supporters and --

14 CHAIRPERSON HILL: Emailed supporters?

15 MR. DANA: -- they came through.

16 CHAIRPERSON HILL: Everybody showed up on a
17 Saturday or a Sunday or something?

18 MR. DANA: It was a Monday afternoon.

19 CHAIRPERSON HILL: It was a Monday afternoon.
20 Somebody brought their dog.

21 MR. DANA: Somebody brought their dog.

22 CHAIRPERSON HILL: Okay. All right, does anybody
23 have any questions for the Applicant?

24 VICE CHAIRPERSON HART: Mr. Dana, you've -- you're
25 having some queuing inside the -- I mean some minimal queuing

1 inside the store or inside the building. And then once you
2 kind of get -- and I'm looking at the diagram that you guys
3 provided in the 113A I think, the line kind of queuing. And
4 the door opens wide enough to allow folks to -- and you have
5 -- a lot of folks to kind of queue up on the -- on one side
6 of the register and then be able to move through. And then
7 I'm not really sure what happens on the -- it looks like
8 there may be a bar or something, like where people can stand
9 at.

10 MR. DANA: That's just like we call it the Expo
11 stations. That's where you pick up your finished order and
12 then leave. So we wanted to leave that side of the
13 restaurant open for people waiting for their order to be
14 finished and then that sort of --

15 VICE CHAIRPERSON HART: And then at the window,
16 what happens there?

17 MS. STEIN: Nothing. There's no seats or
18 anything. That's just a ledge that was existing.

19 VICE CHAIRPERSON HART: Yes, but I'm saying people
20 could like just stand there and eat, and talk, and whatever?

21 MR. DANA: Yes, they can sit and wait for their
22 order.

23 VICE CHAIRPERSON HART: But that's a -- is that --
24 that's a place to sit or is it a place to -- is it like bar
25 height or is some place that you are actually sitting on?

1 MR. DANA: It's -- it is an existing sort of bay
2 window that has low brick. So it's not like meant for
3 seating. Now, if somebody wants to sit there, they could.

4 VICE CHAIRPERSON HART: Okay.

5 MR. DANA: But there's no official seating up
6 there.

7 VICE CHAIRPERSON HART: Okay. And how much area
8 is there for the -- and I'm looking at the page I guess it's
9 one, which is the diagram of the line. How much area? It
10 looks like it may be ten feet for the sidewalk, if you do
11 this line the way in which your -- you've got to turn the
12 mike on.

13 MR. DANA: Width-wise?

14 VICE CHAIRPERSON HART: Yes.

15 MR. DANA: We'd have to measure it exactly but I
16 suspect it's a little wider than that.

17 VICE CHAIRPERSON HART: No, no. I'm saying the
18 area between the curb and your building is 20 feet. It looks
19 like people take up --

20 MR. DANA: Right.

21 VICE CHAIRPERSON HART: -- the line would take up
22 about half of that.

23 MR. DANA: Right.

24 VICE CHAIRPERSON HART: So you'd have about ten
25 feet left.

1 MR. DANA: Yes. Sorry, I didn't understand.

2 VICE CHAIRPERSON HART: No, that's okay.

3 That's it.

4 CHAIRPERSON HILL: Okay, I've got two quick ones
5 again.

6 So the hours of operation, as far as the Office
7 of Planning, say they are going from 7:00 a.m. to 3:00 p.m.
8 and so you're comfortable with that?

9 MR. DANA: Yes, sir.

10 CHAIRPERSON HILL: And then the -- how long is
11 your lease?

12 MR. DANA: Ten years.

13 CHAIRPERSON HILL: Ten-year lease, okay, because
14 I know we had, at some point and I don't know whether or not
15 we're going to get to it at this point, but talked about you
16 know you having to come back. And so I don't know. We'll
17 see. I mean I thought that even five might have been too
18 short for me. I thought maybe your lease was seven. But
19 we'll see where we get.

20 Mr. Shapiro, do you have any questions?

21 COMMISSIONER SHAPIRO: No, sir.

22 CHAIRPERSON HILL: Okay.

23 All right, who is here wishing to speak in
24 opposition? If you could, raise your hands.

25 And who is here wishing to speak in support? If

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1 you could, raise your hands.

2 Okay, great. Let's take the opposition first.
3 If you all could just free up some chairs. Commissioner, if
4 we miss you, I guess do you have anything that you would like
5 to add at the end?

6 MS. PALMER: I didn't know that I was going to be
7 invited to ask a question of the Applicant.

8 CHAIRPERSON HILL: Oh, sure. Okay, wait. Sorry.

9 MS. PALMER: I do --

10 CHAIRPERSON HILL: If you, gentleman, could sit
11 back down.

12 You're a party. And so, therefore, you are able
13 to ask questions.

14 MS. PALMER: Terrific. Thank you. This will be
15 my -- well probably my only question.

16 After speaking with the -- briefly with the
17 commissioner of your existing store, one of the things that
18 he noted to me that I found to be important to us was how
19 well you worked with the community there.

20 And I should state that within my own district,
21 we have had a number of blocks where new retail has come in,
22 new food businesses have come in and, before they opened, the
23 neighbors were very concerned about quality of life issues.
24 And I think we have been very fortunate in my district to
25 have operators who work really well with the neighborhood and

1 are interested in working with the neighborhood. You
2 mentioned that a little bit in your comments early.

3 And if it is appropriate to you all, I just want
4 to ask if you could just sort of talk a little bit, very
5 briefly about your interest in supporting the neighborhood
6 and their very specific concerns about quality of life issues
7 and detriment to the community.

8 Is that?

9 CHAIRPERSON HILL: Go ahead.

10 MR. DANA: Yes, absolutely. I think the most sort
11 of relatable thing to this is that we have sponsored
12 neighborhood cleanups over in Parkview, where we provide them
13 with breakfast, and then provide them with the tools, and
14 they go around cleaning up the neighborhood. So that's not
15 even just in front of us. That's the entire neighborhood.

16 And as stated last time, we are doing multiple
17 things that are sort of out of the norm of a typical
18 restaurant with the daily trash pickup, weekly pest control
19 contract, where the Department of Health actually only
20 requires it to be once a month. Trash is going to be in an
21 enclosure inside so it's not even affecting anybody outside.

22 And then outside of that, we love to work with
23 local schools, and organizations, and all of that. So we
24 truly want to be a member of the community for the entire
25 ten-year lease.

1 MS. PALMER: Thank you.

2 CHAIRPERSON HILL: Okay. And finally,
3 Commissioner, do you have any questions for the Office of
4 Planning?

5 MS. PALMER: No, thank you.

6 CHAIRPERSON HILL: Okay. All right.

7 Okay, yes, Mr. Dana, I mean the problem -- the
8 reason why you are here, as I stated before, is you guys are
9 too successful you know. And so that's why you are here.

10 So let's see, could I have the people in
11 opposition please come forward? Okay, great.

12 If you could, please introduce yourselves for the
13 record, from my right to left.

14 MR. MURPHY: Rick Murphy. I'm Commissioner for
15 single-member District 3 in ANC 2E and I reside at 3136 P
16 Street.

17 CHAIRPERSON HILL: Thank you.

18 MS. ROTH: Melinda Roth and I reside at 3418 O
19 Street.

20 MS. CRUSE: Karen Tammany Cruse and I live at 1259
21 35th Street.

22 MS. CARAVATTI: Marie Louise Caravatti, 1405-1407
23 35th Street, Northwest.

24 CHAIRPERSON HILL: Okay, great. Well, welcome
25 back everybody.

1 Let's see so I think you were all here last time.
2 And so we're going to go ahead and put three minutes on the
3 clock for each of you. And if you could, go ahead and
4 testify as to what you're speaking to -- I'm sorry.

5 It's a limited scope hearing, basically about all
6 the information that has been presented since the last time
7 you were here. So that's basically what we are going to hear
8 the testimony of.

9 And so you can begin, Mr. Murphy, whenever you
10 like.

11 MR. MURPHY: As I say, I am the SMD, the
12 Commissioner for the single-member district in which this
13 property is located. I am here to speak to the evidence the
14 Applicant has provided of undue burden on the property owner
15 if this variance is not granted.

16 I oppose the application because the Applicant has
17 utterly failed to carry its burden of proving that the
18 property owner would suffer exceptional and undue hardship
19 if the requested use variance were not granted.

20 ANC 2E voted six-two in favor of this application.
21 I voted against. Since that happened, I've got to hear a
22 whole lot about it and I think I can safely say that a
23 majority of my constituents in the single-member district
24 favor the granting of this variance. I haven't changed my
25 mind.

1 Fortunately, we don't use referenda to decide
2 whether variances from the requirements of the Zoning Code
3 should be granted. Variances are designed to be hard to get.
4 Indeed, the code tells us that the Applicant for a variance
5 bears the burden of proving that strict application of the
6 code would result in, and I quote, in peculiar and
7 exceptional difficulties to or exceptional and undue hardship
8 upon the owner of the property.

9 Exceptional and undue hardship. Before you apply
10 that standard to the evidence, the slim evidence the
11 Applicant has offered, let's clarify what's at issue here.

12 The Office of Planning seemed to think the
13 question was whether this property had to be converted to
14 residential use or whether we were talking about just an
15 increase in the intensity of the use. The fact is, the first
16 floor and the basement of the building have been used for
17 commercial purposes since time runneth not to the contrary.
18 It's always been that way. No one claims that the owner
19 should be required to convert the building to a completely
20 residential use.

21 The choice you are being asked to make is between
22 the nonconforming use that has been in place forever and the
23 more intense retail use. Thus, to be entitled to the
24 variance, the Applicant must prove that it would suffer an
25 exceptional and undue burden -- hardship, rather, if it were

1 only permitted to lease the commercial space in the building
2 to retail tenants, like those that have been there before.

3 Now, the only evidence of exceptional and undue
4 hardship the applicant has offered is a letter from the
5 manager of the applicant. In that letter, Mr. Sean McCann
6 says, and I quote, I think it would be extremely hard to find
7 a long-term successful tenant that could lease this property.
8 Closed quotes. That's an opinion. It's not a statement of
9 fact and it's an opinion that is based entirely on quotes
10 from some poor hapless ANC commissioner saying that
11 traditional retail is suffering in Georgetown. That poor guy
12 was me. And, indeed, it is.

13 That's all he says. He thinks he might have
14 trouble renting to a successful long-term tenant but he
15 doesn't claim that he's even tried. And indeed, the
16 statement in Mr. McCann's letter is flatly contradicted by
17 Mr. Dana's testimony at the hearing we had several weeks ago.
18 As you may recall, Mr. Dana recounted a conversation with Mr.
19 McCann's late father in which his father told Mr. Dana, and
20 I quote, lots of people are banging on his door looking to
21 lease this space.

22 Now, Mr. McCann also noted in his letter that it
23 would be cost -- essentially cost-prohibitive -- that's a
24 quote -- to remove the walk-in cooler to transform the space
25 for residential uses but nobody's asking that the space be

1 converted to residential use. The walk-in cooler doesn't
2 have to come out to continue with the existing retail use.

3 Now this is not just some sort of one-off problem.
4 As Mr. Dana earlier testified, we've got nonconforming
5 commercial uses right down the block next to this space.
6 Every one of them is a candidate for a requested use variance
7 to increase the intensity of that use. If the bar gets
8 lowered as low as what we've got in this record to get a use
9 variance, this fragile block may go straight downhill and
10 that's why I'm here opposing it.

11 Failure to grant the requested variance would not
12 impose an exceptional and undue hardship on the owner of the
13 property if this application is granted. I request that you
14 deny it.

15 Thank you.

16 CHAIRPERSON HILL: All right, thank you,
17 Commissioner.

18 We're going to go down and hear from everybody and
19 then we'll take questions from the Board. Okay?

20 Mr. Commissioner, if would turn off your
21 microphone just so that it doesn't provide feedback.

22 And Ms. Roth, so you have three minutes and you
23 can begin whenever you like.

24 MS. ROTH: Thank you.

25 All right, Mr. Dana suggests in his latest letter

1 that we believe that the concerns of the Georgetown residents
2 are more likely in a matter of right situation versus a
3 variance. He suggests that it's just a matter of which way
4 the toasters face. Sadly, Mr. Dana is wrong.

5 Let Call Your Mother open. Please let Call Your
6 Mother open. How long the line is, how it snakes, the time
7 it takes to make bagels, whether they have music or a hundred
8 deliveries a day or only eight deliveries a day, none of this
9 matters to us, the residents. What matters is that you
10 uphold the very standards that you have set. There is no
11 absolute right to the variance. You have to prove the three
12 prongs required and they have not.

13 There is a difference between favoring Call Your
14 Mother, which we do and I do, and favoring granting a
15 variance.

16 Call Your Mother did not submit all the requested
17 materials from the first hearing. This, alone, should
18 postpone this hearing. I can go into details but I don't
19 have time in my three minutes.

20 Mr. Dana does not explain the differences between
21 opening as a matter of right and opening with a variance as
22 requested by you all. Instead, he uses some math to explain
23 they can make a dozen sandwiches per minute, if their cooks
24 can prepare them but only one sandwich per minute if the
25 customers have to prepare them themselves. But this totally

1 ignores the fact that they are proposing, if they open as a
2 matter of right, to have ready-made sandwiches delivered.
3 You can't have it both ways. If there are ready-made
4 sandwiches for people, the line might even move faster.
5 Let's be clear about that. The math is just not there.

6 Furthermore, this has been turned into a
7 popularity contest. Okay? Form letters from a massive
8 Rolodex of people sending in support letters who do not live
9 near enough to the proposed location to matter, students who
10 graduate in May, the newspapers, all of the popularity that
11 Call Your Mother has and they do have a wildly popular
12 supporting group following them on different social media
13 platforms.

14 All of that doesn't matter about granting the
15 variance. We want those people to come and buy their bagels
16 and buy their sandwiches in Georgetown, we do. We absolutely
17 do. But what matters to the homeowners that live there is
18 granting of the variance and 95 percent of the relevant
19 immediate homeowners who pay taxes and live within the 200
20 feet who are supposed to be those that are most affected
21 oppose this variance. Many people cannot be here today
22 because they are working and we may be a minority but we are
23 the most affected and we are the ones that matter.

24 So please let Call Your Mother open as a matter
25 of right. They are trying to intimidate us by saying it will

1 be even worse if they do not get their variance. We disagree
2 wholeheartedly. They talked about how they will work with
3 the neighbors but every day there have been four to eight
4 different trucks and vans parked illegally in the area that
5 does not have adequate spots. They had an unpermitted crane
6 the day before Thanksgiving. If this is how they act as good
7 neighbors now, we are afraid for how they will act in the
8 future. If they can't control the people who work for them,
9 how can they control the customers who would leave their
10 premises because there is nowhere to sit and eat and be
11 within the neighborhood?

12 Okay, I'm out of time but I have one more thing
13 to say, that please apply the law. We would be happy to have
14 the retail shop -- we would be unhappy to have the restaurant
15 open with a lifetime variance to change forever the character
16 of our street and our neighborhood.

17 We have not gone to the media but we have gone to
18 the Mayor's office. We will go to the press. We will
19 appeal. We will go to the court of public opinion because
20 the law needs to be applied here.

21 So please, I beg you to open -- let them open as
22 a matter of right and I personally will be in line, maybe not
23 first, but I will be in line to buy my bagels and support
24 them as a retail establishment and happy to have them either
25 on this corner or elsewhere in Georgetown. But please apply

1 the law and do not grant the variance just because they want
2 one.

3 Thank you.

4 CHAIRPERSON HILL: Okay, thank you.

5 MS. CRUSE: Good morning.

6 CHAIRPERSON HILL: Good morning.

7 MS. CRUSE: I don't have a lot to say because I'm
8 channeling Commissioner Murphy. Everything I was going to
9 say was about the third prong or the prong that said that
10 they have to prove some kind of a hardship, which they have
11 not proved.

12 With regard to whether or not this can be rented,
13 my original thought was we have not heard from the owner of
14 the property. We have a letter from the manager or the
15 property management but we are all testifying here under
16 oath. I would like to hear from the owner what measures did
17 they take to find some other tenant.

18 We know that this can be a retail spot. It's been
19 a retail spot for over -- for decades -- 60-70 years. So we
20 know that there's no problem for it being a retail shop. For
21 him to -- for Mr. Dana to maintain that they couldn't get
22 another tenant, just doesn't hold water. And so I would like
23 to hear from the owner what measures did he take to try to
24 find something that would be more suitable. Did he have an
25 agent? If he had the agent, how long did he have the

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1 contract with the agent to try to find another tenant? Did
2 he put signs up in the window? From the neighbors'
3 testimony, no, he didn't.

4 All we heard is anecdotally well, they thought it
5 would be hard to find some other tenant. That doesn't --
6 that doesn't wash. That just is not sufficient and I would
7 like to hear from the owner. And because he's never come
8 here, because he's not under oath, we don't know.

9 And so that prong is important for the variance.
10 It's not one of three that they have to prove, or two of
11 three. They have to prove all three and that is extremely,
12 extremely important that there is no other use that this
13 building can be put to, absent the variance.

14 Otherwise, everything -- I echo everything that
15 Mr. Murphy has said.

16 I would like to add with regard to the lines on
17 the sidewalk, that is all public space. That's not their
18 property. That's public space that they would be on. The
19 pictures that they show shoulder to shoulder, that's not
20 realistic to have five lines of people shoulder to shoulder.
21 That's not going to happen.

22 And then the idea of having a five-year trial
23 period. Five years, if you had a baby now, the child would
24 be kindergarten before the trial period would be over. A
25 teenager would be in college before the trial period is over.

1 So I don't think the idea of having a trial period to see how
2 it would work would be sufficient or would be plausible. I
3 really hope that you don't advance this variance further.

4 As Mr. Murphy said, that block is extremely
5 fragile. I'm right on the corner of that block. We already
6 have five nonconforming uses. If you add this, it turns it
7 from residential. Mr. Dana might say it's commercial but
8 it's not a commercial -- it has a lot of commercial activity
9 but it is residentially zoned and you have to remember that.
10 I don't want to throw this neighborhood, the block, to the
11 wolves just because there is already activity there. That's
12 exactly why we need to protect it and to deny this variance,
13 which would only exacerbate the problems.

14 Thank you.

15 CHAIRPERSON HILL: Thank you.

16 Please.

17 MS. CARAVATTI: I just have three points to make.
18 The purpose of this hearing should be to present facts, not
19 alternative facts such as the utterly fabricated photo of
20 posed students standing in the kind of line you might see in
21 North Korea but not here. You should come to this area to
22 see what is actually happening there.

23 As a 35-year resident of 35th and O, with a view
24 of the intersection, I can attest that no line outside Saxbys
25 has ever looked like this. People spill on the road, huddled

1 with groups of friends to chat and otherwise act like normal
2 people, not replicants.

3 The same is true of lines outside Georgetown
4 Cupcake, Crumbs and Whiskers further down O Street. The
5 rendition of what the lines might look like is absurd.

6 The owner was required to submit a statement about
7 the lease terms, which he has not done. He's not even here
8 at the meeting. I suspect he knows that he could make a
9 great deal of money if the Applicant were to break his lease.

10 The manager's and lawyers' assertions of hardship
11 and exorbitant expense of converting the property to a
12 residence have no basis. I'm trying to be polite here.

13 With far less equity than the owner of the
14 property, I was able to obtain a bank loan to completely gut
15 my O Street home and dig out a full basement, all with
16 necessary permitting, ANC, all Georgetown Board approval.
17 I sold it for a profit and was able to use the proceeds to
18 turn a dilapidated two-unit building on 35th Street, dating
19 back to the same period as the one in question here, into a
20 single-family residence. It's perfectly doable and I might
21 add that I don't have deep pockets.

22 As for the contention that its front door and
23 windows pose an insurmountable barrier, that is completely
24 debunked by photos that were presented at the last hearing
25 of similar properties that have been successfully converted

1 to residential use.

2 Comments on the difference between the permitted
3 retail use and the proposed use as a prepared food shop, the
4 Applicant's response is the equivalent of stomping his foot
5 and asserting that he will make things worse if he doesn't
6 get his way.

7 I believe Mr. Dana is a smart businessman and he'd
8 fine a highly profitable alternative out of the 53 empty
9 storefronts that are now in our commercial zone. Indeed, at
10 the very time Mr. Dana was hunting for suitable properties
11 and allegedly signed a lease for \$70 a square foot, 1303-1305
12 Wisconsin Avenue in the heart of our commercial zone were
13 available for \$42.50 per square foot.

14 Statements from Mr. Dana and his lawyer that no
15 other affordable options exist simply aren't true.

16 In closing, I want to underscore that the granting
17 of this variance would not only upend our quiet residential
18 area but would further undermine the viability of our
19 commercial zone, where I repeat we have 53 empty properties.

20 Thanks to other BZA decisions, such as allowing
21 the demolition of a perfectly serviceable building, we now
22 have our very own Potemkin village on 31st and M Street.
23 It's been there for almost seven years, with a crane hanging
24 precipitously over it for over two years.

25 At a time when we already have oversupply in the

1 residential -- in the commercial zone, we really don't need
2 another variance to expand supply into the residential area.

3 The job of this Board is simply to apply the law,
4 not to figure out how to go about it. We've been unable to
5 count the false statements made by the Applicant because we
6 were denied party status. Please do your due diligence,
7 instead of accepting dubious assertions by the Applicant at
8 face value.

9 Thank you.

10 CHAIRPERSON HILL: Okay, if you wouldn't mind
11 turning off your microphone there.

12 Does anybody have any questions for the Board --
13 I mean from the Board?

14 Sure.

15 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Yes,
16 question for Commissioner Murphy and Ms. Roth, specifically.
17 My understanding from both of you was one of the more
18 significant issues that you are -- that is before you is the
19 issue of precedent. So if we were to grant this variance,
20 you are both concerned about the precedent that would set.

21 MR. MURPHY: I most definitely am. This would
22 make the hurdle for obtaining a use variance a very low one,
23 given the state of the record in this case.

24 COMMISSIONER SHAPIRO: Okay.

25 MR. MURPHY: They simply have not proven a right

1 to this variance. And there are in my district, on this
2 block and in other places, a number of low intensity retails
3 shops that might be candidates for increased intensity, if
4 the standard gets changed by this decision.

5 COMMISSIONER SHAPIRO: Thank you.

6 MS. ROTH: And I couldn't agree more. I think
7 that it's a very slippery slope to grant a variance, when you
8 have not proven the three prongs that are required.

9 Again, if this were a McDonald's or a Chipotle,
10 or a take-away pizza place, they could not have the support
11 that this restaurant has because, again, as Chair Hill said,
12 the problem is they've been too successful. They are a
13 business that we all want to see succeed and we want to see
14 in Georgetown but granting a variance changes the way that
15 the zoning regulations would operate for anybody else, then.

16 COMMISSIONER SHAPIRO: Okay, thank you.

17 Thank you, Mr. Chair.

18 CHAIRPERSON HILL: Okay, Mr. Murphy --
19 Commissioner. So Commissioner, you are very articulate. You
20 argued this the other way the last time you were here for
21 something else, right? You did. Okay?

22 And so your concern, right, again that you've
23 stated here, and this is what I just want to make sure I
24 understand just from you, your personal view, is that you are
25 concerned about the test being met. Right, so that's the

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1 thing you're worried about.

2 You're not concerned about the undue burden on the
3 neighborhood or the lines. You're -- I'm asking your honest
4 opinion, actually. You're concerned with -- you're here on
5 principle for the code.

6 MR. MURPHY: I am here on principle for the code.
7 I have those concerns but those concerns, quite frankly, can
8 be debated, the public detriment concerns.

9 CHAIRPERSON HILL: Right.

10 MR. MURPHY: And a lot of that is in the eye of
11 the beholder.

12 CHAIRPERSON HILL: Okay.

13 MR. MURPHY: But as a lawyer, I've done this
14 before. You've got to get your evidence in. If it's not in
15 the record when you've got the burden of proof --

16 CHAIRPERSON HILL: Oh, Commissioner, you were here
17 just a month ago or six weeks ago for also something that
18 took a lot of time. And just I would like to mention
19 actually for the record, we take a lot of time to do this.
20 Right? It's basically a volunteer job and we just do our
21 best to read through everything. And we live in the city.
22 We live in the community. I live in a very dense part of the
23 city and so I'm very aware of like lines, and noise, and
24 construction. What I'm trying to share is that we're aware
25 and that's why we're here. And we take our job very

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1 seriously in terms of what we do.

2 So --

3 MR. MURPHY: If I may just finish my answer,
4 though.

5 CHAIRPERSON HILL: Sure.

6 MR. MURPHY: There is an overarching connection
7 between the two cases. We need -- we need help with our
8 commercial district in Georgetown. That's what I was here
9 for the last time. And this is not helping our commercial
10 districts in Georgetown. So there is a certain consistency
11 here.

12 CHAIRPERSON HILL: Oh, Mr. Murphy, I was just
13 commenting on how articulate you were then and how articulate
14 you are now, and how you are arguing the other side of what
15 you argued the last time.

16 And so that's not to say that what you just --
17 your points aren't valid. I'm just saying that you were
18 before.

19 So let's see, does the Board have any questions?

20 (No audible response.)

21 CHAIRPERSON HILL: Okay. All right, well thank
22 you very much for your testimony.

23 All right, so all those wishing to speak in
24 support, if you could just go ahead and raise your hand
25 again. I'm just trying to count how many people I've got.

1 Okay. Then if you can all fit at the table now,
2 please come forward.

3 Okay, if you could please introduce yourselves for
4 the record from my right to left. You need to push the
5 button.

6 MR. GERAGHTY: My name is James Geraghty.

7 MR. WATHEN: My name is Richard Wathen, W-A-T-H-E-
8 N. I live at 1306 36th Street in 2E08.

9 CHAIRPERSON HILL: Okay and I'm sorry, Mr.
10 Geraghty, where do you live?

11 MR. GERAGHTY: 3422 O Street.

12 CHAIRPERSON HILL: Okay.

13 MS. COLLINS: Good morning. My name is Nancy
14 Collins. I live at 1306 36th Street.

15 MR. CASEY: Good afternoon. My name is Tim Casey.
16 I live at 320 Varnum Street, which is not in Georgetown.

17 CHAIRPERSON HILL: That's okay.

18 MR. MOREIRA: Good morning. My name is Daniela
19 Moreira and I live at 4126 8th Street.

20 CHAIRPERSON HILL: The Beast.

21 MR. MOREIRA: Yes.

22 CHAIRPERSON HILL: Okay.

23 MS. DISALVO: Also known as. Lindsay DiSalvo and
24 I am the opening manager of Call Your Mother Deli in
25 Georgetown.

1 MR. SUHY: Scott Suhy. I live at 3640 Winfield
2 Lane.

3 CHAIRPERSON HILL: Okay, great. If you could,
4 just try to keep one microphone on at a time, otherwise, I
5 get feedback. I'm sorry.

6 Mr. Geraghty, if you could go ahead and start,
7 you'll get three minutes, just like everybody else and you
8 can begin whenever you like.

9 MR. GERAGHTY: Sure. So I'm a senior at
10 Georgetown. I've gone to school there for three plus years
11 now. And I've lived off campus, living two doors down on O
12 Street now. And last year, I was actually in an off-campus
13 residence just outside the front gates.

14 I think all I'm really qualified to speak to is
15 kind of the topic of the impact on the community. I know
16 that's one of the major concerns here. I'm just trying to
17 voice kind of the voice of the students I think. Living with
18 the community and living with the residents that live here
19 full-time and not just for four years, it is really something
20 that we're in desperate need of, a better food option off-
21 campus. I know there is Saxbys that would be right across
22 the street, but it just doesn't have the same food offerings.

23 Also I'd just like to, separately from the food
24 options available, just also speak to the -- what was
25 discussed earlier about being a fragile intersection and a

1 fragile part of the neighborhood. I don't think I could
2 disagree with that more. I think it's a very strong part of
3 the neighborhood. It is right on the corner or just past the
4 corner of the intersection is Holy Trinity school, a local
5 K through middle school, school that I volunteer at. Just
6 across the other side of the street there is a Georgetown
7 residential building called LXR, which is actually just down
8 the street from 35th. So it's on the same street as
9 Georgetown buildings. I don't think it impacts the actual
10 residence of the community, as that kind of branches out
11 further past 35th Street.

12 So kind of just those two points is what I wanted
13 to vocalize here.

14 CHAIRPERSON HILL: Thank you.

15 Sir?

16 MR. WATHEN: So my name is Rich Wathen. We live
17 at 1306 36th Street, which is about a block from this
18 location. It's right across the street from Holy Trinity
19 Church. We're in 2E08, which is actually the Georgetown
20 Student ANC.

21 You know we're in support of this application,
22 kind of echoing this gentleman's comments. This is a pretty
23 active block between Holy Trinity School, Georgetown I went
24 to for ten years. We've lived in the neighborhood for eight.
25 Visitation, Georgetown University, you've got 1776 and The

1 Tombs. It's not -- the nature of this neighborhood is
2 diverse. It's not purely residential and we really it can
3 sustain, and without significant disruption, this kind of
4 business.

5 The other thing is you know when I hear there is
6 56 empty units in Georgetown, that frankly alarms me. I mean
7 I think that we are going to have to find a lot of solutions
8 to bring back the vibrancy of Georgetown and they may not all
9 be on M and Wisconsin. You know we really need to try to
10 start exploring how we bring back what made this neighborhood
11 special. And I don't sense the red alarm feeling for that
12 but we certainly feel it.

13 CHAIRPERSON HILL: Thank you.

14 MS. COLLINS: Nancy Collins. Again, I live in
15 1306 36th Street. We're married.

16 And to echo what Richard was saying, I think in
17 many ways this is exactly what Georgetown needs to help with
18 the commercialization that it is sorely in need of fixing.

19 I disagree that this is a residential
20 neighborhood. It has commercial businesses all up and down
21 that block of 35th Street. I'm a daily customer at Saxbys
22 and if Saxbys were to close, I'd be very upset because I
23 think it's the kind of business that we need. It's a kind
24 of business that I think is being discussed for this thing.

25 We moved to Georgetown because I think it has the

1 perfect environment of urban village. And with an urban
2 village, it's business and it's residential. And I think
3 that this kind of establishment is exactly the kind that
4 Georgetown needs to help fill those commercial issues that
5 it's got going on.

6 Thank you.

7 MR. CASEY: I just wanted to speak to kind of the
8 effectiveness of the plan --

9 CHAIRPERSON HILL: If you could, turn off the
10 other microphone. I'm sorry. Thank you.

11 MR. CASEY: I'm so sorry -- the effectiveness of
12 the plan that we have for the line.

13 So I was there the day we did kind of the trial
14 and --

15 CHAIRPERSON HILL: I'm sorry, again. Who are we?
16 You work with --

17 MR. CASEY: Oh, yes, I'm sorry.

18 CHAIRPERSON HILL: That's okay.

19 MR. CASEY: I manage catering for Call Your
20 Mother.

21 CHAIRPERSON HILL: Oh, okay. All right, go ahead.

22 MR. CASEY: So I'd like to kind of object to like
23 the statement that they were lined up, that people outside
24 were lined up kind of like military or like soldiers or
25 something. I think that there was space in-between everyone

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1 and it did look strikingly similar to how people kind of
2 naturally line up in Parkview. As the quote from the
3 councilmember earlier stated, everyone is always super
4 polite, super organized, never been a complaint about noise
5 or litter. So I think that that makes complete sense to do
6 it kind of transcend Georgetown as well.

7 I also wanted to speak about not only Dani and
8 Andrew being kind of like a fabric of the neighborhood, but
9 really everyone who works with Call Your Mother. You know
10 we know people in the neighborhood by name, by face. And so
11 yes, we look forward to doing that in Georgetown as well.

12 Thank you.

13 CHAIRPERSON HILL: Thank you.

14 MR. MOREIRA: Thank you for listening. I'm co-
15 owner of Call Your Mother and like my proud future-to-be
16 husband say I'm his fiancée.

17 All I want to say is you say that the problem we
18 have right now is we are too successful. And what I want
19 everybody to know is behind success is people and all the
20 employees that we have are very happy to work with us. They
21 are given the tools and opportunities to grow. We are
22 successful because of the people we have working for us and
23 the community around us.

24 We founded Timber Pizza Company and from the
25 start, we were successful for all the people form the

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1 neighborhood coming to our restaurant, not from other parts.
2 Call Your Mother is the same now opening in Georgetown.

3 What I can speak of from my experience, I have a
4 degree in health and environment from Argentina and I went
5 to the Culinary Institute of America. I am the executive
6 chef but I also create systems with Lindsay. And I want to
7 tell the neighborhoods that the part that their concern has
8 about pest control, we've done a lot of research to find the
9 best companies out there. We had no issues at Timber. No
10 issues at Call Your Mother.

11 I have like very particular way of training people
12 on how to work. I worked at Eleven Madison Park in New York.
13 It is a three Michelin Star restaurant. To be able to work
14 there, you have to be extremely clean, organized. And if you
15 go there, you can see that you can eat from the floors. It
16 is more like a hospital, not a restaurant. And I was trained
17 that way, and it's what I bring to the table here, and I will
18 not stop until everything is perfect.

19 So people that are concerned about cleanliness,
20 trash outside, people not doing what they are supposed to,
21 I can assure them that I am doing the best that I can to make
22 sure that doesn't happen.

23 And that's all I got. Thank you.

24 CHAIRPERSON HILL: Thank you.

25 MS. DISALVO: Hi there. So we spoke last time and

1 I kind of want to just go through the scope of things that
2 you asked for us to provide to you between then and now.

3 So to start, one of the things was the undue
4 hardship with the landlord and owner. And personally, I
5 have, obviously, since the last meeting, have been thinking
6 about this nonstop, about everything, and what we can do to
7 be part of the neighborhood, and the best part of the
8 neighborhood. And so with undue hardship to the landlord,
9 I think about it as myself, if I were looking to be -- if I
10 was to be transferred into a residential unit, I would not
11 want to live on a first floor unit that has windows that
12 large. I just don't see it being a residential thing.

13 For retail, again, like Commissioner Rick Murphy
14 said, it is dying in Georgetown. A lot of my friends who are
15 in the restaurant industry are concerned about it in
16 Georgetown specifically because the more that is there, the
17 more people that will be there, the more that will bring it
18 in to the area and we need that, right? We want --
19 Georgetown is a great part of this city and I think I agree
20 with the residents of Georgetown that we would be a benefit
21 to the neighborhood in that way.

22 With line management, obviously, we did that
23 scale. We looked at our busiest hour at Parkview, which was
24 right after our Bon Appetite release, and it was -- we did
25 65 transactions in that hour and that's why we brought on

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1 that amount of people in the line, to show that that would
2 be our busiest that we ever have been so far in our Parkview
3 location. And as you can see, that manages that space or
4 that amount of people well, with still space for lots of
5 people to get by in the sidewalk. And I do have additional
6 photos that show that we were not shoulder-to-shoulder, as
7 stated before.

8 And I think, if I was going to talk about anything
9 else -- I think that's it but that's all I really have to
10 say. So thank you.

11 CHAIRPERSON HILL: Okay, great. Thank you.

12 MR. SUHY: My name is Scott Suhy. I live a couple
13 blocks north of the proposed location. I've been there for
14 16 years. My background is I have been an entrepreneur for
15 the many years that I've existed in D.C. and I am also an
16 investor in several companies.

17 I learned about Mr. Dana's business at the ANC
18 meeting, where it was approved, and I found it fascinating.
19 And I actually go to get my haircut next door to the
20 location. So I've had the opportunity to talk to some of the
21 people in the area.

22 I, too, am here because I am worried about the
23 macroeconomics of Georgetown. And I understand the
24 microeconomics of building a business really well because
25 I've done it my entire career. And if you actually look at

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1 the November 14th meeting that was had by the bid, the
2 Georgetown bid, and the ANC, and CAG that occurred, you will
3 see that they expected only a handful of people to come in
4 to talk about retail in Georgetown and it was flooded with
5 four or five times as many people as they expected.

6 We are all worried about the area and the fact
7 that nine percent of all retail is vacant at the moment, and
8 that's the highest it has ever been, and the property values
9 are now starting to suffer, and I'll end up moving out of the
10 area because of this. And you know I just wanted to be here
11 to support entrepreneur and help them get through this kind
12 of issue that I think is actually against what the area
13 needs.

14 The area needs vital businesses. And to push back
15 on a business that is so successful from coming into the area
16 just doesn't make economic sense.

17 So, that's why I'm here.

18 CHAIRPERSON HILL: Okay, great.

19 Does the Board have any questions for the
20 witnesses?

21 VICE CHAIRPERSON HART: I don't.

22 CHAIRPERSON HILL: Okay. Yes, so I also have a
23 small company. And so like great. Good luck to you.
24 Congratulations. People are important.

25 And I'm just kind of making some statements here.

1 The line, the line thing, like I mean I think it's great.
2 Like again, whether or not it's cheek-to-jowl or whatever it
3 is, I mean just you got people to show up there and stand in
4 the line. I think it looks all crammed in there as well but
5 it doesn't matter. I think you can have stanchions. I think
6 you made your point is what I'm just trying to point out.

7 So that's it. You all can go back in the
8 audience. And if we can have the Applicant before us.

9 Mr. Sullivan, I've got to take 30 seconds. I'll
10 be right back.

11 Okay. All right, Mr. Sullivan, I guess I'll let
12 the Board have any questions that they might have to you.

13 I actually am interested in also hearing about the
14 argument about the corner store. And so that's still a
15 question that I'm going to kind of -- did you need more time
16 or --

17 MR. SULLIVAN: No, I think we can discuss it.

18 CHAIRPERSON HILL: Okay. So that's my first
19 question.

20 MR. SULLIVAN: I definitely want to because that's
21 why I'm here.

22 CHAIRPERSON HILL: Okay, so that's the question
23 first from the Board.

24 MR. SULLIVAN: So we've looked at both, getting
25 relief from both and we thought the use variance relief was

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1 attainable. We weren't clear that it was not also use
2 variance relief from the corner store regulations. There's
3 a provision, it's U 254.6(g). It's a 750-foot rule
4 specifically for the R-20 zone, that we can't be within 750
5 feet of any property that is within a commercial zone. And
6 we didn't meet that requirement. And that requirement was
7 specifically not waivable by special exception later on in
8 the regulations. Under 254.15, it was not included as
9 something that was a waivable condition. So we know that
10 that would be a variance.

11 CHAIRPERSON HILL: For sure.

12 COMMISSIONER SHAPIRO: So you're saying you're
13 reading that as a use variance, not an area variance?

14 CHAIRPERSON HILL: No, what I --

15 MR. SULLIVAN: I think -- I'm sorry.

16 CHAIRPERSON HILL: What I understand, and this is
17 anyone -- we're talking to OAG. So it -- and I'm turning to
18 OAG now.

19 So as far as it being a special exception, there
20 is the special exception criteria and/or an area variance,
21 right, rather than the use variance. Is that what, Mr.
22 Sullivan, you had also read?

23 Let me turn to OAG first.

24 MS. CAIN: Yes, so if you look at U 245.16, which
25 talks about other provisions of the corner store regulations

1 being waivable as a variance, it does not specify
2 specifically whether it's going to be an area variance or a
3 use variance.

4 The provision that Mr. Sullivan is citing to is
5 a locational requirement. Our interpretation of that run in
6 conjunction with X Chapter 10, which is the variance
7 standards, is that because the issue in question goes to
8 location, goes to where something can be located, that is an
9 area variance. It does not meet the requirements for a use
10 variance.

11 CHAIRPERSON HILL: Okay, can you say that again?

12 MS. CAIN: So the provision that they are not in
13 compliance with -- hold on -- okay is that in the R-20 zone,
14 no nearer -- a corner store will not be located any nearer
15 than 750 feet from a property line of a lot in the MU or the
16 NC zone. They are not in compliance with that. That is a
17 locational requirement.

18 If you go over to the different variance types,
19 which are in Subtitle X Chapter 10, they cite that examples
20 of area variances are requests to deviate from number (a) is
21 requirements that affect the size, location, and placement
22 of buildings and other structures.

23 So our interpretation of that, because there is
24 no guidance in the Subtitle U 254, as to what type of
25 variance these would be qualified as, because what they are

1 seeking relief of is an area requirement, it's a locational
2 requirement, that that would properly be considered as an
3 area variance.

4 CHAIRPERSON HILL: Okay.

5 COMMISSIONER SHAPIRO: You said properly not
6 probably?

7 MS. CAIN: Yes.

8 COMMISSIONER SHAPIRO: Okay.

9 CHAIRPERSON HILL: Okay. So I guess -- I mean
10 what I'd like to hear, I suppose, Mr. Sullivan, I mean I
11 don't mean to send you back to get more information but I
12 guess I would like to hear the argument to have you know what
13 OAG is speaking towards. And I don't know whether that also
14 means that you would have a discussion with the Office of
15 Planning in terms of this being an area variance, right, or
16 a special exception under that provision.

17 So unless the Board has different thoughts -- I
18 mean I am interested in hearing that thought out.

19 VICE CHAIRPERSON HART: Yes, no, I am, too. I
20 think the problem that I am now -- hearing the conversation
21 that we've had today or at least listening to the testimony
22 and this particular issue, I'm -- typically with variances
23 we have -- this is what we -- this is the only opportunity --
24 this is the only option that we have.

25 You are seeking a variance. You know special

1 exception is these things are kind of considered in the
2 zoning and there is a -- meet these criteria and then you can
3 receive that relief. Variances are well, you kind of fit --
4 you fall outside of the zoning and you have to kind of meet
5 these particular items. And typically, you get to we can't
6 do anything unless we get this variance.

7 Right now, we are kind of saying, or at least I'm
8 understanding that there may be another option and I just
9 need to understand that option to be able to say okay, I get
10 this. But because I don't have that understanding, it makes
11 it harder to say this is the only option that we have.

12 COMMISSIONER SHAPIRO: Just the only thing I would
13 add is I am joining with the Vice Chair Hart on this, is that
14 it sort of gets to the undue hardship. There is another --
15 there may be another option. I'd like to hear what the
16 analysis of that is. So I'm joining with you.

17 CHAIRPERSON HILL: Okay, so right. And then if
18 that -- you know the argument, even in terms of with the
19 Office of Planning or what have you in terms of the waiving
20 of the 750 feet, you know I'd like to hear about that as
21 well, in terms of what you think you might be able to argue
22 or propose. Because at the very least, I would like to work
23 through this so that we understand that this is the place
24 that you're at in terms of the original argument and that you
25 can't -- I'd just like to hear it thought out, Mr. Sullivan.

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1 You follow what we're saying, right?

2 MR. SULLIVAN: I think so.

3 CHAIRPERSON HILL: Okay. All right, so now this
4 creates a possible problem, in that I don't know if that
5 would mean that if you did go down that route you would have
6 to change the application. And now I'm looking at OAG.

7 MS. CAIN: We would recommend that the Applicant
8 file a statement explaining what relief would be needed under
9 the corner store provisions. If they are sort of comfortable
10 enough with that to want to submit a revised burden of proof
11 or revised self-certification and change the application,
12 they can do that but at bare minimum, we would want that
13 written statement in the record.

14 CHAIRPERSON HILL: Okay, Mr. Sullivan, do you
15 understand?

16 MR. SULLIVAN: I do. I have a comment about that.
17 Obviously, we want to be approved and we'll take that
18 whatever way the Board sees fit. We're concerned about
19 delay, of course, because we're already delayed, not as a
20 result of the Board.

21 And I think that the test for undue hardship can
22 be met independent of the fact that there is an area variance
23 available. There is no special exception available, in my
24 opinion. It's still a variance.

25 And use variance and area variance are not

1 legislatively -- they are animals of case law. They are not
2 specifically legislated as separate things.

3 So you heard the opponents say they are concerned
4 about standards and you have to stick to your standards. One
5 of those standards was met on November 20th, when there was
6 another case in Georgetown for use variance in which this
7 Board found an undue hardship based on the oral testimony of
8 the contract purchaser, saying that it was difficult to find
9 another service use for a hair salon and then excepting
10 office use.

11 Also I would point out that if they're concerned
12 about precedent, the standard right now is tougher than it
13 was three years ago. Prior to the 2016 regs, this request
14 would have been a special exception, without reference to the
15 corner store, because there was a special exception available
16 for a change from one nonconforming use to another for what
17 is known as neighborhood facilities. And neighborhood
18 facilities was broadly interpreted to include something like
19 this. Neighborhood facilities was written out of that. So
20 it's effectively no longer available for any use.

21 And I know there was some discussion with the
22 Office of Planning on that and they are not changing that.

23 So as far as precedent and concern about the
24 future, this is harder to do than it was three years ago.
25 However, I do believe that the statement of the owner has

1 presented a case for undue hardship. I'll say that. If the
2 Board disagrees, obviously, we would like to be approved any
3 way that the Board sees fit. I prefer to do it without delay
4 but we probably would need a week to write up a statement
5 regarding the 750-foot rule.

6 I'd also want to check 254.13, which has some
7 specific rules relating to fresh food markets or grocery
8 stores devoted primarily to the retail sale of food. I don't
9 think we fit within that but I would want to make sure.

10 The list of restrictions for the corner store is
11 long and ambiguous. I don't think one has ever been approved
12 yet.

13 So, I guess I would appreciate the feedback of the
14 Board.

15 CHAIRPERSON HILL: Okay. So, I guess, Mr.
16 Sullivan, so again, I think you're hearing from us that we
17 want to at least explore this road, right, and understand
18 what -- and you can go ahead and submit what you think you're
19 qualifying for and then what you think you're not qualifying
20 for, I suppose. Right?

21 And I don't know if the -- and this is just for
22 the Applicant. I mean we're trying to figure out whether or
23 not you're getting through these prongs. Right? And before
24 we can determine whether or not you're getting through these
25 prongs, we want to make sure that -- and we've done this in

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1 the past -- is that there's not something that is a different
2 alternative to actually what you're asking us to do. Right?

3 And so I want to understand everything before --
4 you might end up at the exact same place, Mr. Sullivan, I
5 suppose, right? I don't think you will but you might. Okay?
6 And so I'd say that -- and I don't know. OAG, you mentioned
7 something maybe that -- I'm trying to think what else do we
8 need to hear from them?

9 MS. CAIN: I think really all we need from the
10 Applicant, at this point, is a statement explaining you know
11 what relief they think they would need under the corner store
12 regulations, if any, and if there is any other provisions
13 that they think that they are not meeting under those regs.

14 CHAIRPERSON HILL: Okay and then Mr. Sullivan, so
15 you understand that. And then I guess you might have to talk
16 with the Office of Planning again, right? And I know you're
17 going to have to go back and explain this to your client.

18 And how fast -- I know that this has been going
19 on for a while, but how fast do you think you'd be able to
20 turn this around?

21 MR. SULLIVAN: Friday.

22 CHAIRPERSON HILL: Okay. So that means that the
23 Office of Planning I'd want to hear from. Right? And then
24 that means that we'd be back here -- you couldn't give us
25 something by next week -- okay. All right.

1 So then you're saying you're going to give us
2 something by Friday. And then the Office of Planning is
3 going to give us something on Tuesday? No. When?

4 You can speak into the microphone.

5 MS. MEYERS: Hi, Crystal Myers for the Office of
6 Planning. We could respond within a week. So by that
7 Friday, we could have something posted to the record.

8 CHAIRPERSON HILL: Okay, so that means we could
9 be back here again on the 18th. Oh, God, the 18th -- so I
10 say that because the 18th is the last day before we go on
11 holiday and everybody is here on the 18th. Like we have like
12 20 -- Mr. Murphy, you're welcome to come back if you like on
13 the 18th, okay? Hang out all day.

14 MR. SULLIVAN: Mr. Chair, we could submit --

15 CHAIRPERSON HILL: Yes?

16 MR. SULLIVAN: We could submit by tomorrow, if
17 that helps the Office of Planning at all.

18 CHAIRPERSON HILL: No, I mean the -- I don't know.
19 Does that help?

20 COMMISSIONER SHAPIRO: The 11th is better.

21 CHAIRPERSON HILL: The 11th is better for you?

22 COMMISSIONER SHAPIRO: Yes, I mean it's just --

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER SHAPIRO: -- it's not the 18th.

25 CHAIRPERSON HILL: Oh. Well, I mean I think the

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1 11th sucks, too. I don't think either day -- I think both
2 days are packed.

3 Mr. Moy, don't we have everything on both days?

4 SECRETARY MOY: Both days, pretty much equal, an
5 equal number of cases.

6 CHAIRPERSON HILL: Right. Honestly, are they an
7 equal number of cases?

8 SECRETARY MOY: Yes, just about, yes, give or take
9 one.

10 CHAIRPERSON HILL: Okay because I think -- do we
11 -- we don't have an appeal on either day, do we?

12 SECRETARY MOY: Well, we have a -- we have a
13 decisionmaking on the 18th on an appeal and but no new
14 appeals.

15 CHAIRPERSON HILL: Okay. So then I suppose it
16 would be better on the 11th or I guess it doesn't -- that
17 means that you could try to give us something, Mr. Sullivan.
18 The Office of Planning is going to give us something back.
19 And then we'd be here on the 11th, is that what I'm just
20 hearing us say? Oh, that's next week. Oh, there's only two
21 more hearings. Okay. All right, then let's shoot for the
22 11th. Okay?

23 Yes, and OP you can get us something to us by
24 when?

25 MS. MEYERS: Monday, probably.

1 CHAIRPERSON HILL: The 9th?

2 MS. MEYERS: Yes, just to give us some time to
3 write it and review it.

4 CHAIRPERSON HILL: Okay. All right. Okay, so
5 everybody understands?

6 MR. SULLIVAN: A question -- clarification. Am
7 I submitting two potential alternatives --

8 CHAIRPERSON HILL: No.

9 MR. SULLIVAN: -- or are we adjusting this to an
10 amendment?

11 Okay, understood.

12 CHAIRPERSON HILL: Yes. Yes, to the second.
13 Okay?

14 All right. Okay, then we'll have your
15 information, we'll have Office of Planning's recommendation
16 on Tuesday. And then do we have to have limited scope again?

17 MS. CAIN: I would do a limited scope.

18 CHAIRPERSON HILL: Yes, okay. Then we'll do a
19 limited scope on this argument, okay? And if you need the
20 extra week, just let us know. Okay? And then we'll be back
21 here on the 18th and we're going to put you last. Okay?

22 All right, and then -- pardon? Yes, I'm just
23 kidding.

24 Let's see. All right, Mr. Moy, do we understand?

25 SECRETARY MOY: I just want to go over it again

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1 for my own edification.

2 So this would return next Wednesday, December 11th
3 for continued hearing, limited scope, of course. The
4 Applicant would submit their statement with the two
5 alternatives tomorrow -- was it tomorrow or -- yes.

6 CHAIRPERSON HILL: Not the two alternatives.

7 MR. SULLIVAN: Correct, an amended application.

8 CHAIRPERSON HILL: Yes.

9 SECRETARY MOY: Amended, very good. So that's
10 tomorrow. That would be tomorrow, Thursday, December 5th.

11 And OP would file a supplemental Monday, the 9th.
12 Is that right?

13 CHAIRPERSON HILL: Yes.

14 SECRETARY MOY: Okay.

15 CHAIRPERSON HILL: And so and the ANC would have
16 an opportunity, I guess to submit anything at any time they
17 wanted to after that information.

18 SECRETARY MOY: Which would be after the -- yes,
19 any time after the 5th.

20 CHAIRPERSON HILL: Okay and then when we'll be
21 back here again is to hear the argument on the corner store.
22 Mr. Sullivan, do you understand?

23 MR. SULLIVAN: Correct.

24 CHAIRPERSON HILL: Okay and we're going to do this
25 first because Mr. Shapiro will join us just for this in the

1 morning and so we will go first. Okay?

2 And so just so everybody understands what's
3 happening here: So we want to understand if this is the only
4 argument or if there are other arguments. Okay? And so
5 that's what we're interested in hearing because we don't want
6 to -- we just want to have all the information that we can
7 to make a decision. Okay?

8 So that's it. Got any questions?

9 MR. SULLIVAN: No, thank you.

10 CHAIRPERSON HILL: Okay. All right, I will --
11 that's it.

12 Does the Board have anything else, Mr. Moy?

13 SECRETARY MOY: Nothing from the Staff, sir.

14 CHAIRPERSON HILL: Okay, we stand adjourned.

15 Hold on one second, Mr. Moy. Hold on wait. Don't
16 -- please don't yell.

17 So I'm just explaining -- I'm trying to explain.
18 So there is a limited scope hearing next Wednesday. Okay?
19 So what that limited scope hearing is going to be about is
20 this argument that we've just raised that we wanted fleshed
21 out by the Applicant. So if there's anybody here that wants
22 to come testify again on that issue, you may. Honestly,
23 whether it's this way or the other way, all of the arguments
24 that I've heard thus far are the same arguments but you're
25 welcome to come. Right? You know the undue hardship to the

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1 community or the different prongs of the test, those are
2 still the same issues but you're welcome to come.
3 Everybody's welcome to come.

4 So we will do that but it is, unfortunately, just
5 to let you guys know, it's only the -- it's the second to the
6 last hearing before the holiday. It's packed and so you know
7 we're really -- I'm going to be very like not to be -- I mean
8 you guys kind of had -- we were going to have an appeal today
9 and an appeal is a four-hour hearing, usually. And so since
10 an appeal wasn't happening today, we had this opportunity to
11 hear from you guys today, which I believe we thoroughly have
12 heard from, and we also thoroughly heard from everyone the
13 last time.

14 So the next time that you all come, it's going to
15 be very concise as to the additional information that is
16 being submitted into the record.

17 So, just to share everything. Okay?

18 All right, Mr. Moy, is that the end for the Board?

19 SECRETARY MOY: Yes, sir.

20 CHAIRPERSON HILL: Okay, we stand adjourned.

21 Thank you.

22 (Whereupon, the above-entitled matter went off the
23 record at 12:52 p.m.)

24

25

C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DC BZA

Date: 12-04-19

Place: Washington, DC

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