

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 20, 2023

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

ZONING COMMISSION MEMBERS PRESENT:

FREDERICK D. HILL, Chairperson
CHRISHAUN SMITH, Board Member
ROBERT MILLER, Zoning Commissioner
ANTHONY HOOD, Zoning Commissioner
JOSEPH IMAMURA, Zoning Commissioner

OFFICE OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

OFFICE OF ZONING ADJUSTMENT LEGAL COUNSEL:

RYAN NICHOLAS, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on September 20, 2023.

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

2 (9:30 a.m.)

3 CHAIRPERSON HILL: Good morning, ladies and gentlemen.
4 The Board of Zoning Adjustment will please come to order. Today
5 is 9/20/2023. My name is Fred Hill, Chairperson of the District
6 of Columbia Board of Zoning Adjustment. Joining me today is
7 Board Member Chrishaun Smith, Zoning Commissioners Anthony Hood,
8 Rob Miller and Joe Imamura.

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

21 At the conclusion of the decision meeting session, I
22 shall in consultation with the Office of Zoning determine whether
23 a full or summary order may issued. A full order is required
24 when the decision it contains is adverse to a party, including
25 an affected ANC. A full order may also be needed if the Board's

1 decision differs from the Office of Planning's recommendation.
2 Although the Board favors the use of summary orders whenever
3 possible, an Applicant may not request the Board to issue such
4 an order.

5 In today's hearing session everyone who is listening
6 on Webex or by telephone will be muted during the hearing, and
7 only persons who have signed up to participate or testify will
8 be unmuted at the appropriate time. Please state your name and
9 home address before providing oral testimony. Oral presentation
10 should be limited to a summary of your most important points.
11 When you're finished speaking, please mute your audio so that
12 your microphone is no longer picking up sound or background noise.
13 Once again, if you're experiencing difficulty accessing WebEx or
14 with your call-in telephone, please call the OZ hotline number
15 which is listed on your screen.

16 All persons planning to testify either in favor or
17 opposition should have signed up in advance. When they're called
18 to testify, if this is an appeal, only parties in the appeal are
19 allowed to testify. By signing up to testify all participants
20 complete the Oath of Affirmation as required by Subtitle Y,
21 Section 408.7.

22 Requests to enter evidence at the time of an online
23 virtual hearing, such as written testimony or additional
24 supporting documents other than live video, which may not be
25 presented as part of the testimony, may be allowed pursuant to

1 Subtitle Y 103.13, provided that the person making the request
2 to enter an exhibit and explain, a) how the proposed exhibit is
3 relevant, b) if the good cause justifies allowing the exhibit
4 into the record, including an explanation of why the requester
5 did not file the exhibit prior to the hearing pursuant to Subtitle
6 Y 206, and how the proposed exhibit would not unreasonably
7 prejudice any parties. The order of procedures for special
8 exceptions and variances are pursuant to Y 409.

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

23 Finally, the District of Columbia Administrative
24 Procedures Act requires that the public hearing on each case be
25 held in the open before the public. However, pursuant to Sections

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

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

9 MR. MOY: Morning Mr. Chairman and members of the Board.
10 I do. A very brief announcement related to today's hearing
11 docket.

12 Application No. 20918 of Terrence Allen Chavis, Jr.
13 That application was withdrawn by the Applicant. No. 2, case
14 application No. 20824 of Rupsha 2011, LLC was postponed and
15 continued to October 25th, 2023 and finally appeal No. 20889 of
16 Chukwuma Ewelike was postponed and continued to November 1st,
17 2023. Other than that, Mr. Chairman, we may have other
18 preliminary matters but I'll bring that to your attention when I
19 call that specific case.

20 Thank you.

21 CHAIRPERSON HILL: Great. Thank you, Mr. Moy. Okay,
22 Mr. Moy, you can call our first decision meeting case, please.

23 (Pause.

24 MR. YOUNG: You're on mute, Cliff.

25 CHAIRPERSON HILL: Mr. Moy, you're on mute.

1 MR. MOY: Oh, thank you. So I have to repeat that;
2 right?

3 CHAIRPERSON HILL: That's right. That was Mr. Young
4 who first noticed.

5 MR. MOY: Thank you, Mr. Young. All right. So, the
6 first decision-making case before the Board is Application No.
7 17944-C of The Lab School of Washington. As the Board is aware
8 the Applicant filed a request pursuant to Subtitle Y § 703 for a
9 modification of significance to change a condition adopted
10 previously in Order No. 17944-A to extend for an additional 15
11 years or until August 1st, 2038, which is the term of approval.
12 The property is located in the R-1-B zone at 4470 Q Street, N.W.,
13 Square 1363, Lot 9A.

14 As you're aware, the Board last heard this at its
15 hearing on September 13th and participating in this decision is
16 you, Mr. Chairman, Mr. Smith and Zoning Commissioner Dr. Imamura.

17 Thank you.

18 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. Okay. So
19 as you all recall this started out as a modification of
20 consequence back, I can't remember when it was first filed, and
21 they, the Applicant, are trying to tie in I think, you know, for
22 another r15 years, the term of the special exception which is to
23 allow the private school use with the, I guess the lease they
24 have with the city.

25 So in terms of the, and then the Board, I think the

1 Board at one point, I'd have to go back and recall but, you know,
2 thought that maybe this could be a modification of significance.
3 Then, after further discussion it was -- the Board, as I
4 understand from going back and discussing with the Office of
5 Zoning Legal Department, the Office of Zoning Legal Department
6 in the previous hearing thought that perhaps they were asking the
7 Board to contemplate if this should be a new application and at
8 the time, there was I guess an, and you'll forgive me because
9 I'm not exactly clear on the time line, there was the possibility
10 that this was going to expire while the Board was going through
11 the process of the application.

12 I believe that after again reviewing the -- then the
13 Office of Zoning's Legal Department was going to go back and take
14 a look at what they thought would be the best route for the Board
15 and also what they thought maybe the Board should consider and
16 the Office of Zoning Legal Department recommended that the Board
17 think about this as a new application and I believe that this is
18 something that we should look at as a new application meaning we
19 can take into consideration all of the previous history on this
20 application, but that this would be for a new 15 year term.

21 So that's the way that I'm going to take a look at it
22 and it really doesn't change any of the analysis. It doesn't
23 change any of the notice. It doesn't change anything that is
24 before us. It's just the way that now I believe the Board should
25 take a look at this application.

1 So that being said, I'm going to go to the merits of
2 the application and what we talked through last week. It was a
3 pretty extensive hearing. I believe that we heard from a variety
4 of members of the community as well as the ANC. A lot of the
5 issues that the ANC brought up I did not think were within the
6 standard of review for the BZA. I think that whatever the ANC
7 would like to do with talking to, you know, really what's above
8 us, really kind of like the City Council and the Mayor's Office,
9 in terms of whether a public school should be there or whether
10 there's another way to tie this with the priorities of the
11 District of Columbia.

12 That's not really what is before us. Like, what we
13 have here is the standard within the special exception under Y
14 703 as to whether or not this school use should be permitted and
15 under 203.1 in terms of the analysis, it is relatively
16 straightforward I think in terms of, you know, is the private
17 school going to be of undue hardship or harm to the community,
18 is there ample parking, is there -- in terms of the parking it
19 looks like they're currently driving 26 vehicles and DDOT had no
20 issues with the application, whether this would be in harmony
21 with the general purpose and intent of the zoning regulations and
22 will that tend to adversely affect these, again, as I said are
23 the neighboring properties.

24 I'm looking back at the Office of Planning's report and
25 again kind of the relatively straightforward criteria for the

1 special exception standards and also an X 901. I think that the
2 fact that the school has been there for 15 years and even in the
3 report that we were given from the ANC, a) the ANC agreed that
4 the school has been a good neighbor and that they've been, you
5 know, adhering to all of the conditions that the BZA had put
6 forward I guess in the first order and I would again recommend
7 that the other nine conditions that were in the previous order
8 stay in this order, if this were to get approved.

9 I was a little bit, I must say, I was thinking a lot
10 about whether or not to have a term limit and the reason why is
11 we've had term limits before of three, five to seven years so
12 that there would be more time for the community and the applicant,
13 whoever that may be whether it's, you know, anybody, a school or
14 a home, I don't know, right, any issues could be addressed and
15 it seems as though from all of the testimony that we heard and
16 all of the filings on the record that the school has been a good
17 neighbor and has lived up to all of the conditions that the BZA
18 had put in place in the first order.

19 So, I would go ahead and agree with the Applicant and
20 the testimony that we heard, as well as the reports from the
21 Office of Planning and how we're going to be able to feel
22 comfortable with this application. So, again, the other items
23 that I thought were brought up, they're really kind of issues I
24 think that are not within our purview but I think that I wouldn't
25 be able to vote in favor of this application.

1 Dr. Imamura, may I hear your thoughts?

2 ZONING COMMISSIONER IMAMURA: I agree wholeheartedly
3 with your summary, your thorough and comprehensive summary and
4 position. I just had a couple of additional thoughts. In
5 addition to agreeing with the nine conditions it seems to me that
6 it makes a lot of sense to match special exception with the C of
7 O here for the additional 15 years.

8 I would also add that I know Chair Duncan, I certainly
9 appreciate her concern for student enrollment of other schools
10 but here this is a lessee and lessor situation I think and
11 wouldn't go to your neighbor who's maybe leasing or renting a
12 property from, you know, a property owner, you'd go to the
13 property owner and discuss, you know, your concerns about what
14 the future of your neighbor's property is.

15 She also added that there are seven other schools of
16 similar design that received additions, but I would note that
17 those seven other schools have different site conditions also.
18 So I have a high level of confidence that the school board and
19 others have run this to ground and have determined perhaps that
20 an addition to this building was not viable be it for financial
21 reasons or site conditions or otherwise. Otherwise I don't think
22 the city would have extended the lease for an additional 15 years.

23 So I think that's probably been run to ground and fully
24 vetted throughout the D.C. bureaucracy. So I'm comfortable
25 moving forward and prepared to support this and I'm interested

1 in Board member Smith's comments.

2 CHAIRPERSON HILL: Thank you. Board Member Smith?

3 MR. SMITH: I appreciate the vote of confidence in my
4 comments, Dr. Imamura, but you've taken the thunder away from me,
5 you know, the comments that you provided.

6 I agree with you and Chairman Hill in this particular
7 case. First things first is I do believe they understand the
8 concerns and questions raised by the community but the question
9 before us is it simply doesn't meet the standards under Subtitle
10 Y 703 (indiscernible) the previous request for the standards
11 under Subtitle, was it 203? Yes 203, for a special exception
12 for the continued use by The Lab School and it does by and large
13 meet those standards and those are the standards along with the
14 standard special exception standards for us to evaluate this
15 application.

16 Even under the standard special exception criteria X
17 901 the proposal does meet standards for us to approve it with
18 those nine conditions. So I do agree with you, Dr. Imamura,
19 concerning the timeframe for each special exception. I think we
20 should allow (indiscernible) so I agree with that thought as well
21 as the conditions as outlined by the Office of Planning and OZLD,
22 and I don't want to beat this dead horse but I do agree with your
23 assessment, Dr. Imamura, on, you know, some of the concerns raised
24 by the ANC.

25 I'm sure that this evaluation was done. This is a

1 lessee versus the lessor type of situation and evaluating the
2 District of Columbia's school system and the Mayor's Office, in
3 evaluating the needs of schools on this side of the city and I'm
4 sure that there was an extensive evaluation that was done of all
5 land that could be suitable for a public school on this side of
6 the city, and I'm sure there was an evaluation done of this
7 particular school, this older school that houses The Lab School
8 and I completely agree with you, there may be site constraints
9 with -- the property is registered as well so there was probably
10 a feasibility study done that says that this particular school,
11 this existing school, probably isn't suitable for the site of a
12 future public school going forward and as you stated, if the
13 school system felt that this was a suitable site they wouldn't
14 have had extended the lease, and even if they do extend the lease
15 I'm sure there are mechanisms where they can, you know, change
16 the terms of that lease or terminate it if it's deemed to be for
17 the greater good of the District of Columbia to have a school at
18 that site.

19 So I do believe that any discussions about us extending
20 or granting a special exception that is some type of impact on a
21 future school is beyond the purview of this Board. So with that
22 I do, as I stated before, I do believe that the Applicant has
23 met the burden of proof for us to grant the special exception
24 with the conditions and I give OP's staff report great weight and
25 will support the application.

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

2 Okay. I'm going to make a motion to approve the
3 application for a new special exception for an existing private
4 school use for a 15 year term to expire August 31st, 2023 with
5 the previous nine conditions removing the No. 1 condition which
6 was a term limit that was from the previous order and ask for a
7 second. Mr. Smith?

8 MR. SMITH: Second.

9 CHAIRPERSON HIL: And this was again for the standard
10 of review under U 203.1 and X 901.2. Mr. Moy, could you take a
11 roll call, please?

12 MR. MOY: Thank you, Mr. Chairman. When I call your
13 name if you'll please respond to the motion made by Chairman
14 Hill to approve the request to extend for another 15 years and I
15 believe, Mr. Chairman, in your motion the 15 years would be August
16 1st, 2038 unless you correct me on that.

17 CHAIRPERSON HILL: No, August 31st oh, I'm sorry. Hold
18 on. I'm sorry. I got the wrong date. Yes, what's the date that
19 you have, Mr. Moy?

20 MR. MOY: Well 15 years would be August 1st, 2038.

21 CHAIRPERSON HILL: Yes, that's correct.

22 MR. MOY: All right. Thank you, sir. And your motion
23 was second by Mr. Smith.

24 As to the vote count, Zoning Commissioner Dr. Imamura,
25 your vote?

1 ZONING COMMISSIONER IMAMURA: Yes.

2 MR. MOY: Again, Mr. Smith?

3 MR. SMITH: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Staff would record the vote as three to zero
7 to two and this is a motion from the Chairman to approve. The
8 motion to approve was second by Mr. Smith. Voting to approve
9 Zoning Commissioner Dr. Imamura, and of course Mr. Smith and
10 Chairman Hill. We have two members not participating. Again,
11 the motion carries on a vote of three to zero to two.

12 CHAIRPERSON HILL: Thank you. All right. Mr. Moy, you
13 can call our -- we're with Dr. Imamura for the next case and then
14 we'll jump back into our decision meeting for an expedited review
15 when we get through the cases with the other Commissioners. So
16 if you wouldn't mind calling the next one for Dr. Imamura.

17 ZONING COMMISSIONER IMAMURA: Thank you, Mr. Chairman.

18 MR. MOY: Okay. Give me a second. I've got to reorder
19 my cases here.

20 HCAIRPERSON HILL: Yes, sorry. So do I.

21 MR. MOY: Okay. Here we go. So in effect actually we
22 jumped into the other hearing session as a courtesy. So this
23 would be case application 20932 of 1501 Erie Street SE
24 Construction, LLC. Once again, this is a self-certified
25 application pursuant to Subtitle X § 901.2 for a special exception

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1 under Subtitle E § 204.4 from the rooftop architectural element
2 provisions of Subtitle E § 204.1. The property is located in
3 the RF-1 zone at 113 18th Street, S.E., Square 1097, Lot 118 and
4 once again, this was heard at the Board's hearing session that
5 started on September 13th. Participating is the Chairman, Mr.
6 Smith and Zoning Commissioner Dr. Imamura.

7 CHAIRPERSON HILL: Okay. Great. Thank you. If the
8 applicant can hear, if they could introduce themselves for the
9 record, please?

10 MR. SULLIVAN: Thank you, Chairman Hill, and members
11 of the Board. My name is Marty Sullivan. I'm here on behalf of
12 the Applicant and I believe Michael Cross is here as well. I
13 don't know if he's on the panel yet or not.

14 CHAIRPERSON HILL: I see it. He is on the panel. Okay.
15 Mr. Sullivan, I know what we asked you for and I see it in the
16 record, but could you please repeat what you guys did from the
17 last hearing.

18 MR. SULLIVAN: Sure. I think I'll turn it over to Mr.
19 Cross because he'd be better to speak that language and explain
20 what we've submitted.

21 CHAIRPERSON HILL: Yes.

22 MR. CROSS: Certainly. Michael Cross, architect for
23 113 18th Street, S.E.

24 The materials provided since the last hearing include
25 a streetscape collage of all the facades of the buildings on that

1 side of that lock as well as an elevation which has been prepared
2 to show the heights of those buildings for that same section of
3 the block. Also noted in that elevation is the buildings with
4 and without mansard roofs.

5 CHAIRPERSON HILL: Okay. Great. I've seen everything
6 that's in the record. I mean, Dr. Imamura and/or Mr. Smith, do
7 you have any questions?

8 ZONING COMMISSIONER IMAMURA: Thank you, Mr. Chairman.
9 Just want to confirm with Mr. Cross, I saw in the streetscape
10 elevation provided that the height is just shy of 35 feet plus a
11 three foot two inch parapet.

12 MR. CROSS: That's correct. Our building is set to
13 conform with the zoning code height regulations for, as measured
14 from grade on our lot. It should be noted that the building at
15 the end of the block which faces Independent Avenue has what is
16 likely a different building height measuring point which is
17 potentially why it is shorter than the others as it is a recent
18 construction.

19 ZONING COMMISSIONER IMAMURA: All right. Thank you,
20 Mr. Cross, and I gather that the images that you provided, those
21 were simple grabs from Google street view?

22 MR. CROSS: The ones on the sheet A201 are actually
23 shots that I took just prior to our original BZA hearing.

24 ZONING COMMISSIONER IMAMURA: Right. I see the
25 distortion of those but I think in Exhibit 28A the streetscape

1 photographs, I think those are just simple Google street view
2 grabs; is that right?

3 MR. SULLIVAN: I think maybe the photos are of the
4 other side of the block.

5 MR. CROSS: Right.

6 MR. SULLIVAN: Yes. Okay.

7 ZONING COMMISSIONER IMAMURA: And they include both
8 sides?

9 MR. SULLIVAN: Yes. But I think Mr. Cross may have
10 taken his own photos of our side of the block.

11 ZONING COMMISSIONER IMAMURA: Right. Noted. All
12 right. I don't think I have any further questions, Mr. Chairman.
13 I think the Applicant has answered my questions and I think we
14 have a total height of almost, well a little over 38 feet so I
15 think it's evident by the design. That's all I have and I yield
16 back.

17 CHAIRPERSON HILL: Thanks. Mr. Cross, I sometimes
18 forget and I can ask Mr. Jesick, the height does not include the
19 parapet wall; is that correct?

20 MR. CROSS: That's my understanding that the height is
21 measured to the roof structure and that the parapet is excluded
22 under the height regulations.

23 CHAIRPERSON HILL: So how high can the parapet wall go?

24 MR. CROSS: Up to four feet per the zoning code
25 regulations.

1 CHAIRPERSON HILL; Mr. Jesick?

2 MR. JESICK: Thank you, Mr. Chairman, and members of
3 the Board. My name is Matt Jesick.

4 Yes, I believe Mr. Cross is correct. The height for a
5 flat roofed building is measured to the main roof line and then
6 you can do a parapet on top of that but that does not count
7 towards the height.

8 CHAIRPERSON HILL: And they did that, meaning the
9 Zoning Commission did that just so that you can have a roof deck?

10 MR. JESICK: I don't know the original purpose of that
11 height measurement method but that's the method for measuring the
12 height of a flat roof building.

13 CHAIRPERSON HILL: Okay. I always forget
14 (indiscernible). Okay. All right. Does anybody have any
15 questions for the Office of Planning? Go ahead, Dr. Imamura.

16 ZONING COMMISSIONER IMAMURA: Thank you, Mr. Chairman.
17 No questions for the Office of Planning but thank you, Mr. Jesick,
18 for the clarification.

19 I do have another question for Mr. Cross, just to put
20 it on public record. Can you explain, Mr. Cross, the three foot
21 two inches, sort of the design decision behind that, why it's
22 three foot two, not four feet (indiscernible)?

23 MR. CROSS: Yes. I can't speak to this specific project
24 and what led to that. Again, this project was designed some time
25 ago. But I can say that typically when we work on designing a

1 parapet there's a number of things at play. One of the first
2 ones is fire separation between adjacent buildings. That's where
3 the building code requires a minimum of a 30 inch parapet for
4 that type of fire separation.

5 So in some cases we have a parapet for fire separation
6 purposes first and foremost, and then very often there's a roof
7 deck on the uppermost roof and that can cause us to raise the
8 parapet between that 30 inches required for fire separation and
9 the 48 maximum in order to have effectively a guard rail for
10 the occupied space up there. I can't speak to how this particular
11 parapet landed at 38 inches.

12 ZONING COMMISSIONER IMAMURA: So, I appreciate the
13 explanation, Mr. Cross. Our hope is the architect could speak
14 to those design decisions (indiscernible) clarify there is a roof
15 deck on this particular property?

16 MR. SMITH: Looks like (indiscernible).

17 MR. SULLIVAN: (Indiscernible) question in to the
18 Applicant on that point.

19 MR. CROSS: Yes. I'm sorry. I'm pulling it up now so
20 I don't misspeak. Yes, there is a roof deck that is limited to
21 the rear portion of the uppermost roof. It's accessed via a
22 spiral staircase off the rear of the property.

23 ZONING COMMISSIONER IMAMURA: Okay. Thank you.

24 MR. SULLIVAN: And I think, if I may add, I mean I'm
25 not sure that it's critical that that not be lower or reduced

1 but there is, and maybe Michael can talk to that, part of the
2 design with the brick that's being provided also to be more
3 compatible with some of the other buildings needs that parapet I
4 think in part to complete that. Is that correct, Michael?

5 MR. CROSS: Yes, that's right. In performing this
6 analysis the portion of the façade that's dedicated to that
7 masonry frieze above the third story windows is largely located
8 on what is that parapet at the top of the façade.

9 ZONING COMMISSIONER IMAMURA: All right. Thank you,
10 Mr. Cross. Thank you, Mr. Sullivan.

11 MR. SMITH: I just had one --

12 CHAIRPERSON HILL: Go ahead, Mr. Smith.

13 MR. SMITH: -- one question about the masonry frieze.
14 That would be above the third floor window not in line with the
15 roof top of the adjacent property, just for clarification
16 purposes because I think it was hard for me to see (iniscernible)
17 material, you know, last week.

18 MR. CROSS: Sure. Yes, the frieze that's alluded to
19 in our materials and in I think the Office of Planning report is
20 located between the third story windows and the upper most cornice
21 of the façade there at the top of the parapet. It is similar to
22 the friezes found on the majority of the other buildings on this
23 side of this block which do not have mansards. Those buildings
24 have some sort of ornamental masonry frieze in that section
25 between the third story or between the uppermost floor windows

1 and the cornice.

2 MR. SMITH: Okay.

3 CHAIRPERSON HILL: Go ahead, Dr. Imamura.

4 ZONING COMMISSIONER IMAMURA: All right. One other
5 question. Mr. Cross, I think there's a couple of properties
6 down, at 123 there is a third floor that's set back. Just curious
7 if you know by chance, and I'm not asking for anything specific,
8 but it seems as if it's set back much further than the top of
9 the mansard roof. Is that your impression as well? It's actually
10 in some of the photographs that you provided in the record.

11 MR. CROSS: Yes. I'm unable to speak to how much it
12 is set back. I would say the typical enforcement for
13 architectural rooftop provisions requires that an addition to be
14 set back a minimum of three feet from the architectural rooftop
15 element. So I would expect that that front wall to be at least
16 three back from the ridge, possibly three feet back from some
17 other element that we can't see.

18 ZONING COMMISSIONER IMAMURA: All right. Thank you.
19 That's all I have, Mr. Chairman, I promise.

20 CHAIRPERSON HILL: Okay. Thanks. And just to be clear,
21 Mr. Cross, the Office of Planning was talking about the plans
22 that are in 17A and so that is -- those will be used as a condition
23 just to make sure everybody's on the same page. Those are the
24 plans that you are currently playing on; correct?

25 MR. CROSS: Understood. Yes, our client --

1 CHAIRPERSON HILL: 17A.

2 MR. CROSS: -- has agreed to those conditions.

3 CHAIRPERSON HILL: I just want to make sure the exhibit
4 is the right one.

5 Okay. All right. I'm going to go ahead, Mr. Young,
6 there's no one here wishing to speak; correct?

7 MR. YOUNG: We do not.

8 CHAIRPERSON HILL: Okay. I'm going to go ahead and
9 close the hearing and the record. Thank you all very much.

10 Okay. This ended up being very convoluted. It's been
11 around for a while and I think that my looking at this it's not
12 based upon whether it's there or not, it's that this is something
13 that's allowed within the height restrictions. If this were,
14 again, if this had been razed completely they wouldn't even be
15 here.; right? So, anyway I don't want to get into the whole mess
16 (indiscernible).

17 So I would agree with the analysis that the Office of
18 Planning has provided as to how they're meeting the criteria for
19 the special exceptions and concerning the rooftop architectural
20 element and I don't think that the other conditions in 204.4, I
21 think they are all also being met as was that in X 901.2. I am
22 thankful that the Office of Planning was able to work with the
23 Applicant to create something that is in better character I think
24 with the block. Again, if this were razed we wouldn't even be
25 looking at that issue and I learned something new again from the

1 fact that the smaller porch that's at the rear is actually a
2 better architectural design that, as a layperson, I would have
3 thought the bigger porch.

4 So, but nevertheless I'm going to agree with the
5 analysis of the Office of Planning and we do not have anything
6 from the ANC, but I'm going to be voting in favor.

7 Dr. Imamura?

8 ZONING COMMISSIONER IMAMURA: Thanks, Mr. Chairman.
9 You're absolutely right. We wouldn't be here if it was razed
10 properly in the first place, so but we are where we are and taking
11 all of the facts into consideration here in addition to I think
12 some of the testimony that Mr. Cross provided last week or the
13 last hearing, the issue here is really around that mansard roof.

14 Google Street View shows at one point in time in July
15 of 2022 where they did attach a mansard roof, it's set back a
16 couple of feet from the front plane at the base of the building
17 which, according to Mr. Cross, was not even built appropriately
18 and then there needed to be at least a three foot setback out
19 from that, I would say and add that a mansard roof attached to
20 this particular façade and design would look ridiculous and would
21 be out of character with the street scape and the pattern.

22 I have a little bit of heartburn over the height. It
23 is within the regulations. There's a roof deck on it which is
24 why I wanted to find out a little bit more about that. I'm
25 uncomfortable with how we got here but they meet the standards

1 of the special exception and I'm prepared to support reluctantly.

2 CHAIRPERSON HILL: Mr. Smith?

3 MR. SMITH: So, you know I agree with Dr. Imamura in
4 the sense that we're here regarding the mansard roof and as I
5 stated previously in the hearing last week I will try to make my
6 evaluation based on what's before us instead of removal of that
7 mansard roof.

8 So at the last hearing I think we had stated some
9 uncomfortability with what was in the record at that particular
10 point in time for us to evaluate the character along the street
11 itself. The Applicant submitted two exhibits in an attempt to
12 provide additional clarity on the character along the street and,
13 you know, I think they had shown us a parcel which, you know,
14 providing additional information showing us the character along
15 the street. Of course, this proposed building is within the
16 height limits and we have two addition -- roof top additions that
17 have occurred in the strip of townhomes along the street that
18 break that uniform plane and I do believe given the information
19 submitted in the record they have provided, you know, enough
20 where I'm fairly comfortable with what was presented.

21 I agree with Dr. Imamura and I think I said last week
22 I'm uncomfortable with where -- how we got here. Do I think that
23 the Applicant probably can do more to ensure that the property
24 is in keeping with the proposal, in keeping with 204.4(a)(3), the
25 proposed construction of the proposed construction as viewed from

1 the street, alley, and other public way should not substantially
2 visually intrude upon the character, scale and pattern of houses
3 along the street or alley frontage. These types of additions
4 would occur if we were to approve this today. It's the reason
5 why in ZR 16 we modified these regulations so that we didn't have
6 these types of additions in these sort (indiscernible) of
7 basically rowhomes that remove the mansard roof so it didn't have
8 some level of a setback in order to protect the historic character
9 of the street.

10 I get that if they had followed the raze permit, that
11 it would have -- this point would have been moot but I don't want
12 to constantly be in the habit of rewarding bad behavior regardless
13 of the cost to the Applicant and I think that we as the Board of
14 Zoning Adjustment should be -- that should be, you know, the
15 financial (phonetic) concern should be something that's the
16 common factor in our evaluation. I'm not saying that this is
17 the case here but I don't think we should be rewarding bad
18 behavior, but I do believe that the Applicant has attempted to
19 mitigate that character intrusion by implementing a frieze above
20 the third floor windows.

21 So could they have done more? Probably, but I do
22 believe that at a bare minimum they do meet the standards for
23 the special exception. So with that I w ill give OP's staff
24 report great weight and support the application.

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

1 you guy for your help and the analysis.

2 I'm going to make a motion to approve application No.
3 20932 as captioned and read by the Secretary including the
4 condition that the Applicant build according to the plan at
5 Exhibit 17A, and ask for a second. Mr. Smith?

6 MR. SMITH: Second.

7 CHAIRPERSON HILL: Motion made and second. Mr. Moy,
8 can you take a roll call, please?

9 MR MOY: Thank you, Mr. Chairman. When I call your
10 name if you'll you please respond to the motion made by Chairman
11 Hill to support eth application for special exception relief
12 requested plus the condition as he has cited in his motion. The
13 motion was second by Mr. Smith.

14 Zoning Commissioner Dr. Imamura?

15 ZONING COMMISSIONER IMAMURA: My pause is for dramatic
16 effect. Yes.

17 MR. MOY: Mr. Smith?

18 MR. SMITH: Yes.

19 MR. MOY: Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. MOY: Staff would record the vote as three to zero
22 to two and this is on the motion made by Chairman Hill to approve.
23 The motion to approve was second by Mr. Smith. Voting to approve
24 is Zoning Commissioner Dr. Imamura as well as Mr. Smith and
25 Chairman Hill with two other members not participating. Again,

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1 the motion carries on a vote of three to zero to two.

2 CHAIRPERSON HILL: Thank you, Mr. Moy. All right. Dr.
3 Imamura, is that it for you?

4 ZONING COMMISSIONER IMAMURA: That is, Mr. Chairman.
5 Thank you. Always enjoy joining you all on the BZA.

6 CHAIRPERSON HILL: Thank you. We loved having you.
7 Have a lovely day.

8 ZONING COMMISSIONER IMAMURA: All right. Good luck
9 with the rest of the day. Thank you all.

10 CHAIRPERSON HILL: Thank you. Thank you.

11 I believe Commissioner Miller is with us now. Mr.
12 Smith, or Mr. Moy, if you'd like to start us off when we get to
13 that point you are welcome to because I would appreciate it. But
14 if not, I can also start us off.

15 Mr. Moy, do you want to call our next case for a
16 decision, please?

17 MR. MOY: Yes, sir. Thank you. So the next case is
18 Application No. 20919 of William Huffman and Colleen Bevins.
19 Again, this is a self-certified application that was filed
20 pursuant to Subtitle X § 1002 for a variance from the lot
21 occupancy requirements, Subtitle E § 210.1 as well as pursuant
22 to Subtitle X § 901.2 for special exception under Subtitle E §
23 5201 for the rear yard requirements of Subtitle E § 207.1. The
24 property is located in the RF-1 zone at 1005 Quebec Place, N.W.,
25 (Square 2902, Lot 65. As the Board is aware, this was last heard

1 at the Board's hearing on July the 12th and participating in
2 today's decision-making is Chairman Hill, Mr. Smith, and Zoning
3 Commissioner Rob Miller.

4 CHAIRPERSON HILL: Thank you. All right. Do either
5 one of you guys want to go first? Okay, Commissioner Miller. Go
6 ahead.

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

8 This is a request for relief to construct a rear deck
9 on the above ground above the parking space that they currently
10 have in their back rear yard. I believe, I want to thank the
11 Office of Planning for going back and analyzing the exceptional
12 conditions that the Applicant presented at the public hearing
13 which the Office of Planning had not had an opportunity prior to
14 the hearing that we had in July because it was only offered at
15 the hearing in July or the day before, as to what the conditions
16 are that met the first prong of the variance test for the lot
17 occupancy.

18 So I agree with the Applicant and with the Office of
19 Planning that all of the exceptional conditions outlined by the
20 Applicant constitute a confluence of factors which create an
21 exceptional condition leading to a practical difficulty. So the
22 Applicant has met the criteria for the variance. There's no
23 detriment to the public good or to the zoning regulations.

24 There's a special exception also which had previously
25 been reviewed by the Office of Planning for the rear yard and

1 that was found to meet the criteria for special exception as
2 well. There's no objections from the adjacent neighbors, in fact
3 there's support letter from the adjacent neighbors and there's
4 no concerns from the affected Advisory Neighborhood Commission
5 4C.

6 So I'm prepared to support this application today and
7 look forward to hearing other comments that my colleagues may
8 have on the issue.

9 Thank you.

10 CHAIRPERSON HILL: Thank you. Mr. Smith?

11 MR. SMITH: I appreciate the Office of Planning for
12 going back and taking a look at the Applicant's claims and the,
13 it's in the record the supplemental staff report that speaks to
14 the extraordinary or exceptional situation for this particular
15 applicant on being able to increase the lot occupancy to in order
16 for them to construct the rear deck addition and based on the
17 information that was submitted, these eight bullet points that
18 were raised by the Office of Planning and I'll just read them.

19 1) The location of the existing water and drain
20 plumbing lines on the east side of the house; 2) the need to
21 locate the kitchen sink and dishwasher together; 3) the
22 construction of the kitchen over open-air the potential for
23 exposed pipes to freeze; 4) the need to locate those plumbing
24 fixtures in a warm location of the kitchen; 5) the need for
25 adequate entry space next to a door; 6) the need for an exterior

1 landing outside the door; 7) the parking space at the ground
2 level and resultant location of the car-door swing; 8) the
3 location of a column at the cellar level, slightly to the east
4 of the center of the north building line of the house.

5 Given that information that was submitted, the points
6 raised by the Office of Planning are in relation to the
7 orientation of the kitchen and is immaterial in my mind to get
8 extensions for the request to construct a rear deck. I mean, a
9 rear deck is rarely an extraordinary or exceptional situation so
10 I do not believe that the information submitted by the Office of
11 Planning ostensibly negates my thoughts that were raised and the
12 reasons why I didn't support the variance in the first place for
13 this particular case.

14 The points that were raised in the report were raised
15 by the Applicant in order to have access to the rear of the house
16 They effectively have access to the rear of the house. There is
17 a door from the basement for them to be able to access the rear
18 of the house. Questions about plumbing is largely immaterial to
19 the location of a door to the deck. They can arrange the kitchen
20 however they see fit and it's immaterial to the extension of --
21 them constructing a deck that would affect their lot occupancy.

22 So with the supplemental report, I do not believe that
23 my position has changed and I do not believe that the Applicant
24 met the burden of proof under the first prong for us to grant
25 the variance and I will not support the variance.

1 CHAIRPERSON HILL: Okay. Thanks, Mr. Smith.

2 Okay. My thoughts were, again, concerning the variance
3 that it was an area variance so it's really, you know, the
4 exceptional practical difficulty that would need to be proven in
5 order for me to vote for the variance. I guess I'm a little bit
6 torn in that it is a deck that we're speaking of, meaning I think
7 that the points that they raised as to the confluence of factors
8 as to how that deck would need to be designed so as to adhere to
9 the regulations would be difficult to the point that it would be
10 a practical difficulty.

11 Now it seems like we're going to have a split vote here
12 in that I would be able to vote in favor of the variance and I
13 think that what would be best to do is now wait to see when we
14 get a fellow Board member, what that fellow Board member may or
15 may not think of this application. I think that, you know, we
16 can also continue to think about it. I mean, I did have a little
17 bit of reservation with the argument that was being made, not so
18 much because again of the, you know, de minimis nature I think
19 of this project that, you know, it's a deck. It's more like
20 whether other people would be coming forward with different
21 reasoning as to why they're reaching an area variance or not.

22 So I think that we will go ahead and table this decision
23 for another member to join us. I mean, Mr. Smith, like I'm not
24 going to try to convince you otherwise. I mean, the Office of
25 Planning's recommendation and the Applicant's recommendation as

1 to how they're meeting all the practical difficulties and the
2 confluence of factors, you just don't feel comfortable voting for
3 it, right, because you think that they can have a deck, they just
4 can't have the deck that they want; right? Or, well actually, I
5 can't remember whether they can even get a small deck.

6 MR. SMITH: They're over their lot occupancy so
7 anything that they would construct --

8 CHAIRPERSON HILL: (Indiscernible).

9 MR. SMITH: -- (indiscernible) require a variance.

10 CHAIRPERSON HILL: Yes. And the reason why I think
11 that I remember thinking that I was even more comfortable with
12 it in this particular case was because it was built prior to
13 1958. So it was those regulations to how they already were over
14 the limit. Okay. So then nothing, Mr. Smith, that has been said
15 thus far is making you feel more comfortable and you're saying
16 no.

17 All right. I'm going to go ahead and hold this decision
18 in abeyance until we get another Board member. Mr. Moy, do you
19 need to put this on the agenda now, and if so --

20 MR. MOY: Yes, sir. That would be my preference rather
21 than holding it in limbo and of course the Board can always change
22 that date later because my understanding we're still not clear
23 on when the next Board member would be ready to return. So to
24 give this -- to allow for that time then I would suggest us
25 putting this out to the end of October or early November. It's

1 your choice.

2 CHAIRPERSON HILL: Yes. Let's go ahead and see what,
3 I mean, our next Board member might join us by, I think our next
4 meeting is the -- we're off on the 11th I think you said and
5 we're back on the 18th. So maybe the 25th.

6 MR. MOY: This is the 25th of October?

7 CHAIRPERSON HILL: Yes. I was going to say the 18th
8 actually.

9 MR. MOY: Okay. We can do it the 18th.

10 CHAIRPERSON HILL: I just don't know -- I don't want
11 to tax our fellow Board member who's coming back. But let's try
12 the 18th.

13 MR. MOY: Okay. October 18th. Okay. Done.

14 CHAIRPERSON HILL: Okay. And then, yes. Commissioner
15 Miller, do you have anything you'd like to add?

16 VICE CHAIR MILLER: No. I look forward to another
17 Board member reading into the record which isn't all that
18 voluminous and to watch the hearing which maybe they'll enjoy.

19 CHAIRPERSON HILL: Yes. It's always helpful to watch
20 it. It's easier than I think even reading the record sometimes.
21 All right. We'll come back for another crack at the decision on
22 10/18 and I know the Applicant is watching and so, you know, the
23 variance standard is a high bar and the argument that is being
24 made against it is that even a confluence of factors for the
25 first prong isn't that unique in that you do have access to that

1 floor from the rear, you just don't have a deck and there's no
2 one here that wants to not keep you from having a deck, it's that
3 we get stuck with the regulations and so the interpretations of
4 such.

5 All right. So, Mr. Moy, we'll put this on for a
6 decision again October 18.

7 MR. MOY: For clarity for our viewers, Mr. Chairman,
8 this is still in the Board's meeting session; correct?

9 CHAIRPERSON HILL: Actually, you know what? Let's go
10 ahead and have, I mean, I don't know Commissioner Miller and/or
11 Mr. Smith, if I think if we do a continued hearing just so if
12 the additional Board member has any questions perhaps?

13 MR. SMITH: Yes, that makes sense.

14 CHAIRPERSON HILL: All right, Mr. Moy. Let's reopen
15 the record for a continued hearing and then, you know, the
16 Applicant would be available for questions.

17 MR. MOY: All right. Very good. Thank you, sir.

18 CHAIRPERSON HILL: Okay. Great. All right. So we'll
19 do that continued hearing 10/18. What do we have on the 18th?
20 I'm sure I just added a whole case (indiscernible).

21 MR. MOY: Oh, I was afraid you were going -- I was
22 hoping you weren't going to ask. Okay. We have, excluding this
23 case, we have one expedited review application, seven cases and
24 one appeal.

25 CHAIRPERSON HILL: Oh, my god, there's an appeal that

1 day?

2 MR. MOY: Yes. There are complications for why I have
3 this number for the docket. Maybe we can talk, maybe we can move
4 something but we still have some time.

5 CHAIRPERSON HILL: Is the appeal looking likely?

6 MR. MOY: That depends on the vote. This is the appeal
7 of the Erie Street construction related to the special exception
8 case.

9 CHAIRPERSON HILL: Okay.

10 MR. MOY: Yes.

11 CHAIRPERSON HILL: Okay. All right. Okay. All right.
12 Just leave it where it is. If we have to do something we'll do
13 something. Okay

14 Mr. Miller, does 10/18 work for you?

15 VICE CHAIR MILLER: That's fine. Thank you, Mr.
16 Chairman.

17 CHAIRPERSON HILL: Okay. All right. Okay.

18 Well, Commissioner Miller, is that it for you?

19 VICE CHAIR MILLER: That is it for me. Enjoy your day.

20 CHAIRPERSON HILL: Thank you. Bye, Commissioner
21 Miller.

22 Do we want to take a quick five minutes before Anthony,
23 Chairman Hood? Oh, whatever. If you're good I'm good.

24 MR. SMITH: I'm good.

25 CHAIRPERSON HILL: Okay. All right. You want to bring

1 in Chairman Hood then, Mr. Young? I think he's here actually.
2 Chairman Hood, are you with us?

3 (Pause.)

4 MR. SMITH: Chairman Hill, we can, you know, just give
5 him time. We can take that five minute break.

6 CHAIRPERSON HILL: Okay. Great.

7 MR. SMITH: Give him time.

8 CHAIRPERSON HILL: All right. Why don't you guys take
9 a five minute break, come back.

10 (Break.)

11 CHAIRPERSON HILL: So for the record Chairman Hood has
12 joined us. Mr. Moy, can you call our next decision case.

13 MR. MOY: Okay. All right. So this is the last of
14 the decision cases in the meeting session and this would be case
15 Application No. 20949 of George Rice and Elizabeth Gaines. This
16 is a self-certified application Subtitle X § 901.2 for a special
17 exception under Subtitle E § 5201 from the lot occupancy
18 requirements Subtitle E § 210.1. Property located in the RF-1
19 zone at 57 W Street, N.W., Square 3123, Lot 86. That's all I
20 have for you, sir.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. Okay. Okay.
22 I reviewed the record for this expedited review. I thought that
23 it was relatively straightforward. I didn't particularly have
24 any issues with it. I thought that it was helpful to have the
25 solar agreement or at least the statement that the neighbor didn't

1 think that the solar panels were going to be a problem.

2 I also am comfortable with the fact that there's
3 letters of support from the adjacent property as well as the
4 report from the ANC which is in support. I thought that the
5 standard of review for this was, again, pretty straightforward
6 and so I would be comfortable voting in favor of this application.

7 Chairman Hood, do you have any thoughts?

8 ZONING COMMISSIONER HOOD: No, I don't have any
9 thoughts. Again, as noted this is in the historic district. I
10 think that the Commission's being asked, what's being asked for
11 as far as relief is very de minimis and I think this is right
12 for the expedited review calendar, and I would agree with your
13 assessment as well.

14 Thank you, Mr. Chairman.

15 CHAIRPERSON HILL: Thank you, Chairman Hood. Mr.
16 Smith?

17 MR. SMITH: I don't have anything to add, Chairman
18 Hill. I agree with the assessments of my colleagues and support
19 the application. I do believe also that they've met the standards
20 for approval on the expedited review.

21 CHAIRPERSON HILL: Okay. I'll make a motion to approve
22 Application No. 20949 as captioned and read by the Secretary, and
23 ask for a second. Mr. Smith?

24 MR. SMITH: Second.

25 CHAIRPERSON HILL: The motion is made and second. Mr.

1 Moy, can you take a roll call?

2 MR. MOY: When I call your name if you'll please respond
3 to the motion made by Chairman Hill to approve the application
4 for the special exception relief requested. Motion to approve
5 was second by Mr. Smith.

6 Zoning Commission Chair Anthony Hood?

7 ZONING COMMISSIONER HOOD: Yes.

8 MR. MOY: Mr. Smith?

9 MR. SMITH: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: With no others participating, staff would
13 record the vote as three to zero to two and this is on the motion
14 made by Chairman Hill to approve. The motion to approve was
15 second by Mr. Smith. Voting to approve the application is Zoning
16 Commission Chair Anthony Hood, Mr. Smith and Chairman Hill.
17 Motion carried on a vote of three to zero to two.

18 CHAIRPERSON HILL: Thank you. Mr. Moy, could you call
19 our next case, please?

20 MR. MOY: The next case before the Board is Application
21 No. 20931 of Layla, this is either pronounced [Bonn-ay] or [Bonn-
22 not]. I apologize. It's B-O-N-N-O-T. This is an application
23 pursuant to Subtitle X § 901.2 for special exceptions, Subtitle
24 E § 204.4 from requirements for rooftop or upper floor additions
25 of Subtitle E § 204.1, Subtitle E § 5201 from the front setback

1 requirements, Subtitle E § 206.2 and from the rear yard
2 requirements Subtitle E § 207.1. Property is located in the RF-
3 1 zone at 1434 Parkwood Place, N.W., Square 2688, Lot 76. For
4 the record, Mr. Chairman, the Applicant has filed a motion to
5 postpone and continue her application.

6 Thank you.

7 CHAIRPERSON HILL: Okay. Thank you. Can the Applicant
8 hear me and if so, could you introduce yourself for the record?

9 MS. BONNOT: Yes. Mr. Chairman and members of the
10 Board, my name is Layla Bonnot.

11 CHAIRPERSON HILL: Okay, Ms. Bonnot. I guess I
12 understand that there's been an unfortunate death concerning your
13 project and so your architect you mean has passed away and you
14 need to apply to another architect. Is that correct, or at least
15 figure out -- how much time do you think you need?

16 MS. BONNOT: So I've been on the line and heard you all
17 scheduling for like later into October or early November, so I
18 think that would definitely meet our timeline. We're in
19 conversations with the Office of Buildings because the exception
20 was missed in the original memo and so I think it just depends
21 on what we need to get to the Office of Buildings in terms of
22 updated plans that would impact obviously (indiscernible)
23 computations (phonetic) and agree whether to have that memo
24 recirculated with the public notice or not.

25 CHAIRPERSON HILL: Okay. Ms. -- how do you say your

1 last name? I apologize.

2 MS. BONNOT: The T is silent and so [Bonn-o.]

3 CHAIRPERSON HILL: Okay. Ms. Bonnot, I guess if --
4 yes. Go ahead and see with the Office of Planning what you think
5 your requirements or your requirements for the project might be.
6 I don't know if you heard our deliberation about a previous deck
7 that was looking for a variance and it's currently in -- it's a
8 difficult standard to meet, a variance test; right? So I'm just
9 saying that, you know, avoiding that is paramount, you know.

10 MS. BONNOT: Yes.

11 CHAIRPERSON HILL: You want to try to do that. So work
12 with the Office of Planning because you don't want to get here
13 with these issues not resolved. I don't know, you've got to get
14 an architect to see what happens. Mr. Moy, is there a date you
15 suggest?

16 MR. MOY: Mr. Chairman, in reviewing the case load and
17 hearing the next steps that the Applicant will need to pursue, I
18 can suggest possibly November the 8th. I'm weighing into this
19 the possibility if there's going to be a variance relief we're
20 going to have re-notice. So the earliest probably would be
21 November 8th, but we already have eight cases for that day so
22 this will be the ninth and the issue of course the following week
23 on November 15th we have four cases and one appeal. That's a
24 possibility for November 15th, otherwise we're looking at
25 November the 29th where we have eight cases also.

1 CHAIRPERSON HILL: No, no, no. Let's do that first
2 one. What did you say, 11/8?

3 MR. MOY: Yes, sir.

4 CHAIRPERSON HILL: Okay. Great. So we'll move to
5 11/8. Ms. Bonnot, okay?

6 MS. BONNOT: Thank you.

7 CHAIRPERSON HILL: Good luck. All right. Mr. Moy, I'm
8 closing this portion of the hearing and the record for the
9 postponement issue.

10 All right. You want to call our next one, Mr. Moy?

11 MR. MOY: Yes, sir. So this case is Application No.
12 20928 of Matthew and Sarah Tucker. This is an application
13 pursuant to Subtitle X § 901.2 for a special exception under
14 Subtitle E § 5201 from the rear yard requirements, Subtitle E §
15 207.1 and Subtitle X § 1002 for an area variance from the lot
16 occupancy requirements, Subtitle E § 210.1 in the RF-1 zone at
17 616 7th Street, N.E., Square 860, Lot 135, and I think -- I
18 believe that's all I have for you.

19 Thank you.

20 CHAIRPERSON HILL: Thank you. If the Applicant can
21 hear me can they introduce themselves for the record, please.

22 MR. TUCKER: Good morning, Board members. Matt Tucker
23 and my wife, Sarah Tucker, here.

24 MS. TUCKER: Hello.

25 CHAIRPERSON HILL: All right. Mr. and Mrs. Tucker,

1 welcome. All right.

2 Mr. and Mrs. Tucker, I'm going to go ahead and give you
3 15 minutes so just I have an idea of how much time we are, where
4 we are to make your argument for why you think you're meeting
5 the criteria to grant the relief requested and you may begin
6 whenever you like.

7 MR. TUCKER: Perfect. Thanks very much for hearing our
8 case. I realize you guys take a lot of time reviewing all these
9 and we really do appreciate you hearing us out on this. As
10 we've been hearing through the rest of these cases we know we do
11 have to meet a pretty high standard and we do believe, given the
12 unique circumstances present at our property here in Northeast
13 just off Capitol Hill that we do meet those requisite standards
14 and just hopefully well short of 15 minutes try to walk you
15 through everything that we're abler to present and please feel
16 free to interrupt with questions or if there's anything else that
17 I can help provide, I'm happy to do so in real time.

18 So the crux of our application is we are looking to
19 build a rear deck at our house on the level of the main floor.
20 So it's a two unit RF-1 zone rowhouse. The basement is its own
21 separate unit. We own both units. We inhabit the upper two
22 floors and the basement unit is vacant. Currently, we have no
23 -- we're not really what we're going to do with it for now but
24 what we are trying to do given where our house sits it is, you
25 know, a 1900 turn of the century rowhouse. The original

1 construction here is well over 100 years old and that is the only
2 construction that does exist on our zoning block site.

3 We originally designed the deck to be about five and a
4 half feet off grade of the ground in the back. This isn't doing
5 -- if you look at Exhibit 3, the photos, you can see the three
6 photos going north of us have the exact same deck. We wanted to
7 match the character and nature of the existing row that is there.
8 You know, we don't believe that this deck project, you know,
9 unduly impacts the privacy here in light of our neighbors and
10 because we really are trying to match what is already present on
11 the row, you know, we think it does match the character, scale
12 and pattern of houses.

13 The purpose kind of building this deck is really, as
14 of right now we have from the upper unit absolutely no access to
15 the rear yard itself, therefore there is absolutely no, you know,
16 usability at present on the ground. There's about a
17 (indiscernible) the existing spot of four foot wide or so based
18 on staircase that splits the already kind of narrow 15 and a half
19 foot on a 16 foot lot size in half and kind of renders that
20 completely useless as kind of an outdoor space, and then on the
21 north side of the lot the rear area there are two air conditioning
22 units that pretty much occupy that entire area and that leaves
23 no real utility or use there and that just kind of leaves that
24 southern kind of third of the lot which is completely obstructed
25 by the 12 foot brick windowless garage that sits to the west of

1 the property and, you know, the north side has a deck that
2 restricts sunlight too as well that we're trying to just build
3 up to that same grade, and then the person to the south has kind
4 of, well they have like the public alley so they have access for
5 both there and the upper unit and in the bottom unit they also
6 don't have door openings for anything like that in the rear and
7 in the upper unit as well that separates them from the present
8 conditions at ours.

9 And so that's kind of the crux of it. So I'll kind of
10 go into detail here on kind of why I think we do meet the area
11 variance test and why we do feel we do have an exceptional
12 situation where there's undue hardship on our property because
13 of -- if this application's not granted.

14 So our total lot size sits in the RF-1 zone. It is
15 about approximately 624 square feet which is about a third of
16 what the standard lot size is supposed to be. Like, I get that
17 this is an old house, an old area. These lot sizes, you know,
18 are non-conforming legally but I mean that in itself is a very,
19 very small size. Even for D.C., these six houses that kind of
20 exist on our little row are pretty unique in the sense to them
21 and kind of the way that some of them sit, I'm going to use that
22 as kind of some of our burden of proof as to why we do think we
23 meet that test, and there is a unique confluence of factors beyond
24 just a small lot size that does present us meeting that first
25 test on the area variance.

1 So going kind of back to the zoning requirements.
2 Pursuant to the setback requirements and I think it's section 360
3 of having at least a 20 foot rear yard, we have about a nine
4 foot. Even if we had full use of the entire floor plan it would
5 be about a nine by sixteen foot space in the backyard which is
6 about 144 square feet which is less than half of what would be
7 the minimum for that standard outside usable and kind of the
8 whole point of having that setback is to have outside space that's
9 reserved for the quiet enjoyment of the owners and residents of
10 the home and we believe that by building that deck and actually
11 capturing that whole floor plan which is why we're asking for the
12 full area variance, the whole kind of footprint basically here,
13 we will best capture (indiscernible) the zoning, kind of the
14 spirit of the zoning requirements there by actually building this
15 deck.

16 And then the burden of proof document which I think is
17 Exhibit 41, I kind of have a little cut and paste of the map of
18 the mini-block that we sit on. As I said, the three houses
19 immediately proceeding to the north of us all have this deck so
20 they all have much better use of their back space, better access.
21 The northern end has its own unique side yard in different
22 situations so they have plenty of outside space and then the
23 house immediately to the south of us also has immediate access
24 to the public alley and has kind of a unique built down situation
25 there that we don't have and we don't really have the ability to

1 develop much of anything else.

2 Again, kind of where our house rear lot sits it's kind
3 of in a pit of, we have that 12 foot brick garage that sits behind
4 us to the west so we miss all that sunlight as it comes across
5 the entire time. We have about a ten foot fence to the south
6 and then we have one that sits about (phonetic), and then we have
7 the deck to the north, that's about 12 feet. So there really
8 isn't much sunshine and which we think kind of presents its own
9 unique circumstance as well that is not present at any of the
10 other similarly sized lots which is why I want to make that
11 distinction that, you know, this is reasons beyond just the fact
12 that we have a small lot and we believe that these are
13 contributing factors.

14 I kind of walked through the un-usability of the
15 existing space. I mean, if we, you know, paying to move air
16 conditions, things like that, I mean that's, you know, comes to
17 thousands of dollars and I think presents a pretty substantial
18 undue hardship if we were to try to make the space better if this
19 application is not granted.

20 So the other thing too that I kind of want to walk
21 through because I know the Office of Planning issued their
22 recommendation saying that they did not feel that we had met this
23 test and I kind of want to refute a couple of their points. We
24 know they said we did not meet the standard just because we
25 centered things solely on the fact that we have a small lot. I

1 don't think that's the case. I think kind if you contribute all
2 of the factors of, you know, not just a small lot size but lack
3 of sunlight and air due to our unique position in the block,
4 presence of existing stairs and equipment restricting any sort
5 of viable use for the existing footprint outside, lack of sunlight
6 and air due to our unique surroundings based on the where we are
7 uniquely positioned on the block, no public access to the rear
8 yard from the upper unit, and the other thing that the Office of
9 Planning said they couldn't look at because they couldn't find
10 BZA records or that's that are already here pre-date the current
11 regs, so they can't or were not able to consider or don't feel
12 comfortable in the fact that three of our six neighbors have this
13 exact same deck to be sort of any contributing factor which, I
14 mean, I think denial of this application does present an undue
15 burden that would be unique to our property, given where it sits
16 on this six row block of houses. I mean, it does keep us kind
17 out of the style and characteristics of the neighborhood as is.

18 The other thing that the Office of Planning tried to
19 point out and say that we would be able to construct stairs in a
20 landing. I'm not sure that we would be able to permit a landing.
21 Again, our house is already at 75 percent or 77 percent lot
22 occupancy so if they determined that a landing does present a
23 building structure we're going to be right back here looking for
24 an area variance anyway. So I don't think that that's practical.

25 The other thing is from kind of the rear door down to

1 the ground is about just over an 80 inch drop. So if we were to
2 follow their suggestion and just build a staircase out the back
3 that went down there that would, you know, do the math on kind
4 of standard treads or about ten inches, risers eight inches, that
5 puts you going 100 inches towards the rear of the property and
6 that leaves about half a foot when you get to the end of the
7 stairs before you run smack into that brick garage.

8 So I don't think that's a practical solution to this
9 either and we also said even if we built those stairs that would
10 pretty much occupy the remaining third of the lot and so there
11 would be neither a place where you could fit a chair and sit
12 outside, let alone a table or something where you can actually
13 enjoy the space.

14 So I appreciate kind of speaking with them on that. I
15 think that kind of given those confluence of factors that there
16 is all of these different things present here on our property
17 that, you know, we are uniquely situated where our house sits on
18 the block, that we do hit that threshold for area variance test
19 and, you know, we have presented the Board here today with letters
20 of support from both of our immediate surrounding neighbors who
21 fully support the project as well as a petition from some of the
22 other people in the neighborhood who (indiscernible) and kind of
23 hear me out on my plea and signed as well and do support this
24 going forward. But also note that we did receive the support of
25 the Capitol Hill Restoration Society Zoning Committee as part of

1 their beyond the borders now in the Capitol Hill historic zone
2 ends at the top of our block, but they heard us out and garnered
3 their support and submitted a letter in support as well as they
4 felt this was a good use of an exceptionally limited lot and
5 space, and then we did receive the majority of approval from our
6 ANC 6 Planning, Zone and Economic Development Committee on July
7 5th and then received the majority approval of the ANC 6C at
8 their monthly meeting on July 12th. I believe they submitted a
9 letter on our behalf as well and I will just yield real quick to
10 my wife to see what I forgot.

11 MS. TUCKER: I think you covered everything. We're
12 happy to answer any questions you may have.

13 CHAIRPERSON HILL: All right. Thank you. Let me go
14 through this process and then we'll see whether my Board members
15 have questions.

16 Can I hear from the Office of Planning, please?

17 MR. KIRSCHENBAUM: Yes. Good morning. Jonathan
18 Kirschenbaum with the Office of Planning.

19 For this case we do recommend denial of an area variance
20 to construct a deck in the rear yard at the subject property.
21 With regards to the existence of an exceptional condition at the
22 property, we did not find that there were unique factors that
23 pertain to this property that would result in a practical
24 difficulty. The subject property is similar in lot area, lot
25 width and topography to the adjacent properties to the north and

1 south. On the subject square, the adjacent lots are developed
2 with similar two story row buildings constructed around the same
3 time period on relatively similar lots.

4 Regarding the lack of alley access, the Applicant
5 states that access to the rear yard from the upper unit where
6 the owners live, they must walk around the block through an
7 unpaved alley to the west of the subject property. However, this
8 piece of land is not an alley but it's a tax lot that is in
9 separate private ownership.

10 Based on our understanding of the zoning code, a stair
11 and landing to the rear yard would be possible. There are special
12 provisions in the zoning regulations that allow the stair and
13 landing to not count towards lot occupancy and towards yards and
14 so that would not require relief. While there do appear to be
15 adjacent properties with similar decks, we could not locate a
16 record past the Z approvals and so it's unclear how those decks
17 were built, whether they either somehow pre-dated zoning in the
18 District or they might have been constructed with unlawfully
19 issued permits. But because no evidence has been provided that
20 they were built legally, they can't be part of the exceptional
21 condition test as part of the variance.

22 So to obtain variance relief the Applicant must
23 demonstrate an exceptional practical difficulty caused by an
24 extraordinary or exceptional condition unique to the property and
25 because we could not find any sort of exceptional condition unique

1 to the property, we did not find a practical difficult existed.

2 The variance criteria also requires that the proposal
3 not result in substantial detriment to the public good and not
4 result in substantial detriment to the intended zoning
5 regulations. While OP is very supportive of the property owner's
6 ability to improve and upgrade their existing house, the proposal
7 would effectively eliminate the rear yard at the basement level
8 which the most recent Certificate of Occupancy states that is for
9 a dwelling unit that is separate from the first and second floor
10 to the property.

11 We did find that this -- we were concerned that this
12 would impact both access to the unit and light and air available
13 to the basement dwelling because there would be no space
14 unobstructed to the sky adjacent to the basement windows and the
15 exterior door. There could also be negative impacts
16 (indiscernible) from the proposed deck on adjacent properties.
17 The deck would also be directly adjacent to the buildings to the
18 west and that could also result in privacy, noise, light or air
19 impacts as well.

20 As the Board is aware, the subject property is already
21 well over maximum lot occupancy anticipated for the zone and the
22 requested increase in lot occupancy to effectively re move the
23 required rear yard would in this case essentially eliminate
24 separation between this property and the one to the rear and the
25 Applicant is not providing an adequate justification for the

1 first part of the variance test and as such, we found out this
2 proposal would be inconsistent with the intent of the zoning
3 regulations.

4 This concludes my testimony and I'm happy to answer any
5 questions.

6 Thank you.

7 CHAIRPERSON HILL: Okay. Thanks. Let me just check
8 real quick. Mr. Young, do we have people wishing to speak?

9 MR. YOUNG: We do not.

10 CHAIRPERSON HILL: Okay. Mr. Tucker and Mrs. Tucker,
11 what's directly behind you guys? You mentioned a garage or
12 something? Like, I see there's like windows to an apartment
13 building on some of your neighbor's decks. What's right across
14 from you guys?

15 MR. TUCKER: Yes. So right behind us, so there is that
16 public alley the property immediately to the south. So there's
17 one house to the south, there's an alley and then there's I think
18 like a three or four car garage that is, you know, that garage,
19 the backyard and then that apartment complex, The Bailey, that
20 sits on Morris Place.

21 CHAIRPERSON HILL: Okay. And then why did you guys
22 decide to built that screen door, that door there, without having
23 a deck?

24 MR. TUCKER: So, yes. When we moved in we --

25 CHAIRPERSON HILL: I can't hear you, Mr. Tucker. You

1 just went out.

2 MR. TUCKER: I'm sorry. So apologies on that again.
3 So when we moved in we made the stupid naïve assumption, now that
4 I realize that those decks probably are, you know, would have
5 assumed it would have been an easy process to just match what
6 our neighbors had and we were completely (indiscernible), so.

7 CHAIRPERSON HILL: Okay. Mr. Kirschenbaum, can you
8 hear me?

9 MR. KIRSCHENBAUM: I can, yes.

10 CHAIRPERSON HILL: Can they put a Juliet balcony there
11 or is that also something that would need relief?

12 MR. KIRSCHENBAUM: That I do not believe they can do.

13 CHAIRPERSON HILL: So they can't even -- a Juliet means,
14 I don't know if I'm even using the right term. Like, something
15 so that they can open the door but there's that railing there.

16 MR. KIRSCHENBAUM: I mean, they probably could put a
17 railing there. I don't know. I would have -- I don't
18 (indiscernible) that, that's part of the interpretive (phonetic)
19 for the zoning administrator's office, but just putting a railing
20 in front of the door.

21 CHAIRPERSON HILL: Okay.

22 MR. SMITH: But --

23 CHAIRPERSON HILL: Go ahead, Mr. Smith.

24 MR. SMITH: No, I mean to your question. If it extends
25 out. Like, some Juliet balconies extend out from the rear door,

1 then the area under the rear door probably (indiscernible) lot
2 occupancy but if they're just putting a railing in front of the
3 door, as Mr. Kirschenbaum said, that probably wouldn't count
4 because it's not an extension of the building area.

5 CHAIRPERSON HILL: Okay. Even if a railing went out a
6 couple of inches then you have just a couple of inches I guess
7 the zoning administrator or?

8 MR. KIRSCHENBAUM: I think that's interpretive at this
9 point. I don't think we can really make any conclusive statements
10 on the part of the railing.

11 CHAIRPERSON HILL: Okay. So, all right. And then to
12 your, Mr. Tucker and Ms. Tucker, to your south, that neighbor
13 hasn't put on a deck yet; right? That's the last one at the end
14 of the row; correct?

15 MR. TUCKER: Correct.

16 CHAIRPERSON HILL: Okay. And then I see the garage now
17 that you're speaking of that you would be up against. What about
18 the discussion, Mr. and Mrs. Tucker, about like, are you guys
19 renting that bottom unit out?

20 MS. TUCKER: No.

21 MR. TUCKER: No.

22 MS. TUCKER: No, we're not. It's unoccupied.

23 MR. TUCKER: It's unoccupied.

24 MS. TUCKER: But there's no interior stairwell so we
25 can go through that unit to get to the rear yard which has --

1 it's very dark. It's only got an AC unit right now.

2 CHAIRPERSON HILL: I got it. Right. But you have a C
3 of O for that basement unit?

4 MR. TUCKER: We do. We're really unsure about the
5 future of what that unit will be. We might be looking at
6 combining them and making one larger house as we need additional
7 bedrooms to be filled here for us.

8 MS. TUCKER: But that's a separate case.

9 MR. TUCKER: That's a separate decision but I mean
10 there's no -- I might be wrong here but as the owners of the
11 unit, I mean we fully support this application. We would be the
12 aggrieved party here and we don't, we actually feel the opposite
13 that we strongly want this deck to happen.

14 CHAIRPERSON HILL: Okay. Let me think. All right.
15 Does anybody have any questions, meaning my fellow Board members?

16 Go ahead, Chairman Hood.

17 ZONING COMMISSIONER HOOD: Mr. Chairman, first of all
18 good morning, Mr. and Mrs. Tucker.

19 Let me ask, I'm going to try -- I was following what
20 the Chairman, his question, and maybe I should ask him. Where
21 was the garage, Mr. Chairman, that you were able to see? I still
22 don't see it.

23 CHAIRPERSON HILL: In the photographs in Exhibit 3, I
24 think it's Exhibit 3, if you scroll down. It's actually the
25 first photo I think. The first photo I guess that brick wall is

1 a garage to your left.

2 ZONING COMMISSIONER HOOD: Oh, okay. (Indiscernible).

3 CHAIRPERSON HILL: Yes. Then you can look north and
4 see the decks on the, I guess those three units.

5 ZONING COMMISSIONER HOOD: Three units. Okay. Mr.
6 Kirschenbaum, let me just ask, and first of all, good morning,
7 Mr. Kirschenbaum. I don't usually disagree with the Office of
8 Planning and especially when it's an area variance and you all
9 say denied, but when I looked at the record I looked at Capitol
10 Hill and anytime I get something, Mr. Eckenwiler approving it,
11 that carries a lot of weight. Not just him but the ANC across
12 the city.

13 When I'm looking at this, and I know that sometime our
14 regulations, and that's what this Board is for, sometimes our
15 regulations can -- I'm not going to say the need to be changed
16 but they need to interpreted differently. So I just don't know,
17 and I guess I don't know what the Office of Planning is, but I
18 think if Mr. Tucker has made this case with me, I think that he
19 definitely has what they're trying to achieve and first of all,
20 I even appreciate them. It's not easy dealing with DOB, take it
21 from me. I'm learning that now.

22 But it's not easy dealing with them. But I think that
23 if we're going to make use, if we're talking aging in place and
24 is it, Mr. Kirschenbaum, and I'm not trying to give you a lecture,
25 I'm trying to get to my question. Is it that they may not have

1 represented what they're doing correctly for you to interpret it
2 for an approval or is it additional information you may need?
3 I'm just not clear.

4 I look at the pictures and I hear what the analysis is,
5 something's not matching here.

6 MR. KIRSCHENBAUM: Our analysis is based on just the
7 strict analysis of the variance criteria and the D.C., you know,
8 Court of Appeals doing that. You know, there can be a confluence
9 of different factors but, you know, the size of the lot cannot
10 be the central factor in the argument and for us we found that,
11 you know, that the size of the lot was the central argument and
12 the other sort of factors that the Applicant tried to use to --
13 the confluence of factors just we feel just didn't meet the test.

14 ZONING COMMISSIONER HOOD: Okay. And I believe, I'm
15 sure having been involved with so many court cases, I'm sure
16 there's probably some case law out there that says something
17 totally different.

18 So I appreciate your analysis. Thank you, Mr. and Mrs.
19 Tucker, and Mr. Chairman, that's all I have.

20 Thank you.

21 CHAIRPERSON HILL: Okay. I love it. Let's see, so I
22 wondered what we're going to get with this one. Go ahead, Mr.
23 Smith.

24 MR. SMITH: Mr. Kirschenbaum, the only question that I
25 have is, you know, (indiscernible) with your theme that's in the

1 staff report. You know, the arguments that you're making is
2 against the construction of this particular type.

3 My question is the point that you raised a little
4 earlier and was raised by the Applicant about just a stair and
5 you said that the zoning regulations do allow some exclusions for
6 stairs. Is that -- are you just strictly reading 312.4 Subtitle
7 B, § 312.4(e) that allows uses for uncovered stairs and landings?

8 MR. KIRSCHENBAUM: It's a combination of Subtitle
9 324.1(c) and then also the lot occupancy rules (indiscernible)
10 , let me scroll to that.

11 MR. SMITH: You said 324.1(c)?

12 MR. KIRSCHENBAUM: Correct. And then under lot
13 occupancy Subtitle B 312.4, where is it, (e) uncovered stairs,
14 landings, and wheelchair ramps that serve the main floor don't
15 count parts of the building area and our understanding from the
16 zoning administrator's office is that that would also include a
17 landing.

18 MR. SMITH: Okay. Is that immaterial to the height of
19 the stairs?

20 MR. KIRSCHENBAUM: That has -- it doesn't have to do
21 with the height of the stair, it has to do with certainly the
22 main floor of the building.

23 MR. SMITH: Okay.

24 MR. KIRSCHENBAUM: So (indiscernible).

25 MR. SMITH: Just one more question on that.

1 MR. KIRSCHENBAUM: Oh, sure.

2 MR. SMITH: You may be about to answer my question.

3 Where (indiscernible) the main floor?

4 MR. KIRSCHENBAUM: (Indiscernible) I think you might
5 be thinking of sort of that four foot wall that we often talked
6 about, but this is separate and apart from that. This is about
7 just serving the main floor of the building. So if, you know,
8 the door is ten feet up, that's fine.

9 MR. SMITH: Okay. All right. I think that was the
10 only question I had.

11 CHAIRPERSON HILL: Mr. Kirschenbaum? In terms of like
12 the uniqueness, I'll get back to you Mr. Tucker, in terms of the
13 uniqueness and this is where sometimes I have heard, whatever, I
14 think of it differently at different times. The fact that there's
15 only like six of these, is that unique?

16 MR. KIRSCHENBAUM: We looked at the properties that on
17 the subject square fronting 7th street.

18 CHAIRPERSON HILL: Right. So I'm just saying the Office
19 of Planning doesn't think that the fact that there's just six of
20 these, that's necessarily unique because there's six of them.

21 MR. KIRSCHENBAUM: Right. I mean, the issue is, you
22 know, either this should be denied because they're not a
23 uniqueness or this is an issue with, you know, the current zoning
24 regulations. The zoning regulations are clear about this type
25 of, you know, structure is not allowed.

1 CHAIRPERSON HILL: Okay. We seem to be coming up with
2 a lot of decks today and I don't know what's going to happen.

3 Mr. Tucker?

4 MR. TUCKER: So I did want to try and push back on
5 this, like stair and landing concept too. If we are trying to
6 reserve some of the rear yard for usable space, if we build this
7 structure there will be no usable space period. So like --

8 MS. TUCKER: if you --

9 MR. TUCKER: I feel like, right, if you build the
10 stairs. So I feel like OP's trying to have their cake and eat
11 it too by saying the bottom floor will be aggrieved by losing
12 their backyard but also they say you should lose your backyard
13 anyway by this other way.

14 CHAIRPERSON HILL: Yes.

15 MR. TUCKER: So by that (indiscernible).

16 CHAIRPERSON HILL: I'm not interrupting you, it's a -
17 - I am interrupting you. It's a nice point to bring up, like
18 honestly and why he said it, and I'm sure you've watched him in
19 previous things, none of us want to stop anybody from having a
20 deck necessarily, it's just what the regulations say. Like the
21 regulations will let you have the stairs and the landing, but you
22 can't have the deck. That's just the way the regulations are
23 written.

24 So the Office of Planning, even the Office of planning,
25 you know, they're just there to help us interpret the regulations.

1 So but yes, I agree, and I'll even follow that up with Mr.
2 Kirschenbaum.

3 Mr. Kirschenbaum, you agree that the stair and landing
4 are almost up against that garage anyway, right, it'd be like
5 half a foot or a foot next to that garage anyway; correct?

6 MR. KIRSCHENBAUM: Yes. I don't know exactly. We're
7 sort of talking in the air, right, and nothing's been drawn so I
8 can't give you a --

9 CHAIRPERSON HILL: It doesn't matter. You don't have
10 to worry about it, Mr. Tucker and Mrs. Tucker. It's a tiny area.
11 We can imagine how much space there's going to be. There's barely
12 any space now. So, you know.

13 Okay. Mr. Smith, do you have any questions?

14 MR. SMITH: No, I don't have any.

15 CHAIRPERSON HILL: Okay. All right. Okay. Mr. Tucker,
16 Ms. Tucker, do you have anything you'd like to add at the end?

17 MS. TUCKER: I would just say that it's five and a half
18 feet off the ground is one point I would make. It's not a very
19 tall structure that we're asking for and just to consider that.

20 MR. TUCKER: Yes. Just, I mean, the whole point of
21 this is for us to truly try and capture that full footprint of
22 the very limited space that we do have back there for outdoor.
23 It's an open air deck, like you'd get some sun. You can put a
24 table out there. You know, it matches what already existed there.
25 I mean with line of site from windows and existing that's, I

1 don't think anyone's losing any sort of privacy that they might
2 have already had. But really this is just trying to make do and
3 make the best out of a situation that, you know, just by nature
4 of the lovely features of these rowhouses that we have. You
5 know, they're quirky and unique and historic, and we're just
6 trying to improve on the property as best as we possible can for
7 our, you know, quiet enjoyment.

8 CHAIRPERSON HILL: I got you. Does your deck, your
9 design, does it line up with the other decks?

10 MR. TUCKER: Yes.

11 CHAIRPERSON HILL: Okay. Because it's unclear to me
12 --

13 MR. TUCKER: Ours actually might be a little bit --

14 MS. TUCKER: Shorter.

15 MR. TUCKER: -- shorter because we --

16 CHAIRPERSON HILL: You're going up to the wall. The
17 other decks --

18 MS. TUCKER: (Indiscernible) take a step out of the
19 house so it will be a little bit shorter. The top of the deck
20 should be in line with the fence on the south side of the
21 property.

22 MR. TUCKER: So like it really --

23 CHAIRPERSON HILL: I see it. Your neighbors' decks go
24 past that garage.

25 MS. TUCKER: No, they're in line with the garage.

1 MR. TUCKER: They go past.

2 MS. TUCKER: Oh.

3 MR. TUCKER: They go past by probably five or six
4 inches.

5 CHAIRPERSON HILL: Okay. All right. Mr. Smioth, you
6 had your hand up?

7 MR. SMITH: Yes. I'm still, and I get the argument
8 that everybody's making. The question is not, and I heard you
9 talking about the Office of Planning's trying to have its cake
10 and eat it too, but the question is there an extraordinary or
11 exceptional situation? So you have a rear yard that could be
12 accessed via stairs from that upper unit.

13 Was there any consideration to -- based on the
14 interpretation of the Office of Planning you can construct the
15 stairs that would not create additional lot occupancy on your
16 property. Was there any consideration to pursue that route,
17 especially considering that you did get the staff report from the
18 Office of Planning when they released the staff report that you
19 could improve the rear yard with a, you know, concrete patio
20 that's in close to the ground where it would not impact lot
21 occupancy? Did you exhaust that in any way?

22 MS. TUCKER: Yes. So with the current, I mean, we
23 could just theoretically build a set of stairs. In order for,
24 based off of my calculations of the riser side and the tread side
25 and the number of stairs that we would need, we would have to

1 have a turn like he's talking about and this would, we would have
2 to in order to actually fit the stairs, move the stairs that are
3 coming up from the basement in the middle of this tiny yard and
4 move the HVAC units in order to actually fit stairs down to the
5 landing and use that space, and that to me is a bit excessive.

6 MR. TUCKER: It was excessive and then we did also look
7 at using like a roller (phonetic) elevation patio because in
8 order to be able to stay under I believe lot occupancy, and check
9 me if I'm wrong here, but I believe the foot height was you have
10 to stay under four feet. If we were to do that, I mean it's
11 doable now with the five and a half feet to still allow for a
12 rear (indiscernible) egress from that downstairs unit but I mean
13 if you build anything below that that's, I mean, you're barely
14 even in crawl space territory if you're trying to get out of
15 there.

16 MS. TUCKER: And then this also allows for access to
17 service of HVAC (indiscernible).

18 MR. TUCKER: Yes. Without having to pay either
19 thousands of dollars to move them to the roof or something or,
20 you know, risk a whole bunch of other issues too if you have your
21 AC units up top and they break, everything like that.

22 MS. TUCKER: And then if we did --

23 MR. TUCKER: It would be, again, thousands of dollars.
24 So I think what we kind of ended up with is this was the best
25 way to meet the character of the neighborhood with the existing

1 rowhouses that our neighbors are and try to move in a way to
2 actually maximize outside space use and that's kind of why we
3 ended up here asking for a very -- of I think an interpretation
4 of the zoning rules, and really do thank you for hearing us out
5 on it.

6 MR. SMITH: Okay. All right. Thank you for that
7 clarification. That's the only question that I had, Chairman
8 Hill.

9 CHAIRPERSON HILL: Okay. All right. I'm going to go
10 ahead and close the hearing and the record. Goodbye Mr. and Mrs.
11 Tucker.

12 MR. TUCKER: Thank you again.

13 CHAIRPERSON HILL: Mr. Smith, I'm going to kind of put
14 you on the spot because I kind of want to know what you're
15 thinking.

16 MR. SMITH: So, you know, my thought process on this
17 is very similar to the thought process that occurred in the
18 previous case that we continued and I think you probably
19 anticipated that so (indiscernible).

20 I'll do the heavy with this and I'll do the heavy, you
21 know, coming from a zoning administrator past. This is a request
22 for a variance, an area variance, it's a lower standard than a
23 use variance but you still have to prove an extraordinary or
24 exceptional situation for your request and I agree with the
25 position of the Office of Planning that I do not believe that

1 they have met the burden of proof for us to grant the special
2 exception for a deck.

3 I'll do the heavy in saying that a variance, an area
4 variance for an accessory structure and a deck is an accessory
5 structure. It's nice to have, everybody wants to have outdoor
6 space and it's an accessory structure. The property -- what was
7 presented to me does not create to me an exceptional practical
8 situation for them to use their property to operate their property
9 in the manner that it currently operates as. It's a two unit or
10 it has multiple dwelling units within it.

11 The arguments made, I completely agree with the
12 arguments that have been made by the Office of Planning. The
13 size of the lot is not a unique situation. All of the other lots
14 along this -- within this stick of row homes face similar
15 situations where there's larger tenant homes on there on smaller
16 lots, so their lot occupancy is constrained. But this does not
17 constrain the operation of a legal dwelling unit or to be able
18 to enjoy a legal dwelling unit, multiple dwelling units on the
19 property. So I do not believe they've met that first prong.

20 The second prong, not be of substantial detriment to
21 the public good. Again, I agree with the Office of Planning's
22 assessment on this particular case and the third prong, essential
23 to the purpose and integrity of the zoning regulations. I agree,
24 again, with the Office of Planning's particular position on that
25 third prong. It's the first prong that I'm hung up on and I do

1 believe that the Applicant has -- there are other applicants
2 whether they are granted or not the easiest route, there may be
3 other avenues that the Applicant can pursue outside of seeking a
4 variance where I still don't see how -- I can't get to them
5 meeting that first prong.

6 So that's where I am, Chairman Hill, and I don't think
7 that'll change.

8 CHAIRPERSON HILL: Okay. You know, Mr. Smith, I
9 appreciate your comments. I appreciate your thoughts on both
10 this one and the other variance case that we had today.

11 I don't know what other avenues they might have been
12 able to pursue with the Office of Planning. I will ask the
13 Applicant to reach out to the Office of Planning and see if there
14 is another way to do something under a special exception that
15 might not get them exactly what they think they might want to
16 do.

17 I would ask Chairman Hood also, and Chairman Hood, I'm
18 going to let you have the last word here in a second because what
19 I'm going to suggest is that we do come back again for a continued
20 hearing on 10/18 which is the other day that we're going to be
21 hearing, we're going to hear another similar issue and when I say
22 similar, just that they're asking for an area variance, and my
23 statement to Chairman Hood would be like, you know, we get these
24 deck things every now and again and like, it seems as though
25 there might be a way that this doesn't have to be an area variance

1 or something. I don't know, I don't know if a deck is some way
2 and I know, Chairman Hood, actually you might think, well, there's
3 all these decks for this development that happened -- I forget
4 where it was. It was somewhere where all these townhomes happened
5 without a deck and then they had to come back for a special
6 exception for the deck which I think was a special exception
7 then.

8 I'll let you, Chairman Hood, and again Mr. Smith raised
9 his hand. Mr. Smith?

10 MR. SMITH: Well, before Chairman Hood speaks, just to
11 expound on what you were saying. You know, we do see these decks
12 but, again, I want to say to the previous applicant and to this
13 applicant that I am not opposed to decks. You know, I'm not
14 opposed to what you're thinking to do. You're trying to attempt
15 to create outdoor usable open space for your tenant, for the
16 second floor. But a lot of time with these things or with special
17 exceptions in general regardless of where you're at, D.C.,
18 wherever, flies in the face of does it meet a hardship requirement
19 and such a structure, it's very hard to meet that hardship
20 requirement from, in my mind, the zoning ordinance.

21 So, I mean, what you just raised, Chairman Hill, was
22 is there a way to -- we can figure out a way where this, we don't
23 (indiscernible) because then, you know, the option then is under
24 Subtitle B, § 312.4(e) is to have some additional exclusions that
25 would allow for a certain size balcony up to a certain size or

1 certain size decks up to a certain size to be excluded. That's
2 an option. I've seen it done in other jurisdictions. That's an
3 option. I just wanted to put that out there. I don't want to
4 legislate on speaking for the Zoning Commission but I will just
5 say that it has occurred.

6 So I just wanted to put my two cents out there and also
7 as you stated on behalf of the Board, I'm not opposed to decks
8 or to having additional open space for residents to enjoy. It's
9 just, you know, the hard realities of a zoning ordinance.
10 Unfortunately, it can be a blunt instrument, fairly and unfairly,
11 and that's the way that it can make the Zoning Board just a little
12 bit more safe.

13 CHAIRPERSON HILL: Okay. And the last comment I'll
14 make and then I'll turn it to Chairman Hood is I'll also put that
15 out there. What the Office of Planning is bringing up also is
16 you basically take the light and air away from the lower unit.
17 That's another thing that is a little bit, you know, if that
18 lower unit was rented the tenant could be here in objection to a
19 ceiling being put over their window. So that is something that,
20 I'm on the fence a little bit on this one by the way.

21 So, Chairman Hood, do you have any thoughts before, or
22 any thoughts on my proposal which is to come back on 10/18 when
23 we get one more Board member?

24 ZONING COMMISSIONER HOOD: Well, two to one or one to
25 two won't work today, I can tell you that in this case. One of

1 the things that, I was not privy to the first case. I dd not
2 listen to the first case which I should have, I was doing some
3 other things, but I will tell you that as I look at this case
4 and I look at it now, and I don't have a ZA hat like my colleague
5 does but I do have a hat that I use.

6 But I think, you know, while I know that the regulations
7 speak to one thing, and that was my question because I noticed
8 in the Office of Planning's report that they basically said that
9 the Applicant actually said it -- I don't know. That's why I
10 was asking how they to rise to their analysis because one of the
11 things that they put in the Court of Appeals conversation was
12 that the Applicant mentioned that there are other decks. We
13 already know we're going to take that out of the equation. That's
14 not even in the question.

15 But when I look at the pictures, a picture's worth a
16 thousand words, when I look at the pictures and see what's going
17 on I do get it. But I think Board Member Smith had the, and I
18 don't usually like saying this or I don't even like hearing this
19 when I come to the BZA, oh, maybe the Zoning Commission should
20 re-look at this.

21 But in this case, you're right, Board Member Smith.
22 Maybe some things should be taken out and I think, while it won't
23 probably help this case, I think there should be some things
24 taken out just like we do the IZ, over four units and five units
25 and as we go up higher, that was done. So, and the creativity

1 of pop-ups, well they don't like to call them pop-ups and pop-
2 backs and there are things in the code.

3 Situations like historic Capitol Hill where the Tuckers
4 are trying to, I guess age in place or trying to stay in the city
5 and stay there and they try to come up with ways where they can
6 enjoy their house and I think the zoning code should be more
7 friendly to that and I thought that's what we were trying to do.
8 We did the ZR 16 in 2016, but obviously there are still some
9 things that need to be tweaked and I was looking for exactly what
10 Board Member Smith was saying. How can we make it so that the
11 Tuckers and other residents can enjoy their houses and what gets
12 it for me is Capitol Hill Restoration Society supported it, ANC
13 16 supported it and actually the way it goes now I just need to
14 find a legal way, but I want to support it because I think it's
15 very important that people are able to enjoy their houses and the
16 strict application of the regulations can always be taken away
17 from the Board of Adjustment to a point, as long as it's not in
18 conflict with the zoning code.

19 So, Mr. Chairman, I don't know, you know, I know that
20 may have been kind of abstract and all over the place, sometimes
21 that's just how it is. But I'm interested, very interested in
22 your comments and I will ask the Applicant and the Office of
23 Planning, which is I think where the Chairman's going, see how
24 we can come back and take some of these things out even though
25 they're in the code, but how can we make this work for the

1 Tuckers.

2 So I'll leave it at that. Thank you, Mr. Chairman.

3 CHAIRPERSON HILL: Okay. And I guess what, I don't
4 know. Like I said, we look at each thing individually and I
5 appreciate Mr. Smith, your comments, you know, I'm looking at the
6 plans right now for the deck and, again, it's just completely
7 going to cover that yard for the lower unit if someone were in
8 that lower unit.

9 However, the part that I also am just thinking about
10 is, again, that Office of Planning report, the last part -- and
11 now I'm just speaking extemporaneously on this other case -- is
12 that, you know, the moving of the pipes, the freezing of that,
13 you know, I mean if those things are all unique this also seems
14 unique, right, and so I'm a little conflicted also.

15 But we're going to go ahead and have a continued hearing
16 on 10/18, this is going to be a long 10/18 day. Unless my fellow
17 Board member is unable to make it on 10/18 and my fellow Board
18 member is not going to be happy with me that I'm loading her up
19 with decisions. So, but we're talking about for a continued
20 hearing. Chairman Hood, can you come back for a continued hearing
21 on 12/18 or 10/18?

22 ZONING COMMISSIONER HOOD: 10/18? Yes.

23 CHAIRPERSON HILL: Okay.

24 ZONING COMMISSIONER HOOD: Can we put it first?

25 CHAIRPERSON HILL: Mr. Moy, can you hear me? Mr. Moy

1 --

2 ZONING COMMISSIONER HOOD: Mr. Chairman, can it go kind
3 of towards the beginning?

4 CHAIRPERSON HILL: Yes. I got -- we'll do both of them
5 at the beginning. Commissioner Miller will be here again for the
6 10/18 thing, so if you guys can tell me who has to do what when,
7 we'll put them both at the beginning.

8 ZONING COMMISSIONER HOOD: Okay. Thank you.

9 CHAIRPERSON HILL: Mr. Moy, does 10/18 work?

10 MR. MOY: Yes. If it works for the Board, it works
11 for me.

12 CHAIRPERSON HILL: Okay. It's going to be a long day.
13 Okay. All right. Let's go ahead and take a break. You want to
14 just take ten minutes, come back? Thank you.

15 (Break.)

16 CHAIRPERSON HILL: All right, Mr. Moy. You may call
17 our next case, please.

18 MR. MOY: Thank you, Mr. Chairman. After a quick recess
19 the Board has returned to its public hearing session and the time
20 is now or about 11:51 in the morning.

21 The next case before the Board is Application No. 20912
22 of Jason Cheperdak as amended, self-certified application
23 pursuant to Subtitle X, § 901.2 for special exception under
24 Subtitle U, § 253.4 that would permit an accessory apartment.
25 The property is located in the R-3/GT zone. Address is 3542 T

1 Street, N.W., Square 1302, Lot 36.

2 Other than that, Mr. Chairman, I believe that on June
3 14th, 2023 the Board granted a request for party status, I believe
4 to a Catherine Buhl and I believe also the party status person
5 withdrew her party status under Exhibit 37 as well as included
6 into the case record support under Exhibit 38 and I would ask
7 Ms. Fowler to confirm that. Other than that, that's all I have
8 for you, Mr. Chairman.

9 CHAIRPERSON HILL: Okay. Mr. Cheperdak, if you could
10 just mute your line until we get to you. If the, and Ms. Fowler,
11 if you can hear me, if you could introduce yourself for the
12 record.

13 MS. FOWLER: Hi. Good morning, everybody. Jennifer
14 Fowler with Fowler Architects. I'm here representing the
15 homeowner.

16 CHAIRPERSON HILL: Thank you. Let's see. Ms. Fowler,
17 if you want to go ahead and walk us through your client's
18 application and why you believe that your client is meeting the
19 standard for us to grant the relief requested. I'm going to put
20 15 minutes on the clock so I know where we are, and if you want
21 to also, as you're talking through this, confirm the discussion
22 with the party in opposition and the withdrawal of the party
23 status and you can begin whenever you like.

24 MS. FOWLER: Okay. Thank you, everybody.

25 So this case was originally filed in March with the

1 previous architect, and I took over in May and we started kind
2 of doing some neighbor outreach and realized that the neighbors
3 next door, Ms. Buhl, at 3540 had concerns about the project. So
4 we postponed our BZA hearing and our ANC meeting to be able to
5 work with the neighbor. So basically the result, the original
6 application included a screened in porch that was triggering a
7 lot occupancy request. There had also been a request for the
8 ten foot rear setback which I don't think would actually have
9 applied.

10 But as a result of working with the neighbors, the
11 homeowners agreed to remove the porch completely so now instead
12 of a screened in porch with a roof on it, we have a deck that is
13 actually less than four feet above grade so it does not count
14 towards the occupancy.

15 So really the relief that we're asking for has boiled
16 down to the use relief 253.4 for the ADU to be able to build a
17 two story carriage house for the apartment on the second floor.
18 So basically we've kind of scaled it down. So all of the main
19 house building which is kind of rebuilding the back sunroom and
20 adding the third floor is all matter-of-right for this project
21 as of now.

22 So we did work with the neighbor and they pulled the
23 party status and they've actually submitted a letter of support
24 and part of that process was coming up with a neighbor agreement
25 and they basically put together a covenant of agreement that has

1 been recorded (indiscernible).

2 So the nature of the relief is 253.4 --

3 CHAIRPERSON HILL: What was in the covenant, Ms.
4 Fowler? I was just curious.

5 MS. FOWLER: It was basically they were going to be
6 removing the porch from the scope of work and they would be, you
7 know, kind of withdrawing their party status. They also kind of
8 agreed not to expand their property and Jason could probably
9 expand on that a little bit more. He was intimately involve in
10 that discussion if you want to --

11 CHAIRPERSON HILL: Yes, Mr. Cheperdak, go ahead. I was
12 just curious. If you could introduce yourself for the record.

13 MR. CHEPERDAK: Hello. My name's Jason. I'm the
14 homeowner of 3542 T Street.

15 So Cathy, the next door neighbor, the biggest provision
16 was the change of removing the sun enclosed deck. To Jennifer's
17 point also verifying that they can not make any extensions for
18 modifications typically to their property and that the covenant
19 also shows full support of the entire scope of our project which
20 shows all the architectural drawings and everything that we had
21 planned to do and the covenant lastly also states that we cannot
22 change or modify or add additional parts to our project for the
23 extent of our ownership, and that is our plan.

24 We're really excited about this property and the use
25 for it for our family and, you know, what we plan to present is

1 something that will stay for the test of time with the way that
2 this covenant has been drawn.

3 CHAIRPERSON HILL: Okay. I was just curious. Okay,
4 go ahead, Ms. Fower.

5 MS. FOWLER: Okay. So really just running through
6 quickly the Subtitle U, § 253 requirements. We do meet all those
7 requirements. The owner plans to occupy the principle dwelling.
8 We're going to limit the number of occupants to the accessory
9 apartment to three so we will comply with that component there.
10 We have -- 253.8 requires the permanent access. This steps in
11 on a 20 foot alley so it more than meets the access requirements
12 there which requires a minimum of 15 feet.

13 Also one of the components in this R-20 zone is that
14 you can't use the accessory use with anything else aside from a
15 private garage so that is what we're planning. The first floor
16 is a private garage, second floor is the use and there is no roof
17 deck and the other apartment would be on the second floor. So
18 all of these components are met for this proposal and we, as I
19 said, we have neighbor support. We've got the Office of
20 Planning's support and we have -- we did get support from the
21 ANC 2E. We received a letter from them yesterday by email. I'm
22 not sure if I saw it in the record as of a few minutes ago, but
23 I believe that somebody, a representative was planning to come
24 and testify that they were in support.

25 CHAIRPERSON HILL: There's something in the record.

1 We've got it in the record.

2 MS. FOWELR: You did? Okay. Great. So that's really,
3 in terms a summary of the project and where we are and
4 respectfully ask for your support.

5 CHAIRPERSON HILL: Great. Okay. Let me walk through
6 this process and I'll get to my questions from my Board members.
7 Can I turn to the Office of Planning, please?

8 MS THOMAS: Good morning, Mr. Chair and members of the
9 Board. Karen Thomas for the Office of Planning and we are
10 recommending approval of the special exception to allow the
11 enlargement of the accessory building and that they would
12 accommodate an accessory apartment.

13 It has met all the requirements for the criteria on the
14 253 and we were pleased to see that the Applicant worked out the
15 issues it had with the neighbors. We do not anticipate any
16 adverse impact to the neighbors at this time and we would rest
17 on the record of our report.

18 Thank you.

19 CHAIRPERSON HILL: Okay. Mr. Young, is there anyone
20 here wishing to speak?

21 MR. YOUNG: We do not.

22 CHAIRPERSON HILL: Okay. Does the Board have questions
23 of either the Applicant or the Office of Planning? Okay. Ms.
24 Fowler, do you have anything you'd like to add at the end?

25 MS. FOWLER: No. I just want to thank you all for your

1 time. Thank you to Ms. Thomas for your report and to the
2 neighbors for working with us. Thanks.

3 CHAIRPERSON HILL: Okay. All right. I'm going to go
4 ahead and close the hearing and the record, if you could please
5 excuse everyone, Mr. Young.

6 I don't particularly have any issues with this
7 application. I thought to begin with that the Applicant was
8 meeting the criteria for us to grant the relief requested. I
9 would agree with the analysis that the Office of Planning has put
10 forward. I will also -- glad to be able give great weight to
11 the ANC in their approval of this project and that the Applicant
12 has worked with the neighbor in order to cut down the project in
13 a way that the neighbors could come together and agree.

14 I'm going to be voting in favor of this project.
15 Chairman Hood, do you have anything you'd like to add?

16 ZONING COMMISSIONER HOOD: So I really appreciate, as
17 well as you, the collaboration with the neighbors to get us to
18 this point and I will be voting in favor of this as well. Thank
19 you.

20 CHAIRPERSON HILL: Thank you. Mr. Smith?

21 ZONING COMMISSIONER HOOD: You're on mute, Mr. Smith.

22 MR. SMITH: Okay. I have nothing to add. I do agree
23 with your particular assessment of this particular case. I will
24 support the application because I believe it's met the burden of
25 proof for us to grant the special exceptions So I give the OP's

1 staff report great weight.

2 CHAIRPERSON HILL: Okay. Thank you.

3 I'm going to make a motion to approve Application No.
4 20912 as captioned and read by the Secretary, and ask for a
5 second. Mr. Smith?

6 MR. SMITH: Second.

7 CHAIRPERSON HILL: The motion is made and second. Mr.
8 Moy, can you take a roll call?

9 MR. MOY: When I call your name if you'll please respond
10 to the motion made by Chairman Hill to approve the application
11 for the special exception relief requested. The motion to approve
12 was second by Mr. Smith.

13 Zoning Commission Chair Anthony Hood?

14 ZONING COMMISSIONER HOOD: Yes.

15 MR. MOY: Mr. Smith?

16 MR. SMITH: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. MOY: And we have no other members participating.
20 Staff would record the vote as three to zero to two and this is
21 on the motion made by Chairman Hill to approve. The motion to
22 approve was second by Mr. Smith. Voting to approve the
23 application is Zoning Commission Chair Anthony Hood, Mr. Smith,
24 Chairman Hill. Again, the motion carries three to zero two.

25 CHAIRPERSON HILL: Thank you, Mr. Moy. You may call

1 our next case.

2 MR. MOY: The next case before the Board is Application
3 No. 20941 of Chukwuma Ewelike. Sorry if I mispronounced it but
4 it's spelled C-H-U-K-W-U-M-A E-W-E-L-I-K-E. This is a self-
5 certified application pursuant to Subtitle X, § 901.2 for a
6 special exception, under Subtitle U § 203.1(j) to allow a health
7 care facility for nine to 300 persons. Also Subtitle C, § 703.2
8 from the minimum vehicle parking requirements, Subtitle C, § 701.
9 Property located in the R-2 zone at 721 48th Street, N.E., Square
10 5148, Lot 800. Thank you, sir.

11 CHAIRPERSON HILL: Thank you. If the Applicant can
12 hear me if they could please introduce themselves for the record.

13 MR. DEBEAR: Good morning, Chairman Hill. This is Eric
14 DeBear from the law firm of Cozen O'Connor. I'm counsel on behalf
15 of the Applicant. My client's here although their camera is not
16 currently turned on. If they could introduce themselves, that'd
17 be great.

18 CHAIRPERSON HILL: Thank you, Mr. DeBear and welcome
19 back from recess. Let's see. If your client can hear me if they
20 could introduce themselves for the record, please. What's the
21 name of your client, Mr. DeBear?

22 MR. DEBEAR: It would be Nneka Ewelike, which I see
23 her. I see her there. We can get started and I'll text them
24 and see.

25 MS. FINEWOOD (phonetic): Good morning. This is Chee

1 (phonetic) Finewood, also for Linac Services, and Nneke Ewelike.

2 MS. EWELIKE: Yes. This is Mrs. Nneke Ewelike from
3 Linac Services. Sorry was muted and my husband, Pastor Chukwuma,
4 couldn't introduce himself as it was muted at that time and I'm
5 trying to get the camera up also. Thank you. We appreciate.

6 PASTOR EWELIKE: Are you still muted?

7 MS. EWELIKE: Did you hear me?

8 CHAIRPERSON HILL: Yes, I heard you. I think I heard
9 another person, a gentleman.

10 PASTOR EWELIKE: Yes. Yes. Good afternoon. I thank
11 you for this opportunity that you have given us to proceed the
12 application which we made. So my name is Pastor Chukwuma Ewelike.
13 I have been a pastor for eight years. Thank you very much.

14 CHAIRPERSON HILL: Thank you.

15 PASTOR EWELIKE: I will now introduce my wife, Nneka
16 Ewelike, and my lawyer will take over. Thank you.

17 CHAIRPERSON HILL: Thank you. Welcome all of you.

18 Mr. DeBear, if everyone could mute their line other
19 than Mr. DeBear. Mr. DeBear, if you want to go ahead and give
20 us your argument as to why you're meeting the criteria for us to
21 grant the relief requested, and we will move forward.

22 MR. DEBEAR: Yes. If Mr. Young could pull up the
23 presentation, that would be great. Thank you, Mr. Young.

24 Next slide, please. As the Board may be aware, this
25 property is located in the R-2 zone district at the corner of

1 48th Street and Hayes Street in the Deanwood neighborhood of Ward
2 7.

3 Next side, please. To give a little background on the
4 property, the property itself is improved with a two story
5 detached building. The Pastor runs a religious sanctuary and
6 religious use on the first level. The second level and the lower
7 level is mostly administrative office space. As a corner lot
8 there's only one abutting improved property to the south. To the
9 east is actually an unimproved lot that our client actually
10 maintains even though they have no ownership responsibilities
11 over it and the property is one block from Nannie Helen Burroughs
12 which is actually an MU-4 zone, so it's a low density commercial
13 zone and, again, as the Board may be aware there's actually a
14 pending appeal that we are assisting on as well filed by the
15 Pastor and that stems from a prior Certificate of Occupancy that
16 they're continuing to operate under.

17 Why I won't go into great detail on the appeal, that
18 Certificate of Occupancy authorized the religious use with an
19 accessory administrative health office and as you'll hear, that's
20 being used by Linac Services which is a home are agency. What
21 we are proposing here, and as part of this special exception
22 application, is essentially an alternative use that we believe
23 they fall within which is a health care facility use to the use
24 that they proposed under that existing C of O.

25 The appeal has been postponed at the request of the

1 DOB. That won't be heard until November 1st. Obviously we're
2 hopeful that if the Board were to approve this case, we'd be able
3 to withdraw that appeal.

4 Next slide, please. Again, as I mentioned the proposal
5 is for a health care facility use with an accessory by-right
6 religious use which is permitted in the R-2 zone. The health
7 facility use would be conducted by Linac Services, a home care
8 agency, and there would only be administrative staff at the
9 property. As you'll look in a few slides, a home care agency
10 obviously places health care services in patient's homes. So
11 this property would only be used for administrative billing and
12 HR staff.

13 They're proposing no structural changes to the
14 property, however due to the proposed change in use to a health
15 care facility there would be required one parking space. However,
16 there's no alley access or curb cut currently so they are
17 requesting one parking space of relief.

18 Next slide, please. As I mentioned, Linac Services is
19 a home care agency licensed by the District of Columbia and they
20 specialize by treating special needs patients with a focus on
21 pediatrics. This type of work includes assisting patients on
22 home ventilators, home dialysis, with feeding tubes and with
23 autism. Again, there's no medical care of patients that would
24 be seen at this property. It would only be used for HR, billing
25 and a telephone receptionist.

1 Part of why the Pastor moved the operation here in 2019
2 and then obtained that 2021 C of O is that many of their patients
3 are in this zip code so they wanted to be closer to their patient
4 base and they have sought and hired employees from the zip code
5 as well. In addition to that, Linac Servies and their work as a
6 home care agency very much helps to fund the religious mission
7 of Jonac Services, which I'll talk about in a moment as well as
8 their charitable pursuits.

9 Next slide, please. Jonac Caring Services is the
10 religious part of this use. They're 501(c)(3), travel
11 organization and their religious mission is focused on
12 compassionate need, education and rehabilitation specifically
13 relating to chronic disease and physical and mental disabilities.
14 Pastor Ewelike, as he mentioned, is an ordained minister, was a
15 founding member of this movement in Nigeria and organized the
16 chapter here in the Washington, D.C., area.

17 So since 2021 they've been hosting religious services
18 six days a week as well as fellowship. They also organize
19 community events. You can see a few pictures from a recent event
20 and work with the homeless population as well. They also through
21 these community events provide resources for job training and e
22 employment opportunities as I mentioned.

23 Next slide, please. We conducted community and agency
24 outreach. Unfortunately, ANC 7C is in opposition. When they did
25 take a vote last week, the resolution has been submitted into the

1 record last night. It was a vote of two in favor and six opposed.
2 I would just mention that our SMD Commissioner Glover was in
3 favor and has been in favor. We met with him at the property in
4 early August. However, I think the broader ANC identified just
5 really questions about the parking and had an issue with the
6 parking relief, but not so much the health care facility relief.
7 So despite only seeking one parking space of relief, they voted
8 in opposition. Nonetheless, we do have 18 letters of support in
9 the case record with no letters of opposition. The Office of
10 Planning is recommending support and the Department of
11 transportation has no objection.

12 Next slide, please. This is just a quick view of the
13 floor plan. I touched on it before. Again, there's no changes
14 being proposed to this property.

15 Next slide, please. As I mentioned, the special
16 exception relief we're asking for is a health care facility use
17 and parking relief for one space.

18 Next slide, please. In terms of harmony with the
19 purpose and intent, I would note that the health care facility
20 use for up to eight people is matter-of-right in the R-2 zone.
21 So unfortunately we are just over that. Based on how Linac has
22 been using the property previously, there's be about ten
23 administrative staff employees at the property so just over that
24 matter-of-right threshold but well below the maximum of 300
25 people permitted by special exception in the R-2 zone. Again,

1 as I mentioned this allows the home care agency to be closer to
2 their client base and provides employment opportunities for Ward
3 7.

4 In terms of the parking relief it's a modest reduction
5 of one space for a property that has historically had no parking
6 due to a lack of alley access and curb cut.

7 Next slide, please. We do not believe there would be
8 any adverse impact on neighboring property. Again, there is no
9 patients or medical treatment at the property. It's only
10 administrative staff, so in terms of impacts to noise or traffic,
11 it would be limited. It would be during standard business hours
12 of 9 to 5:30 and we are a fully detached building with only one
13 abutting improved parcel. However, that's actually set back so
14 that it's actually behind our property so, again, we really don't
15 have any directly abutting neighbors.

16 In terms of parking there is access to public
17 transportation both the Deanwood and Minnesota Avenue metro rail
18 stations are within 15 minutes. There's also three bus lines
19 within two blocks of the property including a priority corridor
20 network line and I will talk about this a little bit later but
21 our client is in the process, in response to those ANC concerns
22 of working with two particular nearby churches to rent additional
23 parking spaces for use of the health care facility employees.

24 Next slide, please. I don't want to belabor the special
25 conditions. We believe we've met them including that the property

1 is licensed by D.C. under D.C. Code 44501 as a homecare agency
2 and that, again, we are working to address the parking issue but
3 it is under zoning a one space requirement.

4 Next slide, please. We believe we meet two of the
5 special conditions required for parking relief including that the
6 physical constraints of the property make the client unable to
7 provide parking there and although we have tried we cannot
8 currently rent parking spaces within 600 feet. The two churches
9 we're working with are actually just outside that range but
10 certainly close enough that those parking spaces would be
11 walkable to the property.

12 Next slide, please. These are the additional
13 requirements. I believe the lack of demand or at least the
14 reduction in demand demonstrated by the Applicant can be
15 reflected in their ongoing use of the property exactly as how
16 they're proposing it as under this application, yet they've been
17 there for two years without parking on site and, again, no parking
18 can be provided because the property is landlocked.

19 Next slide, please. And finally, as I mentioned, we
20 are pursuing mitigation in response to the ANC's concerns about
21 parking. Our client is actively in discussions with two nearby
22 properties to rent off-site spaces. They are certainly more than
23 willing to do that to address community concerns. They just
24 simply have not been able to enter into a full written agreement
25 so we did not want to specifically say they had rented spaces

1 when it's in process.

2 And with that, I will open it up to questions. You can
3 flip to the last slide, Mr. Young.

4 CHAIRPERSON HILL: Mr. DeBear, just to clarify. You're
5 not making any current changes in the building itself; correct?

6 MR. DEBEAR: Correct.

7 CHAIRPERSON HILL: Okay. Does the Board have any
8 questions of the Applicant?

9 ZONING COMMISSIONER HOOD: One quick question. Mr.
10 DeBear, you mentioned that your Applicant is in negotiations I
11 guess with two other parking pads or parking areas. Are those
12 churches, are they close by?

13 MR. DEBEAR: One that they are in advanced discussions
14 with is about a 1,000 feet away. So it's outside the 600 feet
15 that would allow them to actually meet their parking requirement
16 with that rental but it is close enough for employees to
17 legitimately use and access the property.

18 ZONING COMMISSIONER HOLD: And these conversations with
19 the ANC, was the ANC and the community guaranteed that they would
20 use those lots and not the surrounding area? Is that the issue?

21 MR. DEBEAR: I mean, we told them that we were working
22 on that and, you know, they actually specifically asked us, you
23 know, how we were addressing it and we told him we were working
24 with nearby properties. You know, being candid, Commissioner
25 Hood, we, you know, they didn't explain why that didn't kind of

1 meet their mitigation measures. Perhaps if we had had something
2 in writing they would have felt more comfortable, but again, our
3 SMD was supportive so, you know, it wasn't really explained during
4 the ANC meeting why, you know, renting spaces wasn't enough.
5 They even, one Commissioner actually recommended that we just
6 simply directly place the park on Nanni Helen Burroughs which we
7 were happy to do, but she still voted against. So it really
8 wasn't clear.

9 ZONING COMMISSIONER HOOD: Okay. I'm not sure where
10 we're going with this, but let's see if we can maybe circle back
11 with them and give them something in writing because it's always
12 good to have a full -- I appreciate the Single Member District.
13 If they support it should be really pushing for that for the full
14 ANC, but the law is great weight goes to the full ANC, so. Okay.
15 Thank you.

16 Thank you, Mr. Chairman.

17 CHAIRPERSON HILL: Thank you, Chairman Hood. Let me
18 turn to the Office of Planning.

19 MS. MYERS: Good afternoon, Commissioners. Crystal
20 Myers with the Office of Planning.

21 The Office of Planning can recommend approval of this
22 case and we can stand on the record of the staff report, but of
23 course I'm here for questions.

24 Thank you.

25 CHAIRPERSON HILL: Thank you. Let me check on if

1 there's anybody here wishing to speak, Mr. Young?

2 MR. YOUNG: We do not.

3 CHAIRPERSON HILL: Did you say we do not?

4 MR. YOUNG: We do not. Correct.

5 CHAIRPERSON HILL: Okay. Great. Does the Board have
6 any questions for the Office of Planning? Okay. All right.

7 Does the Board want anything? Like, I'm happy to
8 deliberate, talk about this. Okay. All right, I guess, Mr.
9 DeBear, we will excuse you.

10 MR. DEBEAR: Thank you.

11 CHAIRPERSON HILL: Okay. Going to close the hearing
12 and the record.

13 Before we lose the Office of Planning. Can you -- I
14 want to reopen the hearing and the record. Can you please let
15 Mr. DeBear back in?

16 MR. DEBEAR: Never let me off too easy.

17 CHAIRPERSON HILL: Okay. There you go. Perfect.

18 Ms. Myers, this is for like, the regulations are
19 between nine and 300. Is that what the thing was? The
20 allowability, like we're approving 300 people?

21 MS. MYERS: The regulations are really -- my
22 understanding of it is the regulations are really thinking more
23 along the lines of that there are patients that were coming to
24 the site and yes, it does cover nine to 300. Under nine would
25 be matter-of-right but in this case there would be no patients

1 coming to the site and this application is only referring to
2 their staff.

3 CHAIRPERSON HILL: Right. So limiting the staff to,
4 I'm sorry, the staff, Mr. DeBear, is what's pushing you into this
5 area and it's ten people; right?

6 MR. DEBEAR: Correct.

7 CHAIRPERSON HILL: You've got to stop at ten?

8 MR. DEBEAR: Correct. And they have no desire to, you
9 know, get anywhere near that 300 number and not to belabor it,
10 but the regulation is written in that it sort of indicates that
11 their cap is actually only on patients and if you don't have any
12 patients, you know, we may fall within the by-right regulation
13 but, again, I don't want to confuse and we certainly proceeded
14 as if do we need the relief. So, you know, if the Board needs a
15 condition that it won't go over X number of employees there, we
16 would be perfectly amenable to that as well.

17 CHAIRPERSON HILL: Okay. What is kind of the number
18 of employees that you think your Applicant could even possibly
19 be considering?

20 MR. DEBEAR: They can speak up. I mean, Nneka, the
21 Pastor, I mean what is the kind of the maximum you'd ever really
22 vision in terms of employees being there at one time?

23 MS. FINEWOOD: This is Chee Finewood. Approximately
24 eight at any given time, all at the same time because most times
25 they won't have the same shift and so you don't get them all

1 eight there at the same time.

2 CHAIRPERSON HILL: Okay. So, Mr. DeBear?

3 MR. DEBEAR: I would say up to ten just to be safe. I
4 mean, we're here asking for the relief but we need the parking
5 relief anyway if we're at eight. We've always proffered ten kind
6 of as the expected amount. I think it ebbs and flows as you
7 might imagine but, you know, we'd be happy to just be conservative
8 and say ten.

9 CHAIRPERSON HILL: Okay. Does that, I'm trying to I
10 don't know which was your client's name now. Could the client
11 please speak up and say that ten employees would be reasonable
12 as a limit?

13 MS. FINEWOOD: Yes, please. Ten employees would be
14 reasonable. Thank you.

15 CHAIRPERSON HILL: Okay. Great. Thank you. All right.
16 Does anybody have anything else?

17 Okay. I'm closing the hearing and the record.

18 PASTOR EWELIKE: Thank you.

19 CHAIRPERSON HILL: Thank you.

20 Okay. I'm disappointed that the ANC, and I really, you
21 know, appreciate all the efforts and the work that that particular
22 ANC goes through. I mean, Commissioner Holmes is with us all
23 the time and he takes his time to come and let us know what's
24 going on with their ANC and so I don't like going against them.

25 In this particular case, like it seems as though the

1 one parking space is what they were kind of hung up on and it's
2 one parking space, meaning and they're trying to fix that. So
3 I'm a little surprise that they, and I'm surprised. I understand
4 that they might have still decided to vote against it.

5 In terms of the standard with which we would review
6 this, I am again turning to the Office of Planning's report as I
7 look at stepping though those hoops concerning the health care
8 facility and the parking requirements. I don't really have an
9 issue with any of the standards that we're supposed to look at
10 for the health care facility. I was a little thrown by the nine
11 to 300 and so that's why if anything I'm kind of thinking about
12 the community that I wouldn't want there to be a 300 thrown in
13 there somewhere.

14 So the Applicant seems to be comfortable with ten
15 employees, then I guess I would put in as a condition to the
16 facility still keeping I guess something, that the patients I
17 guess, I would just say ten employees. Like, I would keep it to
18 the employees and the patients, you can still have as many
19 patients as when needed or was able to accommodate to the point
20 that wasn't going to then be a problem for the regulations.

21 So I would be voting in favor with the condition of ten
22 employees and I turn to Chairman Hood for his thoughts.

23 ZONING COMMISSIONER HOOD: I agree, Mr. Chairman, with
24 your assessment and also Subtitle U 203 that they meet. I think,
25 even though it's nine to 300 the way it's been explained, and I

1 would agree with the condition, the way it's been explained is
2 this is health care for HR purposes pretty much. I'm sure they're
3 all in (indiscernible) to that. As you already mentioned, we
4 won't get nowhere near to 300. If I was sitting in the meeting
5 and I heard 300 I probably would have had some major concerns.

6 But either way, as mentioned by the Applicant that most
7 of their patients are in this area and I thought so too, I'm glad
8 you all pulled it, that typically the health care providers would
9 not be there pretty much at the same time because they would be
10 with their patients.

11 Other than that, and I agree, I appreciate also --
12 maybe it's memorialized in the order that the Applicant, I'm not
13 sure if we can do this on the BZA but I'm going to ask it anyway,
14 that it's memorialized in the order that the Applicant has agreed
15 with the community to put the parking spaces 1,000 feet away or
16 in other areas which is outside the 600 feet and other than that
17 I have no problems with moving forward and voting in favor of
18 this case.

19 Thank you, Mr. Chairman.

20 CHAIRPERSON HILL: Thank you, Chairman Hood. Mr.
21 Smith?

22 MR. SMITH: I also agree with the statements that were
23 made by both my colleagues on this particular case. It is sad,
24 you know, a testament to Mr. Holmes. He comes here every other
25 week it seems, at least once or twice a month, maybe even more

1 than that to communicate concerns and issues raised within the
2 ANC. So it is disappointing that they stand opposed to this
3 based off of one parking space and as both of you stated, the
4 Applicant is working to find that one parking space. Given the
5 scale of what would occur here that is still a religious use I
6 believe that any parking impacts will be fairly de minimis on
7 what's already going on at this particular property.

8 I'm fairly comfortable with granting the special
9 exception to reduce their parking requirements from that one
10 parking space, given that the Applicant is continuing to work to
11 try to find parking. Nannie Burroughs is not that far away if
12 they must park there but I don't believe one parking space will
13 have a potential impact on the parking situation within this
14 neighborhood.

15 I do agree with the comments made by the Office of
16 Planning in their staff report regarding both of these special
17 exceptions and I will support the application.

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

19 All right. I'll make a motion to approve Application
20 No. 20941 as captioned and read by the Secretary and the condition
21 that the number of employees be limited to ten, and ask for a
22 second. Mr. Smith?

23 MR. SMITH: Second.

24 CHAIRPERSON HILL: Motion and made and seconded. Mr.
25 Moy, can you take a roll call?

1 MR. MOY: Yes, sir. Thank you. So when I call your
2 name if you'll please respond to the motion made by Chairman Hill
3 to approve the application for these special exception relief
4 being requested along with added condition that the number of
5 staff employees be limited to a maximum of ten persons. The
6 motion to approve was second by Mr. Smith.

7 Zoning Commission Chair Anthony Hood?

8 ZONING COMMISSIONER HOOD: Yes.

9 MR. MOY: Mr. Smith?

10 MR. SMITH: Yes.

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: With no other members participating, staff
14 would record the vote as three to zero to two and this is on the
15 motion made by Chairman Hill to approve. Mr. Smith second the
16 motion to approve. Voting to approve the application is Zoning
17 Commission Chair Anthony Hood, of course Mr. Smith and Chairman
18 Hill. Motion carries on a vote of three to zero to two.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. If you all will
20 just excuse me one second, I just need to grab a file.

21 (Pause.)

22 CHAIRPERSON HILL: All right, you all. Thank you so
23 much. Mr. Moy, you can go ahead and call our last case.

24 MR. MOY: The next and last case before the Board is
25 Application No. 20828 of Olufemi Awoseye. As amended, self-

1 certified application pursuant to Subtitle X, § 1002 for area
2 variances from the subdivision regulations Subtitle C, § 302.1,
3 side yard requirements Subtitle D, § 208.3 and the minimum lot
4 area requirements Subtitle D, § 201.2. The property is located
5 in the R-2 zone at 5321 B Street, S.E., Square 5304, Lot 6. As
6 a reminder, Mr. Chairman, on January 11th, 2023 the Board granted
7 a request for party status in opposition. The person's name is
8 Christopher Austin, and that's all I have for the Board.

9 CHAIRPERSON HILL: Okay. Good. Thank you. If the
10 Applicant can hear me, if they can introduce themselves for the
11 record, please?

12 MR. CARBALLO: Hi. My name is Adam Carballo and the
13 Applicant, on behalf of Mr. Olufemi, the property owner for 5321
14 B Street, S.E., from Carballo Architecture. I'm the architect
15 of record.

16 CHAIRPERSON HILL: Okay, Mr. Carballo. Welcome.
17 Welcome back from our recess.

18 Let's see. Mr. Carballo, what I'm going to do is you're
19 going to have an opportunity to give us your presentation and why
20 you believe your client is meeting the requirements and standards
21 for us to grant the relief requested, and then the person who is
22 also a party status. Mr. Austin, can you hear me and if so could
23 you introduce yourself for the record?

24 MR. AUSTIN: Yes, I can. Hello, my name is Christopher
25 Austin.

1 CHAIRPERSON HILL: Hi, Mr. Austin. So, Mr. Austin,
2 what's going to happen, the Applicant will get an opportunity to
3 give their argument as to why they're meeting the standard. Then
4 you will have an, well, then the way I would like to proceed with
5 this is that you will then have an opportunity to give your
6 presentation as to your concerns about the project and then we're
7 also going to hear from the Office of Planning, and then I'm
8 going to come back and ask the Board if they have any questions
9 of anyone, meaning the Applicant, the Office of Planning or your
10 presentation, Mr. Austin, and then you, Mr. Austin, will also
11 have an opportunity to ask any questions of the Applicant as well
12 as the Office of Planning, and then we'll take any testimony that
13 we might have from people in support or opposition. You'll also
14 have an opportunity to ask questions of them as well.

15 At the end, Mr. Carballo, being the Applicant would
16 have an opportunity to rebut anything that might have been said
17 and then you, Mr. Austin, would have an opportunity to refute any
18 of the rebuttal, if there is any but, you know, keeping it again
19 to the comments that are being made during that portion of the
20 hearing and then at the end, and this isn't in the regulations,
21 I ask for the party in opposition to give us a little bit of a
22 conclusion and then the Applicant has the last word, it being
23 their application, and they will give us conclusion.

24 So do you have any questions, Mr. Carballo, on that
25 process?

1 MR. CARBALLO: I don't have any questions about the
2 process.

3 CHAIRPERSON HILL: Okay. Mr. Austin, do you have any
4 questions about the process?

5 MR. AUSTIN: No, no questions at all. Thank you.

6 CHAIRPERSON HILL: Okay. Great. Mr. Carballo, you can
7 begin whenever you like.

8 MR. CARBALLO: Sure. Am I allowed to share any --

9 CHAIRPERSON HILL: You can't share. Did you send it
10 ahead of time?

11 MR. CARBALLO: Yes, we have and also I wanted to share
12 the D.C. zoning map.

13 CHAIRPERSON HILL: Whatever's in the record we can pull
14 up.

15 MR. CARBALLO: Okay. Okay, I'll do my best to explain.
16 So this property is a vacant lot that is located, as we mentioned,
17 5321 B Street, S.E. It is located between the border between an
18 R-2 zoning district and an R-3 zoning district.

19 The boundary seems to be fairly arbitrary between the
20 two zoning districts. There are a number of properties that are
21 on the R-2 side of the boundary that are in direct violation of
22 R-2 zoning and actually better reflect an R-3 zoning with respect
23 to minimum lot size and minimum lot width, and you can also see
24 in the zoning map that the boundary does not take a queue from
25 the street, the sort of streets. It goes right through mid-

1 blocks, several mid-blocks of that in this area.

2 So you have a housing stock in this immediate area that
3 doesn't quite follow the zoning guidelines. This specific
4 property under an R-2 designation, you know, requires a minimum
5 lot width and a minimum lot size. My client, the property owner,
6 wishes to, in conjunction with a subdivision, create two fairly
7 modest two story semi-detached homes, a housing stock that would
8 closely resemble houses that are directly across the street
9 within the same zoning district R-2 as well as or, you know,
10 semi-detached and attached properties that are adjoining this
11 property immediately to the south that touch this property.

12 We worked with the Office of Planning. My clients have
13 reached out to adjoining neighbors. We've also presented with
14 the ANC and this project which has, you know, gone on for quite
15 some time, we've actually made some concessions. We originally
16 had a three story building proposed or two three story buildings.
17 We've actually reduced the scale of this project to be limited
18 to two stories which is more in keeping with the two story homes
19 that are across the street. There are a number of other houses
20 along the street that are one to one and a half stories in height.

21 Again, as a matter-of-right this building could be
22 three stories. But my client is making concession actually to
23 reduce the scale to respond to the scale of the houses immediately
24 across the street and immediately on either side of the property.
25 The new construction houses that are adjoining lots immediately

1 to the south are actually all three stories, most of them are
2 three stories and we believe that the allowance of two semi-
3 detaches is in keeping with the scale and the scale of the house
4 of the surrounding area create modest single family houses of two
5 stories also meets the Mayor's goal for creating more affordable
6 housing. I don't want to tag it as an affordable house or an IZ
7 house. It isn't, it's market rate. However, we're not intending
8 on building an oversized (indiscernible) building here that's not
9 going to be affordable and as I mentioned, we did meet with the
10 ANC.

11 We did not have a good, I'll be perfectly transparent,
12 we did not have a very good experience with the ANC. The ANC
13 meeting was rescheduled three times to accommodate the schedules
14 of other people that were in opposition. When we did present we
15 received very little in the way of due process. No questions
16 were asked. After waiting two and a half hours to present we
17 were able to present for maybe 90 seconds when opposition was
18 allowed to speak and they immediately took a vote on it. I quite
19 honestly believe they already had their minds made up so I mean,
20 it's disappointing that that's the process that we experienced
21 because we went with transparency and good faith to discuss the
22 merits of our project but that's not what occurred and, you know,
23 we were accused of, you know, playing underhanded and I was even
24 accused of lying which had no evidence and was unfounded
25 completely, you know, and it's a shame that that's how the process

1 occurred.

2 But nevertheless, we believe that this property is in
3 keeping with the surrounding context and we believe that this
4 should be allowed. Otherwise, we'll just be forced to start over
5 and build something that would serve as a matter-of-right which
6 is quite honestly a three story building, a single family building
7 and not subdivide.

8 The lot is a buildable lot. It's a legitimate lot and
9 the owner has a right to build on it. So whether it's subdivided
10 and two smaller two story houses are built or one very large
11 three story house is built there, we're trying to play nice.
12 We're trying to take a cue from the surrounding structure but
13 that's basically where we are right now.

14 CHAIRPERSON HILL: Okay, Mr. Carballo. All right. Mr.
15 Austin, would you like to give us your presentation?

16 MR. AUSTIN: Yes, please.

17 CHAIRPERSON HILL: Do you want us to open that slide
18 deck that you submitted?

19 MR. AUSTIN: Yes, you can. That'd be great. Thank
20 you.

21 CHAIRPERSON HILL: Mr. Young, if you could please open
22 that exhibit. I think it's the last one. Go ahead, Mr. Austin.
23 You get the same amount of time that Mr. Carballo had. He had
24 about 15 minutes so just, you know, go ahead and give it a shot.

25 MR. AUSTIN: Okay. Thank you.

1 Good afternoon everybody. I want to present my case
2 as my opposition towards the Applicant's construction design.

3 If we can go to the next slide. So just to give
4 background with my property and the vacant property. I know that
5 Mr. Olufemi Awoseye, he purchased the property March 1st, 2022.
6 I've been a homeowner of my property since September of 2019.
7 One thing I have is solar panels on my roof from the east side.
8 I own a split level house and some of the exhibits that I've seen
9 thus far is from Mr. Carballo and his client, Mr. Awoseye. I
10 know (indiscernible) have the two new three story semi-detached
11 but they don't give up any design.

12 For them seeking the variances I felt as though there
13 wasn't any transparency and good faith on that end in that the
14 way that they were pursuing the variances based on the homes that
15 are already in the neighborhood, every home that's on this row
16 where I live has been detached homes and that the semi-detached
17 that they propose doesn't really align with anything as far as
18 on our block with the R-2.

19 Next slide, if we can go to that one. So far their
20 waiver as far as the variance, they submitted a form 120. That's
21 Exhibit 1. That was on August 10th and then on August 23rd,
22 that's for Exhibit 12, that's already in the docket as well. The
23 problem with those form 120s that I felt was a fabrication was
24 that they acknowledged that there was no adjoining property that
25 had solar panels on it. I know based on the Subtitle B 208.1

1 and 206.3 that there are three ways that you can show that there's
2 no solar panels that are adjoining. You either have a affidavit.
3 I believe that the next one was that you would get written consent
4 from the owner that they're okay with as far as approving, and
5 the other one was to have a shade analysis report study done that
6 shows that this won't impede as far as any shading or I think
7 it's five percent based on D.C. law. The other two
8 (indiscernible) like this is (indiscernible) resistance as to put
9 in a fabrication that they certified that, knowing good and well
10 that there were solar panels prior to them even purchasing the
11 property.

12 Part of their Exhibit 7, go to the next slide,
13 (indiscernible) Exhibit 7 on the docket it shows that they
14 actually took those pictures maybe around the summertime last
15 year, sometime in '22 and I think they submitted to the Board of
16 Zoning Adjustment on July 10. This is showing what I have here
17 as far as my solar panels. I had those installed on January 9th
18 by Renewable Energy Corporation and here I do have links showing
19 just the summary of just the SRECs that I get from that. But
20 when I purchased and the fact that I do have a split level house
21 does make it difficult as far as how high the property can be on
22 that vacant lot.

23 With that understanding, you know, I reached out, I
24 talked to Mr. Olufemi, I think there was another, Richard Gobelin
25 (phonetic) about, you know, hey, you know, providing just a solar

1 panel -- a shade analysis report and, you know, and seeing what
2 that outcome could look like as far as how it would, you know,
3 affect my solar panels, then we can talk. But there was just no
4 communication or even an act of good faith on that end.

5 Next slide. So just a picture of my house. As you
6 see here there are solar panels you can see. That's on the east
7 side of the house facing the vacant lot on that side. Again, I
8 purchased those back on January 9th, 2020 and been living on the
9 property since 2000 (indiscernible) 2019 right before Mr. Olufemi
10 purchased the property.

11 Next slide.

12 Next slide, I'm sorry. Just another picture showing
13 that again.

14 We can go to the next slide. So this is my stance on
15 the whole thing. I just wanted to outline what it was. I just
16 opposed it just because of the construction plans. They do
17 potentially impact my solar panels as far as shading from the
18 next property. I know Mr. Carballo iterated that, you know, they
19 have every right to build three stories and two stories but
20 according to D.C. law, you know, that's not legal to do that. So
21 without even coming to me in any good faith or any type of
22 communication and also what he says as far as houses across the
23 street, the proposed construction plans don't conform to anything
24 in our neighborhood. I know that those are existing structures
25 that were there and there are more multi-family home units that

1 were, you know, that are I don't know, from the early 1900s so
2 1950s, 30s, whenever that was constructed. Also that they, I
3 know a lot of the different plans that he -- different houses in
4 the area that he referenced that are clearly outside of the block
5 that I live on as well, and referenced in R-3 where those are
6 mostly semi-detached townhomes on that side of rowhouses on the
7 back end and the southern end was just not comparable as far as
8 what would be within an R-2 zone block.

9 I also requested that a shade impact analysis be
10 conducted by the Applicant prior to construction just to make
11 sure again that then that there's no shading that does impact on
12 my house and my solar panels. If there is then, you know, we
13 would have to look at some type of compensation for that and then
14 I just requested that a revised design be done where basically
15 based on the lots and the way the lots are on the space it would
16 be a detached home.

17 Just based on what, you know, I've seen from it, my
18 witnesses which you'll hear their testimonies and also from other
19 agencies' input, the Office of Planning and the words of the ANC
20 Chair.

21 Next slide. So I did look at some of the things from
22 the construction specs and the design. I know their building
23 height was 26 feet and eight inches high. The roof was meant to
24 be a peak roof, it's more of a flat roof. You can go to the next
25 slide for that as well but they have the specs here. So looking

1 at the design I know they want to build like semi-detached but
2 for something like this where the lot is already conformed to
3 where it would be a great opportunity to have a detached house
4 where, you know, the variances are, I mean the variances are with
5 ours but, you know, you have eight feet on the side. I think it
6 would be a really great opportunity to make something, just a
7 brick home just for, you know, a prospective buyer but with it
8 being something that's 15 feet wide I'm of the opinion that that's
9 a not a livable situation.

10 I personally looked at this design and say okay,
11 (indiscernible) 15 foot wide space. I think about my neighbors,
12 I think about what this design means for the neighborhood and
13 this just doesn't bode well as far as where -- as far as the
14 aesthetics, as far as (indiscernible) the properties that are
15 already in place.

16 Next slide.

17 CHAIRPERSON HILL: Hey, Mr. Austin?

18 MR. AUSTIN: Yes.

19 CHAIRPERSON HILL: You're doing a great job because
20 you're not an attorney and I really think your PowerPoint is
21 great. I'm just trying to keep, if you have witnesses, I just
22 want to keep an eye on time.

23 MR. AUSTIN: Okay.

24 CHAIRPERSON HILL: Just kind of, I mean thankfully we
25 have the slide deck so --

1 MR. AUSTIN: Okay. Yes, yes, so you've seen some of
2 the stuff. So we can actually scroll down. I mean, you guys
3 have seen this stuff. I just want to show that, and just on the
4 burden of proof where Exhibit 3 they referenced some of the small
5 lot sizes in the R-2 zone. Those were way outside of where,
6 again where I reside and, you know, to all those adjacent
7 properties. Those aren't adjacent. Those aren't next to.
8 They're clearly outside the boundary.

9 If you go to the next slide as well. They're not
10 comparable lots. So the ones that he references here I have in
11 red. As you see they're further down the block. My house as
12 you see is the blue star, his is with the red marker there where
13 the vacant lot is, it's not comparable from that aspect.

14 Scroll to the next slide. We can go past that as well,
15 go to the next slide.

16 Again, I think there was one thing that I wanted to
17 propose where, not this one but go to the next slide as well.
18 I'm sorry.

19 If you, again, I've shown that and you'll hear from my
20 expert witness as well about the solar energy system I have and
21 we can discuss that now or later.

22 If we go to the next slide as well. The (indiscernible)
23 about the affidavit that was certified twice by Mr. Carballo
24 where he said there was no solar energy system on the abutting
25 property. Again, I felt that was not in good faith and I was

1 the one, you know, explicitly said that that was all a lie which
2 I felt as though, you know, being in the opposition company doing
3 their due diligence based on their Exhibit 7 that they actually
4 show.

5 I think that's on the next slide, I believe I have
6 that. Go through some more. And then just being able to prove
7 that and I also want to consider, you know, for the R-4 zone
8 district where some of the based on the Subtitle 402.3 where the
9 resultant building structure height, you know, like been
10 (indiscernible) upon anything as far as like being light and air
11 which of course with the sunlight would -- I'm thinking of my
12 solar panels as well.

13 Go to the next slide. So, again, for the Exhibit 7
14 here, this is what they submitted back in July 10. You can
15 clearly see from the pictures that they took and submitted that
16 my solar panels are on the roof and I was, you know, perturbed
17 by this because it was like, okay, you have submitted affidavits
18 stating that, twice, that there was no solar panels. But clearly
19 you submitted evidence showing prior to that that there were
20 some. So I'll just take that into account and move to the next
21 slide.

22 And some of the other things that they took, those
23 outdated photos. As you see here, the house -- my house to the
24 west of the red marker wasn't even renovated at the time. It
25 was a derelict building and the developer came in and renovated

1 it and you can see it from the side. Like you hear now that it's
2 different. You know, you look at some of the rowhouses that were
3 built on the south but now that's all been built up and this part
4 of Exhibit 7 that they put was just an outdated photo. It didn't
5 show the current structure of the neighborhood.

6 Next slide.

7 Can we go to the next slide, some of the (indiscernible)
8 I had in there.

9 So in conclusion I just wanted to say that, you know,
10 that what I would like to see from the Applicant probably is just
11 more good faith where they conduct the shade analysis report and
12 that, you know, that being said if it doesn't affect the solar
13 panels as far as what gets generated or received from the sun
14 under five percent then -- over five percent then, hey, you know,
15 build as you need to. As long as it's not that design that you
16 have I'm okay with it, but if it is then there has to be some
17 type of compensation for that where if I'm losing over that five
18 percent. Then that also I would request for the BZA to consider
19 the motions from the Ward 7 chair and also from the OP
20 recommendation that denies all their variances.

21 CHAIRPERSON HILL: Okay. Thanks, Mr. Austin.

22 MR. AUSTIN: Thank you.

23 CHAIRPERSON HILL: Who are your witnesses?

24 MR. AUSTIN: Okay. I have, I guess we can start with
25 one of my neighbors. I think it's Mr. Jim Voltz, I saw him on,

1 and also there's my expert witness, Mr. Andrew Clarke, from
2 Renewable Energy.

3 CHAIRPERSON HILL: Okay. And these witnesses were
4 submitted before; right?

5 MR. AUSTIN: Yes, they were.

6 CHAIRPERSON HILL: Okay. The neighbor is Mr. Voltz?

7 MR. AUSTIN: Yes.

8 CHAIRPERSON HILL: Okay. Mr. Voltz, can you hear me
9 and if so, could you introduce yourself for the record?

10 (Pause.)

11 CHAIRPERSON HILL: Mr. Voltz? Can you hear me? You
12 might be on mute.

13 MR. VOLTZ: This is Jim Voltz. I live behind the
14 properties in question and the neighbor and good friends with our
15 other neighbors including the Austin family.

16 CHAIRPERSON HILL: Right.

17 MR. VOLTZ: And speaking in opposition to the
18 variances.

19 CHAIRPERSON HILL: Got you. Mr. Voltz, I see you also
20 listed as a witness in opposition. Is that correct?

21 MR. VOLTZ: That's correct.

22 CHAIRPERSON HILL: So what I'm going to do, Mr. Voltz,
23 is I'll go ahead and take your testimony now and so normally you
24 would have gotten three minutes as a member of the public to give
25 your testimony whether you use it all or not is not necessary,

1 but just go ahead and give us your testimony as a witness now
2 for the case.

3 MR. VOLTZ: Thank you. I want to say that I moved to
4 this neighborhood four years ago and I love the neighborhood.
5 It's kind of densely populated with a lot of attached structures
6 and apartment buildings, but the neighborhood's getting better
7 all the time and the lot that is in question is a single family
8 lot and it's been zoned as that and the only prior building on
9 the property that I know of was a single family home and splitting
10 this property into two lots will be detrimental to the
11 neighborhood.

12 The increased density they're requesting does nothing
13 good for the neighborhood. It's simply an attempt to make more
14 money for the current property owner and potentially Mr. Carballo
15 to the detriment of all the other properties in the neighborhood.
16 So this one time profit for one family or group is not in any
17 way helpful to the rest of the neighborhood. I think it really
18 hurts us.

19 Our neighborhood is getting safer and more healthy and
20 we see people playing more all the time and I think increasing
21 the density would really be detrimental for us. This is a
22 neighborhood that has historically been crowded and low income
23 and is now really improving. I don't see any public good for
24 approving this person's request. I don't think they've
25 articulated any good for the public.

1 However, if this was a request from a not-for-profit
2 to put in low cost housing I might reconsider any position I'd
3 have because I think that's important. But this is a request by
4 the property owner to increase the value of their property in
5 this one time that would affect the neighborhood permanently and
6 I just -- I've spoken to a number of my neighbors, none of whom
7 are on the ANC Board and all of them oppose this. We don't see
8 the reason for it. There isn't any good that we can see coming
9 from reducing the amount of open space in our neighborhood and
10 increasing the number of tenants.

11 This is already a neighborhood that's taken a lot more
12 than its share compared to the rest of the city of exceptions to
13 healthy living. In fact, our neighborhood just -- we've just
14 been notified that the largest Federal prison pre-release program
15 in the country is going to be located in our Ward and it was
16 forced out of the other neighborhoods in the city, but it's ending
17 up here and lots of that has happened in our neighborhood. I
18 think this would be another step towards treating the
19 neighborhood with disrespect and I think it should be denied.
20 There is no public benefit to approving these exceptions that are
21 requested, and thank you for letting us testify and I have to
22 say that there is universal opposition beyond just the ANC. I
23 don't even know who's on the ANC but I know that all of my
24 neighbors are quite concerned about increasing one person's
25 profit to the detriment of all the rest of us.

1 CHAIRPERSON HILL: Okay, Mr. Voltz.

2 MR. VOLTZ: Thank you.

3 CHAIRPERSON HILL: Thank you. And, MR. Carballo,
4 what's going to happen, since we're taking all this testimony,
5 if you have any questions and I'm going to let the Board as any
6 questions, we'll go ahead before we get to the Office of Planning
7 and ask questions now since there seems to be a lot of testimony
8 being taken, if anybody has any questions, and Mr. Carballo, as
9 you know, at the end you'll have an opportunity to rebut anything
10 and then Mr. Austin will have an opportunity to refute anything
11 that you rebut.

12 Mr. Clarke, can you hear me and if so, could you
13 introduce yourself for the record, and Mr. Voltz, could you mute
14 yourself, please? Thank you, Mr. Voltz.

15 Go ahead, Mr. Clarke.

16 MR. CLARKE: Yes. My name is Andrew Clark. I'm the
17 Vice President for Renewable Energy. We're a solar installer and
18 just here to testify to the fact that we sold Mr. Austin his
19 solar system in December of 2019, installed it on January 9th and
20 it was interconnected with the electric company and turned on as
21 of March 19th, 2020.

22 In that three and a half years it has been on he has
23 already produced over 16 megawatts of clean energy and so not
24 only does he have an average of about 4,750 kilowatt hours of
25 reduction on his electric bill, but that also creates what's

1 known in solar as an SREC, that's solar renewable energy credit
2 which creates income for him and the combination of that savings
3 and the solar renewable energy credits equals about \$2,700 worth
4 of a combination of savings and income for Mr. Austin based on
5 his purchase of the solar system.

6 The solar system is a premium system. There's a big
7 difference between one type of solar panel and others. Some
8 systems could produce as low as 80 or 90 kilowatt hours per
9 kilowatt per month. His system averages over 110 kilowatt hours
10 per kilowatt per month.

11 So the other thing that I think that would be impacted
12 by a building next door is that with the way his shading already
13 was for his house before we installed it, the panels were put in
14 the area that produced the best production and it includes that
15 they come fairly low on his roof and therefore a taller structure
16 to the east side of his house is going to shade any production
17 that is being made by those panels all the way up until close to
18 noon.

19 So our estimate, and it's just a professional opinion
20 based on what we've seen of, you know, the thousands of systems
21 we've installed is that he would probably see something in the
22 neighborhood of a 20 to 25 percent reduction in his production
23 with a house based on the latest plans that Mr. Austin shared
24 with us.

25 Our company does not use any of the national programs

1 that charge pretty high fees but there are programs out there
2 like Aurora Solar who actually have the ability to put in future
3 shading into their program and do calculations and as long as
4 something like that would be done and that it accounts for the
5 actual specific materials, the high quality materials that are
6 used on his home with a Q cell panel, then, you know, I think it
7 would give an accurate estimate of what he would lose based on
8 the height of a building next door.

9 CHAIRPERSON HILL: Okay. Thank you, Mr. Clarke. All
10 right. Does the Board have any questions, and I'm going to --
11 I'm saving all my questions to the end after the office of
12 Planning. But since we've heard a lot of testimony and the Board
13 can do whatever the Board wants to do as well, do you, the Board
14 members, have any questions of anybody now or do you want to wait
15 until we hear from the Office of Planning?

16 ZONING COMMISSIONER HOOD: (Indiscernible) but I
17 definitely have some questions for Mr. Carballo, so I will wait
18 -- I'll follow your lead.

19 CHAIRPERSON HIL: Okay. I'm going to hear, for my
20 questions I'm going to wait until the Office of Planning, but I'm
21 going to let Mr. Carballo and Mr. Clarke ask each other questions,
22 sorry, not Mr. Clarke, Mr. Austin and Mr. Carballo ask each other
23 questions because there's just been a lot of testimony going on.

24 Mr. Smith, what do you want to do?

25 MR. SMITH: I don't have any questions to ask right

1 now.

2 CHAIRPERSON HILL: Okay. Mr. Carballo, do you have any
3 questions of Mr. Austin?

4 MR. CARBALLO: I actually have a lot to respond to.

5 CHAIRPERSON HILL: Okay. Yes, respond to. Do you have
6 any questions?

7 MR. CARBALLO: Sure. Starting off, and I guess maybe
8 it's specific to not only Mr. Clarke but Mr. Austin. What made
9 you think that you could install a system on a house? There's
10 references to open space. The property next to you was not open
11 space. It was a buildable legal lot and, you know, I'm sorry
12 that Mr. Clarke sold Mr. Austin the system --

13 CHAIRPERSON HILL: Mr. Carballo, let me just interrupt
14 you a second real quick. Anybody can put solar panels on their
15 house and then there's regulations that stipulate if you build
16 at a certain height and it affects the solar panels by a certain
17 degree something and something, and this is where it's in the
18 regulations, then the Board takes that into consideration if it's
19 something that's before the Board. If it's something that's
20 matter-of-right, then that's matter-of-right.

21 So you're not in a matter-of-right situation so you're
22 before the Board and therefore if you are going to cause problems
23 with the solar panels we, the Board, are going to ask about it.
24 So to answer your question though, they can put solar panels on
25 anything.

1 MR. CARBALLO: Right. Well, I guess my question is why
2 is Mr. Austin's enjoyment of the income that he makes for the
3 savings that he makes on the solar panels, how does that overrule
4 my client's, you know, ownership right to the property that he
5 has? Why is one value greater than the other?

6 CHAIRPERSON HILL: (Indiscernible).

7 MR. CARBALLO: And quite honestly Mr. Austin mentioned
8 several times about, you know, getting compensation and, you
9 know, reduction in his solar enjoyment, that sounds like a money
10 grab. This isn't an opportunity to have my hand out to say --

11 CHAIRPERSON HILL: Okay. Mr. Carballo, Mr. Carballo,
12 Mr. Carballo. Hold on a second. First of all, we don't need
13 -- none of us need to be using words that are going to trigger
14 anybody, okay, from either side. Okay? I'm just telling you
15 the regulations, Mr. Carballo; right? You guys are here asking
16 for something and therefore if you're going to affect his solar
17 panels we, the Board, are going to ask about it.

18 So to answer your question, it's within the regulations
19 that talk about solar panels as to whether or not your client's
20 building is going to affect those solar panels. So that's
21 something that we will be looking at. Does that answer your
22 question?

23 MR. CARBALLO: Sure.

24 CHAIRPERSON HILL: Okay. Let's go to your next
25 question.

1 MR. CARBALLO: You mentioned that there were some
2 issues with outreach. First of all, in all transparency, I've
3 never physically been to the site. I've done all my investigation
4 through public information, Google Earth, you know, the Street
5 View, et cetera, information that's available on D.C. websites.
6 So what my question is specifically, your interaction directly
7 with my client Femi, Mr. Femi, you know, he should have shared
8 that information, the photographs that you presented were
9 actually taken by my client, not by us and, you know, I want to
10 sort of put it on the record that, you know, the interaction that
11 -- we didn't do this in any type of deceptive form. The
12 information available on-line is the information available on-
13 line. What specifically did Mr. Femi share with you, because
14 this is something we've never been able to ask Mr. Austin, you
15 know, we've never received any direct questions from Mr. Austin
16 either. But what specifically did Mr. Femi share with you, Mr.
17 Austin?

18 MR. AUSTIN: Well for me, it wasn't anything he shared.
19 I just happened to see him talking to the neighbors. Other
20 neighbors have come to me as far as, you know, Mr. Femi Awoseye
21 was actually going to our neighborhood, knocked on our door, and
22 tried to lobby for his design. My neighbors turned it down.
23 They asked me if I had spoke to him and I said well, he has never
24 come by. I just happened to catch him outside one time with Mr.
25 Gobelin and we spoke about it and I reiterated to him like, hey,

1 I want you to build something nice on this vacant lot. I mean,
2 I have this bush (phonetic) here I've been living here even before
3 where it was Mr. Graves who owned the property. You know I've
4 mowed the yard before and it wasn't never shared to me as far as
5 pictures. It was something that was submitted on the actual
6 docket of the case.

7 So that was proof of evidence that, you know, whether
8 or not I don't know if he shared that with you but you had as
9 much access to the information out there as me. So with that
10 being --

11 CHAIRPERSON HILL: Yes. I think you've answered the
12 question. Mr. Carballo, what's your next question?

13 MR. CARBALLO: I have to look at my notes. Obviously,
14 this is a buildable lot. The owner has a right to build on it.
15 Ideally, what would you like to see built on the property?

16 MR. AUSTIN: Well for me, it would be a detached single
17 family home. No split of the actual design where it's the 15
18 foot (indiscernible) but, you know, 30 feet wide like you need
19 to do just like any regulation home that would be. As far as
20 the height, I understand that, you know, me having a split level
21 home, I would love to have a two story house but I have a split
22 level home and that's when I think my solar panels then, again,
23 we would have to, you know, talk about that about as far as what
24 that would look like based on, yes, sorry.

25 CHAIRPERSON HILL: Okay. That's all right. I got you.

1 I mean, the question I guess, Mr. Carballo, I don't know, is that
2 whatever zoning allows and so that's whatever you guys, and it's
3 good that you answered the question but, you know, I'm still
4 waiting to hear from the Office of Planning because it's currently
5 in denial of your application and so I think you're going to have
6 a lot of questions for the Office of Planning, Mr. Carballo.

7 What's your next question for Mr. Austin?

8 MR. CARBALLO: You mentioned in your presentation, you
9 shared that, again, a little image that showed semi-detached
10 houses further down the block as well as -- and then obviously
11 the properties across the street that you mentioned are apartment
12 buildings. Doesn't that also kind of prove my point that in this
13 specific part of R-2 the line between R-2 and R-3 or even just
14 the designation of R-2 in this area is very inconsistent and
15 there are lots of exceptions within this immediate area that
16 wouldn't necessarily support a straight interpretation of R-2.

17 MR. AUSTIN: Well, based on the laws, and I'll let the
18 Board correct me on this, since it is a vacant lot there is no
19 property on it and there has to be a conformance to those specs
20 as far as there being eight feet from any property line if there's
21 a vacant lot. that's written in D.C. law, so.

22 CHAIRPERSON HILL: Okay. Mr. Carballo, Mr. Austin's
23 not a zoning expert but go ahead, and you got your opinion. You
24 got any more questions?

25 MR. CARBALLO: Let me see. I'll save the rest for when

1 I'm allowed to respond.

2 CHAIRPERSON HILL: Okay. Mr. Austin, do you have any
3 questions of Mr. Carballo?

4 MR. AUSTIN: Well, one question I had. As far as the
5 design, what was the reasoning as far as why it would be a split?
6 I know I've seen other designs where people have, you know, use
7 it where one level is, you know, in other words a lower level.
8 Why the split in half for that?

9 MR. CARBALLO: If you're -- do you mean just two semi-
10 detached homes?

11 MR. AUSTIN: Yes.

12 MR. CARBALLO: Is that what you mean by split?

13 MR. AUSTIN: Yes.

14 MR. CARBALLO: It was intended to have, you know, have
15 the property subdivided for sale, for homeownership versus if you
16 did one unit on the ground floor, one, you can't do multi-family
17 in R-2. But we intended the use to be for homeownership.

18 CHAIRPERSON HILL: Okay. Mr. Austin, you got another
19 question?

20 MR. AUSTIN: Yes. My final question is I guess as far
21 as the picture that was submitted for Exhibit 7, the solar panels,
22 what is the process of due diligence to recognize the properties
23 as far as having solar panels? I know that you haven't been to
24 the property but I assume, I know you have, you know, co-workers,
25 associates, that could do due diligence and I just want to know

1 why those affidavits were signed or what was the process of going
2 about getting those affidavits signed when there was already an
3 article for Exhibit 7 that showed pictures of the property, and
4 you have Google you can look at it now and see that there's solar
5 panels?

6 MR. CARBALLO: Quite honestly, you know, this project
7 started about two years ago It was quite some time ago. The
8 Street View photographs are the actual photographs were provided
9 by the ownership. In speaking to my client, this was the
10 explanation I asked and the question about solar panels and he
11 said that he didn't see any.

12 In retrospect we would have been -- it would have been
13 a better process had we gone down and looked at it ourselves. WE
14 didn't. We relied on the information from our owner, from our
15 client.

16 CHAIRPERSON HILL: Okay. Thanks, Mr. Carballo. All
17 right, you guys. I'm going to turn to the Office of Planning.

18 MS. MYERS: Hello, again. Crystal Myers with the Office
19 of Planning. This is one that I inherited from Steve Cochran
20 who retired earlier this summer.

21 So with this case, the Office of Planning is
22 recommending denial. We don't feel that it meets the first prong
23 of the variance test and that is that the property is currently
24 a conforming legal lot, record lot, and the Applicant is proposing
25 to create two non-conforming lots. It has not provided sufficient

1 argument justifying that there is an extraordinary or exceptional
2 situation for this relief.

3 I think as was discussed earlier there are quite a few
4 other lots on this side of the street that are similar size and
5 dimensions as this lot so therefore it doesn't seem exceptional.
6 There does not seem to be any real reason, I don't see any
7 arguments justifying it except for the fact that it's vacant but
8 that is not a sufficient argument in and of itself to justify
9 the (indiscernible) there's a extraordinary situation and for the
10 third part of the test we believe that because there hasn't been
11 a justifiable argument granting requested relief would result in
12 a substantial detriment to the zoning regulations. Permitting
13 the creation of two substandard lots would not meet the minimum
14 lot width or lot area requirements for the zone.

15 So Office of Planning is not in support of this
16 application. Thanks.

17 CHAIRPERSON HILL: Ms. Myers, can you tell me by-right
18 what could be built there in terms of the height?

19 MS. MYERS: Well, this is the R-2 zone so you could do
20 a 40 foot maximum height development, likely a house.

21 CHAIRPERSON HILL: 40 feet.

22 MS. MYERS: 40 feet.

23 CHAIRPERSON HILL: Okay. All right. Okay. Does the
24 Board have any questions of anybody?

25 ZONING COMMISSIONER HOOD: I was going to ask Mr.

1 Carballo a few questions and I was going to respond to some things
2 but I'd like to hear what others have to say because as far as,
3 I guess the 90 seconds they got at the ANC was much better than
4 I would have given them when I look at this case and I looked at
5 the file and I looked at how it's been misrepresented. I've
6 always had problems when I see something that, you know,
7 especially as was pointed at in Exhibit 1 and Exhibit 20. That's
8 why I stopped right there.

9 You know, when the record in this case is not complete
10 and it's not before us telling the truth, mistake or whatever you
11 want to call it it's not right (indiscernible) the Office of
12 Planning being against it from our planners and not meeting our
13 zoning code, I have problems all the way around. So I don't have
14 any questions for anybody. I would advise them to go back to
15 the drawing board, Mr. Chairman. I'm not sure what you and my
16 colleagues want to say, Board Member Smith, I advise them to go
17 back to the drawing board because I can tell you from what I've
18 heard, if they gave me 90 seconds then it's a blessing.

19 Thank you, Mr. Chairman.

20 CHAIRPERSON HILL: Okay. Mr. Smith?

21 MR. SMITH: I agree with Charman Hood on this one, on
22 this particular case. I don't know the type of questions I can
23 ask but, you know, the Office of Planning has already laid this
24 out, you know, the particular positions in the report and I'm
25 struggling to find where's the extraordinary or exceptional

1 situation, the practical difficulty and strategically how it
2 doesn't adhere to the zoning regulations to create two non-
3 conforming lots and nothing in this discussion that I've heard
4 so far has helped move me from that particular position and I,
5 you know, Mr. Austin I hear your concerns about, you know, solar
6 panels and yet this should help to address that. But it is, you
7 know, within the zone even if they build a single family house
8 they can construct it at the 40 feet, so you may have a problem
9 regardless even if it's the property by-right.

10 But that's not what's before us right now. I'm still
11 not hearing answers to or about some of the conditions in OP's
12 analysis.

13 CHAIRPERSON HILL: Okay. So you all don't have any
14 questions. Mr. Carballo, do you have any questions of the Office
15 of Planning?

16 MR. CARBALLO: No, I do not.

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

19 MR. AUSTIN: The only question I have as far as the
20 Office of Planning. I know that they said by-right I guess to
21 build up to 40 feet. I guess is that something that even though
22 -- I don't know how it is with the D.C. Zoning and Office of
23 Planning as two totally different entities, but as far as pursuing
24 anything further, I guess is that kind of with you guys or is it
25 the Zoning or maybe I can take that up as one of the legal

1 matters, Ms. Myers?

2 CHAIRPERSON HILL: Is your question, I think this is
3 your question. Is it if they build to the 40 feet, is there
4 anything you can do about your solar panels?

5 MR. AUSTIN: Yes, that's correct.

6 CHAIRPERSON HILL: Ms. Myers, do you have any idea?

7 MS. MYERS: I don't know about that but I would like
8 to add that what is also required by a matter-of-right is that
9 they provide side yards. It would be eight feet on each side
10 which the current proposal would be a violation of. If this
11 variance were granted to do the subdivision, they're not
12 providing side yards wither and so that would be a concern when
13 it comes to impact to your property and potential solar panel
14 impacts because they would be too close to your property.

15 As I've mentioned, our position is that this project
16 is just not in conformance on a variety of levels. So when it
17 comes to what you're asking about, I guess, if perhaps it would
18 be a Department of Building question. As a matter-of-right they
19 are -- a matter-of-right project would be you'd have to go up 40
20 feet but it would also be required to be eight foot side yards.

21 CHAIRPERSON HILL: You would have to get the eight foot
22 side yards, Mr. Austin, as well as your eight foot so you'd have
23 16 feet between your building and their building. Even if they
24 went up 40 feet, there would be 16 feet then for the sun to get
25 through.

1 MR. AUSTIN: Okay.

2 CHAIRPERSON HILL: Okay. Do you have any other
3 questions for the Office of Planning?

4 MR. AUSTIN: No. No, thank you. I have no more
5 questions.

6 CHAIRPERSON HILL: Okay. Let's see. Mr. Carballo, do
7 you have anything you'd like to add or rebut?

8 MR. CARBALLO: I will bring all of these comments back
9 to the owner of the property. We've had very similar discussions
10 in the lead up to this case and this presentation and I will
11 bring those concerns and see what direction he would like to
12 take.

13 CHAIRPERSON HILL: Okay. Mr. Austin, do you have
14 anything you'd like to add at the end?

15 MR. AUSTIN: Yes. I would say that given, I know things
16 have been kind of tense between me and the Applicant party. It's
17 been there for a while now. I would really like to work with
18 them just to, you know, good faith as far as, you know,
19 communication-wise and try to establish something that works for
20 both parties.

21 CHAIRPERSON HILL: Okay. Mr. Carballo, anything final?

22 MR. CARBALLO: Nothing else to add, no.

23 CHAIRPERSON HILL: Okay. All right. I'm going to go
24 ahead and close the hearing and the record. Mr. Young, did I
25 ask, Mr. Young, did we have anybody to speak? I think I asked

1 that or no?

2 MR. YOUNG: We do not.

3 CHAIRPERSON HILL: Okay. So I'm going to go ahead and
4 close the hearing and the record. If you can please excuse
5 everyone, Mr. Young.

6 Okay. So I didn't hear anything in the argument as to
7 why they meet the standard for us to grant the relief requested.
8 I think that, you know, the side yard relief nor the subdivision
9 make any sense and what even was specified, which I know is like,
10 you know, training 101 for us is not to create non-conformity.
11 So we would literally be creating two non-conforming lots from a
12 conforming lot.

13 So I know that the Applicant is listening and the
14 architect this morning, you have a conforming lot. We're not
15 supposed to create non-conformities and you're asking us to
16 create two non-conforming lots. So that was never going to work
17 unless they made some good argument for it and I don't think an
18 argument was made for it.

19 So, in addition to that, you got, you know, the ANC's
20 great weight as well as now the people in opposition. But even
21 if they were all in favor of it, I don't see how we would get
22 around creating, again, two non-conforming lots from a conforming
23 lot. So I'm going to be voting against this application.

24 Chairman Hood, may I hear your thoughts?

25 ZONING COMMISSIONER HOOD: Mr. Chairman, I think the

1 way this has been presented and I think the record reflects the
2 merits of this case and the way it's been articulated and
3 presented, and I would agree with you. I think it's -- I would
4 be voting in opposition in this case and I think the record speaks
5 for itself and I'll leave it at that.

6 Thank you, Mr. Chairman.

7 CHAIRPERSON HILL: Thank you. Mr. Smith?

8 MR. SMITH: I agree with Chairman Hood and I kind of
9 spoke on this earlier. Yes, the record speaks for itself. The
10 Applicant in the record has not shown any justification for the
11 request before us. It seems to be more of an economic argument
12 than anything, less so a hardship argument on they can't use the
13 property for, you know, anything that it's zoned for.

14 The property is a conforming lot and you can't
15 construct anything else. This entire argument for the last over
16 30 minutes has been mostly the Applicant discussing the nature
17 of solar panels. Yes, solar panels are -- they should have
18 addressed those, you know. Regarding the merits of the case they
19 should have had more of a discussion dialogue on how their
20 proposed construction would not substantially impact the
21 operation of Mr. Austin's solar panels.

22 But within the record and what was presented, without
23 even discussing the solar panels, the project doesn't meet the
24 three prong test for us to grant the variance. So I said I wasn't
25 going to belabor the point but I belabored it, huh?

1 All right. So that's really all I have to say on it,
2 so I do not believe they have met the standards and I will not
3 support the application.

4 CHAIRPERSON HILL: Okay. I'm going to make a motion
5 to deny Application No. 20828 as captioned and read by the
6 Secretary, and ask for a second. Mr. Smith?

7 MR. SMITH: Second.

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

10 MR. MOY: Yes, thank you, sir. When I call your name
11 if you'll please respond to the motion made by Chairman Hill to
12 deny the request for variance relief. The motion to deny was
13 second by Mr. Smith.

14 Zoning Commission Chair Anthony Hood?

15 ZONING COMMISSIONER HOOD: Ye, to deny.

16 MR. MOY: Mr. Smith?

17 MR. SMITH: Yes, to deny.

18 MR MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes, to deny.

20 MR. MOY: And we have no other Board members
21 participating. Staff would record the vote as three to zero to
22 two on the motion from Chairman Hill to deny the application.
23 The motion to deny was second by Mr. Smith. Voting to deny the
24 application is Zoning Commission Chair Anthony Hood, Mr. Smith
25 and Chairman Hill. Motion carries on a vote of three to zero to

1 two.

2 CHAIRPERSON HILL: Thank you, Mr. Moy. All right,
3 everybody. Mr. Moy, is there anything left for the Board?

4 MR. MOY: I have nothing for you from the staff, sir.

5 CHAIRPERSON HILL: Okay. You guys, it was nice to see
6 you all today. You all have a good one.

7 We're adjourned.

8 (Whereupon, at 1:36 p.m., the above-entitled
9 hearing was adjourned.)

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

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 09-20-2023

Place: Teleconference

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