

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 18, 2023

+ + + + +

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

ZONING COMMISSION MEMBERS PRESENT:

FREDERICK D. HILL, Chairperson
LORNA JOHN, Vice Chairperson
CHRISHAUN SMITH, Board Member
ANTHONY HOOD, Chairperson, Zoning Commission
ROBERT MILLER, Vice Chairperson, Zoning Commission

OFFICE OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

OFFICE OF ZONING ADJUSTMENT LEGAL COUNSEL:

SARA BAJAJ, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on October 18, 2023.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 20919
William Huffman and Colleen Bevins. 6

Case No. 20594
Nezahut and Paul Harrison.40

Case No. 20977
Rahul and Mary Aileen Nandi.42

Case No. 20928
Matthew and Sarah Tucker 45

Case No. 20964
CHR, LLC.83

Case No. 20950
Jose Reyes.95

Case No. 20955
Daryl and Daphne Womack.102

Case No. 20957
Alade Interests, LLC.110

Case No. 20956
Rachel Kahn and Corey O'Brien. 124

Case No. 20960
SV Real Estate, LLC.130

Case No. 20963
Thomas Schultz. 153

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

(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen to the Board of Zoning Adjustment. Today's date is 10/18/2023. This public hearing will please come to order. My name is Fred Hill, Chairman of the Board of Zoning Adjustment for the District of Columbia. Joining me today is Vice Chair Lorna John, Board Member Chrishaun Smith and Zoning Commissioners Rob Miller and Anthony Hood.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of this webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also please be advised that we do not take any public testimony in our decision meeting session. If you're experiencing difficulty accessing Webex or with your call-in telephone line then please call our OZ hotline number 202-727-5471, once again 202-727-5471 to receive Webex login or call-in instructions.

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

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1 an affected ANC. A full order may also be needed if the Board's
2 decision differs from the Office of Planning's recommendation.
3 Although the Board favors the use of summary orders whenever
4 possible, an Applicant may not request the Board to issue such
5 an order. 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 or your
10 presentation. All presentations should be limited to a summary
11 of your most important points. When you're finished speaking,
12 please mute your audio so that your microphone is no longer
13 picking up sound or background noise. All persons planning to
14 testify either in favor or opposition should have signed up in
15 advance. They will be called by name to testify. If this is an
16 appeal, only parties are allowed to testify. By signing up to
17 testify all participants complete the Oath or Affirmation as
18 required by Subtitle Y, § 408.7.

19 Requests to enter evidence at the time of an online
20 virtual hearing, such as written testimony or additional
21 supporting documents other than live video, which may not be
22 presented as part of the testimony, may be allowed pursuant to
23 Subtitle Y 103.13, provided that the person making the request
24 to enter an exhibit and explain, a) how the proposed exhibit is
25 relevant, b) if the good cause justifies allowing the exhibit

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

6 At the conclusion of each case, any individual who was
7 unable to testify because of technical issues may file a request
8 for leave to file a written version of the planned testimony to
9 the record within 24 hours following the conclusion of public
10 testimony in the hearing. If additional written testimony is
11 accepted, then parties will be allowed a reasonable time to
12 respond as determined by the Board. The Board will then make
13 its decision at its next meeting session, but not earlier than
14 48 hours after the hearing. Moreover, the Board may request
15 additional specific information to complete the record. The
16 Board and the staff will specify at the end of the hearing exactly
17 what is expected and the date when persons must submit the
18 evidence to the Office of Zoning. No other information shall be
19 accepted by the Board. Once again, after the Board adjourns the
20 hearing, the Office of Zoning in consultation with myself will
21 determine whether a full or summary order may be issued.

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

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

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

8 MR. MOY: Good morning, Mr. Chairman, members of the
9 Board. Welcome Vice Chair John. Now I have to remember how to
10 count to four. Anyways, let's see. So I believe, Mr. Chairman,
11 you wanted to tee up case Application No. 20919 which includes
12 the participation of Mr. Miller. Am I correct?

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: Okay. Here we go. So before the Board is
15 case Application No. 20919 of William Huffman and Colleen Bevins.
16 Once again, this is a self-certified application pursuant to
17 Subtitle X, § 1002 for a variance from the lot occupancy
18 requirements of Subtitle E, § 210.1 and pursuant to Subtitle X,
19 § 901.2 for a special exception under Subtitle E, § 5201 from
20 the rear yard requirements of Subtitle E, § 207.1. The property
21 is located in the RF-1 zone at 1005 Quebec Place, N.W., Square
22 2902, Lot 65.

23 As you recall, this was last heard by the Board at its
24 September 20th hearing and participating is you, Chairman Hill,
25 Mr. Smith, Zoning Commission Vice Chair Miller and I don't know

1 if Vice Chair John is going to participate because she
2 participated in the first hearing back in July but if not then
3 the participants would be the Chairman, Mr. Smith and Mr. Miller.

4 Thank you, sir.

5 CHAIRPERSON HILL: Thank you. Vice Chair John, have
6 you read into this record?

7 VICE CHAIR JOHN: Yes, Mr. Chairman. Yes, I've looked
8 at it.

9 CHAIRPERSON HILL: Okay. Now, Mr. Moy, this is a --
10 is this a public, did we reopen the record for this or is this
11 --

12 MR. MOY: Yes. Yes, you did. This is a continued
13 hearing.

14 CHAIRPERSON HILL: Oh, okay. Great. I just wanted to
15 make sure that that was the case. If the Applicant is here, if
16 they could please introduce themselves for the record.

17 MR. HUFFMAN: Good morning. William Huffman appearing
18 for the Applicants.

19 CHAIRPERSON HILL: Okay. Mr. Huffman, were you here
20 at the previous hearing?

21 MR. HUFFMAN: I was here for the first hearing, yes,
22 the hearing in July and I watched the meeting in September.

23 CHAIRPERSON HILL: Okay. Mr. Huffman, now what again
24 is your relationship to the Applicant?

25 MR. HUFFMAN: I am the property owner. I am the

1 Applicant.

2 CHAIRPERSON HILL: Oh, okay. I got confused at first.
3 Well, welcome. Mr. Huffman, I guess what happened since the last
4 hearing? I see you did file some additional information for the
5 Board to review which I have reviewed. Could you please explain
6 to us again a little bit about what you submitted into the record
7 since the hearing?

8 MR. HUFFMAN: Yes. Basically at the last September
9 meeting there was a, you know, issue raised about, you know,
10 whether there was a need for the Applicants to have a main door
11 in the rear of their house and because we do have a basement door
12 and so my supplemental filing after that meeting was to address
13 the practical difficulties of using the basement for ingress and
14 egress and I can go into detail with that if you'd like.

15 CHAIRPERSON HILL: Okay. Is the Office of Planning
16 here?

17 MR. JESICK: Yes, Mr. Chairman.

18 CHAIRPERSON HILL: So, Mr. Jesick, you guys have
19 submitted a supplemental?

20 MR. JESICK: Yes. At the July hearing the Board
21 requested a supplemental memo from OP and we submitted that. I
22 believe it's at Exhibit 33.

23 CHAIRPERSON HILL: Can you walk us through your report
24 a little bit, Mr. Jesick?

25 MR. JESICK: Sure. At the, for our initial report the

1 Office of Planning recommended denial of the variance. At the
2 hearing in July and in the days right before the hearing the
3 Applicant entered new evidence into the record addressing the
4 variance criteria and that's why the Board asked us to write a
5 supplemental memo. So we reviewed that additional information
6 and concluded that we did recommend now approval of the variance
7 as well as the associated special exception.

8 We felt with the additional information the application
9 met the three part variance test and I can answer any questions
10 about that if the Board would like.

11 CHAIRPERSON HILL: I guess, Mr. Jesick, since we've
12 struggled so much with it on the hearing before, could you explain
13 why your opinion has changed?

14 MR. JESICK: Certainly, and I will just mostly be
15 referring to page 3 of our report. Again, that's I believe it's
16 Exhibit 33.

17 Previously we had found that there was no exceptional
18 situation affecting the property leading to a practical
19 difficulty for the Applicant. However, with the additional
20 information we did conclude that there is an exceptional
21 situation and then there are a number of factors which together
22 lead to this exceptional or even unique situation.

23 It begins with the location of the plumbing in the
24 house. The main drain line is on the east side of the house and
25 that leads to certain arrangements of the kitchen that are

1 necessary, physical arrangements in the kitchen where the sink
2 can go and the dishwasher and that impacts therefore where the
3 exit door from the kitchen can be located. That is also related
4 then to the location of the stairs on the exterior and the stairs
5 need to be located on the east side because the parking space
6 has to be located on the west side and that's due to the spacing
7 of the column, the support column at the cellar level.

8 So all these things add up together to create an
9 exceptional condition and the practical difficulty related to
10 that is that without having the deck connecting the stairs with
11 that kitchen exit, there would be no opportunity for an entry or
12 exit from the kitchen level and connected to the stairs which
13 lead to the parking level at the rear. So we did conclude that
14 the application then met the three part variance test and we are
15 recommending approval.

16 CHAIRPERSON HILL: Right. Thank you, Mr. Jesick. It
17 sounds as though you have taken a pretty hard look at this and I
18 appreciate the time that went in the analysis that the Office of
19 Planning has put forward.

20 Does the Board have any questions of the Office of
21 Planning or the Applicant? Sure. Let's go with Mr. Smith first.

22 MR. SMITH: Mr. Jesick, I just had one additional
23 question regarding the stairs and this has come up at the previous
24 hearings. Are stairs excluded from lot occupancy if they're
25 leading to the primary, the principle entrance to the building,

1 the primary floor?

2 MR. JESICK: I believe the Zoning Administrator, I
3 think that the Zoning Administrator has said the stairs do not
4 count towards lot occupancy if they are leading towards the main
5 level of the house.

6 MR. SMITH: Okay. So based on the testimony we heard
7 last, the last time we heard this case and a similar case, this
8 would -- the stair and the existing stair that exists now wouldn't
9 count towards lot occupancy. Am I correct? The issue here is
10 that --

11 MR. JESICK: I didn't quite catch that. Could you
12 repeat your question, please?

13 MR. SMITH: I said, well actually as you're saying that
14 the stair wouldn't count towards lot occupancy, the issue here
15 is the deck?

16 MR. JESICK: That's my understanding. That being said
17 I think the property is already over lot occupancy so any addition
18 would be in the variance territory for lot occupancy.

19 MR. SMITH: Right. But they're not expanding the
20 kitchen. The footprint of the kitchen exists now, they're
21 reconfiguring what's in the existing non-conforming space.

22 MR. JESICK: Correct, yes.

23 MR. SMITH: Okay. All right. That's all the questions
24 that I have now.

25 CHAIRPERSON HILL: Vice Chair John, you had your hand

1 up.

2 VICE CHAIR JOHN: Yes. Thank you, Mr. Chairman. So,
3 Mr. Jesick, my understanding and I believe there's a slide that
4 shows where the kitchen sink and dishwasher would be located on
5 the east side of the kitchen now which is the warmer side?

6 MR. JESICK: They would be located on the east side and
7 that's due to the location of the plumbing in the house.

8 VICE CHAIR JOHN: And that would take care of the
9 freezing pipes which is the initial problem that the Applicant
10 presented; right?

11 MR. JESICK: Yes, I believe that's what the information
12 in the record is stating.

13 VICE CHAIR JOHN: Do you happen to know how wide the
14 kitchen is?

15 MR. JESICK: Well, yes. I believe it goes essentially
16 from lot line to lot line --

17 VICE CHAIR JOHN: Okay.

18 MR. JESICK: -- so I don't have that --

19 VICE CHAIR JOHN: So let's say 16 feet to 17 feet
20 because --

21 MR. JESICK: (Indiscernible).

22 VICE CHAIR JOHN: -- being conservative. So is it
23 possible for the Applicant to build a landing, like a three foot
24 landing, not a deck that would provide egress from the kitchen
25 to the stairs?

1 MR. JESICK: There was not enough, I believe if I recall
2 correctly there was not enough room once you put the sink and
3 the dishwasher on that east wall, there was not enough room to
4 have an entry on that side of the kitchen. So you couldn't put
5 the door right where the stairs are today. The door had to shift
6 to the west.

7 VICE CHAIR JOHN: Okay. So if the door shifted to the
8 west on to a landing, could there then be egress to the stairs
9 from that landing?

10 MR. SMITH: Just for context reasons, Mr. Young, can
11 you pull up the plans, the latest plans, I think Exhibit, I think
12 it's 15 just to give context -- on page 2 I think it's 2 -- just
13 to give context to what Ms. John was saying.

14 MR. YOUNG: You said Exhibit 15?

15 MR. SMITH: Yes, 15 and go to the page that says main
16 floor plan TR001. I'm sorry, Ms. John.

17 VICE CHAIR JOHN: No. That's, that would have been my
18 next question. I'll get to you Mr. Huffman, I just want to see
19 the layout of the kitchen.

20 MR. SMITH: That slide there. If you can zoom into the
21 left side of that page.

22 VICE CHAIR JOHN: Okay. So, Mr. Jesick, this is how
23 the -- I'm looking at the diagram on the left and so the deck
24 would be connected to the stairs on the right. Is that correct?

25 MR. JESICK: Yes, that's correct.

1 VICE CHAIR JOHN: Okay. And the width of that area is
2 about three feet where the stairs connect to the deck; right? So
3 could there be a landing that would continue all the way over to
4 the, I believe that's the east side? In any event, instead of
5 an eight foot deck or whatever it is, could there be a three foot
6 landing across the back of the house?

7 MR. JESICK: Well, a couple of things. One, you're
8 still increasing the lot occupancy. That once you build a larger
9 landing like that, the Zoning Administrator actually considers
10 that a deck and it counts towards lot occupancy and then secondly,
11 what the Applicant has demonstrated in the record is that the
12 columns below that would interfere with the door swing for the
13 parking space. So that's why the columns need to be further back
14 and that leads to a larger deck.

15 VICE CHAIR JOHN: So the Applicant is not using the
16 space for parking now with the same door swing?

17 MR. JESICK: They are but there's no deck there.

18 VICE CHAIR JOHN: Okay. So, now what was the reason
19 that the stove could not be shifted over to, as I look at the
20 diagram, to my left? So that there could be a shorter area to
21 create a more functional landing to the stairs?

22 MR. JESICK: The Applicant may need to respond to that.
23 I don't recall the decision behind that.

24 VICE CHAIR JOHN: Okay. So basically we have roughly
25 a 16 or 17 foot wide kitchen and the Applicant would have me

1 believe that it's not possible to locate the stove and the
2 appliances in such a way that there could a proper egress from
3 the kitchen on to the existing stairs. That's the difficulty I'm
4 having.

5 So that's it for now Mr., oh, one more thing Mr. Jesick.
6 Okay. That's it for now. No more questions, Mr. Chairman.

7 CHAIRPERSON HILL: Thanks, Ms. John. Mr. Jesick, just
8 to be clear again for me, like right, the variance will be
9 triggered even if there's the three foot landing there; correct?

10 MR. JESICK: Well, if it was just a landing something
11 less than say four by four, I don't know that that would add to
12 lot occupancy. It's when you get over that threshold that I
13 think the Zoning Administrator starts to consider it a deck or
14 something that counts toward lot occupancy.

15 CHAIRPERSON HILL: Right. And they couldn't do that
16 because of the columns?

17 MR. JESICK: That's part of the exceptional condition.

18 CHAIRPERSON HILL: Okay. Okay. Let's see.

19 VICE CHAIR JOHN: Mr. Chairman? Mr. Jesick.

20 CHAIRPERSON HILL: Sure.

21 VICE CHAIR JOHN: That's what I don't understand. Right
22 now there's a proposal to build a deck in the same place where
23 that landing would be. That's what I have difficulty
24 understanding. Can you help me with that?

25 MR. JESICK: Well, I think the landing, I think the

1 Applicant has demonstrated that the landing cannot just be
2 located on that east side. It needs to be somewhere over to the
3 west.

4 VICE CHAIR JOHN: Okay. I will go to the Applicant.
5 Lets it for Mr. Jesick for now.

6 CHAIRPERSON HILL: Thank you. I mean, there's nothing
7 there right now; correct? Mr. Huffman, you're nodding yes. Okay.
8 Okay. Let's see. Okay. Does anyone have any other questions
9 of the Office of Planning? Okay.

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

11 MR. YOUNG: No, we do not.

12 CHAIRPERSON HILL: Okay. Mr. Huffman, you had your
13 hand up at one point. Do you have something you want to say?

14 MR. HUFFMAN: Yes. I just wanted to clarify
15 Commissioner John's or further respond to her questions.
16 Basically if we have a landing, currently there's a straight set
17 of stairs that go back. If we were to have a landing the only
18 way to fit it in because just the way that the risers would fall
19 would be to have that shift to essentially, if you were looking
20 at that diagram, to essentially shift to the center of the kitchen
21 and the problem there is that the posts there would literally
22 fall right in the middle of our driveway, so then we wouldn't
23 have the driveway and that's the practical difficulty with that.

24 If we were to stretch the deck all the way across so
25 it's straddles the driveway you would then have a post that is

1 essentially right where we're pulling in and we have to kind of
2 pull in at an angle as it is and it would, you know, be very
3 difficult to pull in and also you wouldn't be able to open the
4 door on that side. So that pole would block the door, and, again,
5 if it's straddled, if the deck straddled the driveway, again if
6 it was just a landing, like a four foot landing or something like
7 that the post would be right in the middle of our driveway so
8 then there would be no parking at all possible.

9 MR. SMITH: Chairman Hill?

10 CHAIRPERSON HILL: Go ahead, Mr. Smith.

11 MR. SMITH: Mr. Young, can I ask you to pull up an
12 additional exhibit, and this one is Exhibit 15, and this is to
13 respond to Mr. Huffman, and to clarify I think what Ms. John was
14 also asking, additional question. All right. Can you zoom in
15 on that hinge (phonetic) because this is in response to, you
16 know, Ms. John's question and her recommendation was how come you
17 couldn't, you know, slide the door over just a little to the west
18 from where it is now and have a four foot landing a little further
19 to the west there and what I'm seeing here on this image here,
20 and she brought this up, there is a post that exists now under
21 your home and if you look to the left of your car where the drain
22 pipe is running to the ground there is a post and effectively
23 that area from the post to your existing stairs effectively --
24 you can't park there anyway because you can't pull your car
25 underneath your house because of that post.

1 So essentially what she's saying is that because you
2 can't use that area to the left anyway, you could have a stair
3 and a landing that lands right to the left of where you see that
4 drain pipe coming down to the left of that post. So that's where
5 I'm even struggling with the practical difficulty because it
6 sounded like you can access, beyond just about whether you can
7 access the rear of your house from your basement, it seems the
8 zoning regulations do allow some ability for you to access -- to
9 move the door and to have a stair and not have this larger deck.

10 So can you speak to how come you can't have a stair to
11 the left, and a landing, to the left of where your car is now?

12 MR. HUFFMAN: Yes, absolutely. If we were to take that
13 set of stairs just as it is and move it over, then I wouldn't be
14 able to get in and out of my car at all because it would be right,
15 you know, basically it would be matching up right with my door
16 right there. So, and as it is we kind of have to park it and
17 pull in at an angle there because it's, I mean, we've only got
18 like, there's only like six feet maybe between those two posts
19 so we're really wedging our car in as it is and I can tell you
20 our car has dents every time we open that door as it is. But so
21 that's just, if we were to move that stair just as it is, straight
22 set of stairs, it would, you know, that would block our entrance
23 to the car. We wouldn't be able to get in there.

24 If you're asking can we put in a landing in that little,
25 you know, spot between the door and the drain pipe now, we

1 wouldn't be able to do that, a) because we have posts that would
2 then sit right in front of our, in our driveway again, and b) to
3 have a landing you need to have, basically the stairs go all the
4 way up. There's no current landing on the steps, so we literally
5 -- we have to go all the way up to, you know, when we walk in
6 the door it's just essentially another step. If we were to create
7 a landing, we need to have the stairs wind down. That's why
8 they're kind of winding stairs, because that's the only way to
9 fit it in because the stairs currently go all the way to our
10 property line.

11 So if we wanted to have room for a landing, you know,
12 basically it would have to engineer it so that the steps would,
13 you know, so that they would meet in an area that -- so that they
14 would, you know, be able to connect there, that's all I can say,
15 and in order to do that you, again, the landing would have to be
16 moved further over which would be right in the middle of our
17 driveway.

18 Is that making sense? It's basically because there's
19 no room for a landing right now. For instance, if you were to
20 put in a landing straight out from our house, it would, you know,
21 the stairs would go all the way, you know, down and you can't
22 really, basically if you just put in a landing where we're talking
23 about right now, then there wouldn't be steps. You know, you
24 can see like the landing would be, you know, essentially where
25 the steps need to be right now. Is that making sense? I guess

1 | it just, it wouldn't be able to fit because there just isn't room
2 | for, you know, we basically need to have extra space. I don't
3 | know how best to describe it.

4 | MR. SMITH: Yes. I'm still unclear because the landing
5 | would be between where your existing stair is now and the space
6 | between your car and the existing stair and I'm not saying it to
7 | move the stair. You could keep the stair where it is now,
8 | essentially just adding a landing to the right of the existing
9 | stair. So I'm, you know, I'm --

10 | MR. HUFFMAN: Yes. Basically if you were to look at
11 | it. So we've got a set of stairs that go up and if you were to
12 | have a landing here, there would be -- you wouldn't be able to
13 | walk because you would be walking, basically when you left that
14 | landing you'd be going down to like the third step because it's,
15 | you know, just the way the stairs go all the way up, you know,
16 | straight up to our house. So if you have a landing the only way
17 | to have it there is to have them turn around so that the stairs
18 | can fit -- I don't even know how to without, you know, basically
19 | a better drawing there.

20 | But basically, again, if you can just picture like a
21 | landing and if you have stairs that don't, they won't go up to
22 | the side of the landing, they're going to go essentially in front
23 | and meaning, again, if you took a step off that landing you'd be
24 | jumping down to the third, like the third step down. You know,
25 | it wouldn't meet to that top, they couldn't just with the space

1 that we have there. It can't meet that top step. I don't know
2 how better to say it without drawing it for you, but --

3 MR. SMITH: Okay.

4 MR. HUFFMAN: -- that's why we have to have the turn
5 stairs.

6 MR. SMITH: Okay. I'm not debating the turn of the
7 stairs but I still, again, question whether you can have a
8 landing, even with that turn you could rebuild the stairs with
9 the turn, I'm still failing to see how you can not have a landing
10 that still would allow you to access your driveway, and we don't
11 have plans that speak to that now or that probably wasn't honestly
12 explored. So I'll just leave it at that.

13 Thank you.

14 CHAIRPERSON HILL: All right. Thanks, Mr. Young. You
15 can drop it. Mr. Jesick, can you hear me?

16 MR. JESICK: Yes, Mr. Chair.

17 CHAIRPERSON HILL: Do you have any thoughts on any of
18 the questions that I've been hearing from a couple of my fellow
19 Board members?

20 MR. JESICK: Well, just regarding that landing idea
21 between the existing stairs and that drain pipe, for me the thing
22 that comes to mind is the location of the columns to ground and
23 that would be, that would again interfere with the car doors
24 opening, you know, at the parking level. That was the first
25 thing that I thought of.

1 VICE CHAIR JOHN: Mr. Jesick, are there circular stairs
2 that would achieve the same purpose? Metal circular stairs that
3 would achieve that same purpose?

4 MR. JESICK: Well, I wasn't even thinking about the
5 stairs but just the columns that would support the landing.

6 VICE CHAIR JOHN: Okay.

7 CHAIRPERSON HILL: Okay. All right. I'm trying to see
8 where we are with anything. I'm, yes, I'm comfortable with the
9 discussion that we've been having thus far and the discussion
10 that we've been having with the Office of Planning. I am going
11 to I suppose close the hearing and the record and see where we
12 get with this discussion and that being said, unless somebody
13 raised their hand and they need something else and I can always
14 come back and reopen the record.

15 Mr. Huffman, don't go anywhere. Mr. Jesick, don't
16 anywhere, but I'm going to close this portion of the hearing and
17 the record. Please excuse you guys, Mr. Young, from the hearing
18 room.

19 Okay. Great. Thanks. All right, I mean I can start.
20 This was something that I struggled with even before on the
21 previous hearing and I guess some of what I struggled with was,
22 again, what the criteria for the variance was and there was now
23 what's going to be put forward with the Board is again, I'm
24 thankful for the Office of Planning's recommendation but like,
25 you know, plumbing fixtures and that they have the, the Applicant

1 has shown how that the pipes have been freezing over at different
2 times and, again, you know, what I go back to is again this
3 confluence of factors as to why I believe that, now I'm going to
4 agree with the Office of Planning's recommendation, why I believe
5 that I would agree with the Office of Planning's analysis.

6 You know, we did have an opportunity to hear from the
7 Applicant and look at all of the drawings and I was again
8 struggling to get to the extraordinary and exceptional situation.
9 I believe that after, again, looking through the Office of
10 Planning's report which I do think is pretty well thought out,
11 like they really tried to see how that this was meeting the
12 criteria for us to grant this relief, that I would be able to
13 agree with the Office of Planning in how they believe they're
14 meeting the criteria.

15 In addition to that, I think that, you know, we do have
16 the recommendation from the ANC which where we are supposed to
17 be giving great weight towards. Now, again, the ANC doesn't
18 necessarily go through all of the criteria but they didn't have
19 an issue with the project on the whole. I think that what has
20 been a struggle for the Board at times has been these deck issues
21 where, you know, it seems to be a -- it seems on the surface to
22 be a small amount of relief being requested in terms of what is
23 actually being proposed, however what the Board struggles with
24 again is the variance test and if there were something, you know,
25 that the Zoning Commission could do concerning decks in the future,

1 that might be something that would be able to provide more clarity
2 for the Board if there was some way to this as a special exception
3 rather than a variance.

4 However, given again that the Office of Planning has
5 reviewed the record and has spoken at length it seems with the
6 Applicant, I would feel comfortable, am feeling comfortable now
7 with the Office of Planning's recommendation.

8 I'm going to turn to Commissioner Miller if I can
9 because I was curious as to your thoughts, Commissioner Miller.

10 ZC VICE CHAIR MILLER: Good morning, and thank you, Mr.
11 Chairman. It's still morning, and welcome back Vice Chair John.
12 It's good to see you.

13 VICE CHAIR JOHN: Thank you.

14 ZC VICE CHAIR MILLER: Yes. I appreciate the
15 supplemental information that the Applicant had provided at the
16 September hearing and the, or the July hearing and the
17 supplemental statement thereafter and the Office of Planning's
18 review of that supplemental information where they could find
19 that the proposed project met the three part variance test due
20 to the confluence of factors which we discussed in detail but
21 related to the necessary redesign of the kitchen, the necessary
22 location rear, egress from the rear door, the location of the
23 landing or deck and the necessary column spacing and how you
24 don't want the column spacing to interfere with the parking space
25 below so that they can have adequate swing space. So I appreciate

1 the Office of Planning providing that supplemental report at
2 Exhibit 33 where they did find that the three part, there was an
3 exceptional condition leading to a practical difficulty resulting
4 from that confluence of factors.

5 So I give great weight to, as we're mandated to do, to
6 the Office of Planning's recommendation and as the Chairman has
7 pointed out, we have the ANC 4C recommendation of approval and
8 no concerns and I think it's been noted previously in the record
9 the adjacent property owners also who would be most impacted by
10 this, in addition to the Applicant, also have no concerns and are
11 recommending that, the immediately abutting property owners on
12 each side have submitted letters into the record in support of
13 this variance. Kind of related special exception which was never
14 an issue from the outset, at least from the Office of Planning's
15 perspective and my own.

16 So, yes, I think that's a reasonable interpretation of
17 the zoning regulations that it can meet the three part test, the
18 exceptional condition leading to the practical difficulty.
19 There's certainly no detriment to the public good or to the zoning
20 regulations.

21 I agree with you, Mr. Chairman, that, and I think at
22 the last hearing that I had a dialogue with Mr. Jesick from the
23 Office of Planning that they are going to look at the whole open
24 air deck issue and perhaps consider or recommend that the Zoning
25 Commission consider making it a special exception in certain

1 situations where it makes sense, and I think in this particular
2 situation it makes common sense to allow this project to go
3 forward and so I, for the future we may be looking at this issue
4 so we're really dealing with what we should be dealing with most
5 importantly which is whether there are adverse impacts upon the
6 regulations, upon the public good, upon the adjacent neighbors,
7 upon the Applicant.

8 So the special exception process might be a better
9 process going in the future, but I think in this case where we
10 have enough information that I'm comfortable with at least, and
11 the Office of Planning is comfortable with to recommend approval
12 of the project. So that's where I am, Mr. Chairman.

13 CHAIRPERSON HILL: Thank you. Mr. Smith, since you've
14 been with us the most, may I turn to you next?

15 MR. SMITH: Sure. I think it's probably no secret, you
16 know, since we heard this case it's been a struggle for me and,
17 you know, in one aspect of this, not necessarily the special
18 exception request from the rear yard requirements. I do believe
19 what, you know, is being proposed from that standpoint of the
20 special exception it does not -- it would meet the standards for
21 a special exception.

22 My concerns have always been about the request for a
23 variance and the Applicant is, essentially what the Applicant is
24 requesting is a variance from lot occupancy so that they construct
25 their rear deck and the initial assumption is I thought it was a

1 stair when we first heard this case, but it seems to me that
2 based on interpretation of the zoning regulation and the zoning
3 regulation that I'm specifically referencing, it's subtitle, §
4 312.4(e) and Subtitle B, § 324.1(c) which allows uncovered
5 stairs, landings, wheel chair ramps that serve the main floor
6 which this would serve and this is by the Applicant's own
7 admission about the basement or the cellar being uninhabitable
8 space or a co-compliant, a residential co-compliant space, so
9 this is functioning the main floor at the stairs and the landing,
10 any stair or landing being there can be excluded from lot
11 occupancy.

12 So from my standpoint the concern is regarding the
13 Applicant's request for the deck and I am not convinced, based
14 on what has been presented in the record for the last three times
15 that we've heard this, that the Applicant has met the burden of
16 proof for us to grant the variance based on prong one and prong
17 two by reason of the special narrowness shown. It's the shape
18 of a specific piece of property at the time of the original
19 (indiscernible) regulations or any extraordinary or exceptional
20 situation specific to the piece of property. What we have here
21 is not unique to, the entire block is composed of row homes that
22 functionally exceed the lot occupancy. So what we're seeing here
23 is not unique within the block.

24 Two, and more specifically prong two would result in
25 peculiar and exceptional practical difficulties or an exceptional

1 undue hardship upon the owner of the property. I have -- it
2 hasn't been sufficiently demonstrated to me that the Applicant
3 can't achieve essentially what he says that he's trying to achieve
4 which is 1) reconfiguring that kitchen which to me is immaterial
5 to the request before us. This is regarding lot and a variance
6 from lot occupancy, that kitchen is already non-conforming, non-
7 complying to lot occupancy so they can reconfigure that how they
8 see fit. I'm not completely convinced that they need to put this
9 kitchen in this exact configuration in order, and also to have
10 an access, a rear access to be able to access their rear yard
11 and their driveway.

12 There's been a couple of scenarios that we, I believe
13 me and Ms. John played out today that I don't think were
14 sufficiently or were looked at I think to a sufficient level by
15 the Applicant where they could have the rear access. I'm not
16 completely convinced that a door and a landing could not exist
17 where the stove is. They're going to have to run gas to the rear
18 of this house, a gas line to the rear of the house in order to
19 put this stove there. I'm not completely convinced that it
20 couldn't be on another wall or another island, an island in the
21 middle that the existing kitchen. There could be a circular
22 stair with a landing that could exist here and to keep the columns
23 that's getting into building code. You can't configure a landing
24 where the weight and the bearing of the weight is transferred to
25 a different location, not necessarily at the corner of the where

1 the landing would land in essence, if the issue is then being
2 able to access their car within the driveway.

3 So based on the information I've seen within the
4 record, I'm willing to grant -- I believe they've met the
5 standards for us to grant the special exception but not the
6 standards to grant the variance and I will be voting in denial
7 for the variance.

8 CHAIRPERSON HILL: Okay. Before I move to Ms. John,
9 what I am thinking about, again, like these confluence of factors,
10 Mr. Smith, I know like the Office of Planning's listing one
11 through eight, right, on their report on where the different
12 appliances would need to be moved and like the costs that are
13 involved with all of that, that's just another thing that I had
14 thought about. But let's see, I don't mean to stick Ms. John
15 coming bac here right from being away but I guess, Ms. John, do
16 you want to give us your thoughts?

17 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I find
18 that the special exception and I frankly, I do not see where t
19 here's an exceptional condition that would prevent the Applicant
20 from meeting the regulations and that's the standard I have to
21 look at, even if I think it might be a good idea for the Applicant
22 to have a deck in that location, and I'm not persuaded by the
23 eight items listed in the Office of Planning's report because I
24 think that, as Board member Smith noted, I believe that it should
25 be possible to construct a landing that would provide egress from

1 the kitchen in or close to the current location of the existing
2 stairs and the Applicant is doing a renovation. I imagine there
3 are many considerations that could be, you know, used to achieve
4 that objective. I don't know if it's absolutely necessary to
5 have the stove in that location. You know, this is a garden
6 variety kitchen at the back of the house and I'm just not
7 convinced that proper stairs cannot be accommodated to provide
8 egress from the kitchen.

9 So if there's another way for the Applicant to achieve,
10 to meet the regulation then there's no exceptional condition and
11 there's nothing in the record that, you know, persuades me that
12 that can't be achieved.

13 So I am a no on this and I appreciate all of the
14 testimony from the Applicant. What is also missing is any
15 credible testimony from an architect as to why these stairs cannot
16 be accommodated in that location or another one. The Applicant
17 is currently using the parking even with the post approximately
18 in the middle of the, you know, the rear of the kitchen, so I'm
19 not persuaded that the parking cannot be accommodated either. I
20 think if the Applicant were to pull the car out some, then he
21 could open the car door I think but all of that needs to be in
22 the record and this is speculation on my part that the parking
23 could still be accommodated.

24 But be that as it may, the reason that I'm not in
25 support of the application is that there's nothing in the record

1 that convinces me that there cannot be proper egress from the
2 kitchen with the reconfiguration so that the plumbing fixtures
3 are not on the exterior wall.

4 So that's a long way of saying that I'm not in support
5 of the application and I don't agree with the Applicant, with the
6 Office of Planning's recommendation that there is a confluence
7 of factors that would require us to grant the application.

8 Thank you, Mr. Chairman.

9 CHAIRPERSON HILL: Okay. Thanks, Vice Chair John.

10 Let me think. So, let me do this. I know that there
11 is another Board member that will be joining us again shortly and
12 so I would suggest that we have another continued hearing to
13 discuss any items that the additional Board member might come
14 forward with in terms of their questions.

15 I'm interested, I might ask the Applicant to come back
16 here right now with the Office of Planning and see if there is
17 any other items that the Applicant might be able to put forward.
18 I mean, it is unfortunate that this is a variance standard which
19 is what the Board is struggling with. The Board does not have
20 any problems with somebody having a deck or, you know, making use
21 of their property in any way. It's that we are going through
22 this analysis and we have been provided with the Office of
23 Planning's analysis which is maybe, you know, maybe if we all
24 take a look at it harder or more closely we might have additional
25 questions of the Office of Planning if it's unclear to me.

1 However, I'm going to bring back in the Applicant and
2 the Office of Planning if I could. Mr. Young, if you could please
3 bring in both parties and I'm going to reopen the record at this
4 point in the hearing. Mr. Huffman, can you hear me?

5 MR. HUFFMAN: Yes, I can.

6 CHAIRPERSON HILL: Great. Mr. Jesick, can you hear me?

7 MR. JESICK: Yes, Mr. Chairman.

8 CHAIRPERSON HILL: Okay. Mr. Huffman, I don't think
9 it will you do you any favor right now to argue this point. I
10 think that if you want to, you've listened to the questions that
11 the Board has and there might be something that you've thought
12 of perhaps that you might be able to add to the record that might
13 help your case and perhaps if you talk with the Office of Planning
14 a little bit more, there might even be -- and this, I don't know,
15 Mr. Huffman, it brings no joy to the Board to have people, you
16 know, talk to architects more and go through a process for what
17 they're trying to achieve because it's not something that we want
18 to get in the way of, it's really just these criteria that the
19 Board is trying to jump through and basically it's like the
20 problem with the variance is that you can't do it any other way,
21 that's how we then are able to approve of it and so the Board is
22 now saying that there is another way to achieve your goals. You
23 might not have a deck but you might get the access that you
24 require and this is where I think that if you could supply
25 anything to the record about some of the questions that you heard

1 from the Board and Mr. Jesick, if you can provide any further
2 help to the Applicant. I'm stuck. I've got a two on two right
3 now, right, and so I need one more Board member and/or an
4 opportunity to provide more information to my other Board members
5 that are opposed to this that they're meeting the criteria.

6 Mr. Jesick, do you have anything to offer at this point
7 or would you like to work with the Applicant a little bit more?
8 What are your thoughts?

9 MR. JESICK: Well, my thoughts are that, you know, we
10 support the application as is. We're not in a position to be
11 able to design an alternate solution. We are happy to review
12 any information that the Applicant provides. We can't, you know,
13 we're not architects. We can't come up with a solution for them
14 that would satisfy the Board. So, again, we're happy to review
15 any information that's put into the record.

16 CHAIRPERSON HILL: Okay. I mean, Ms. John or Mr. Smith,
17 is there any direction you'd like the Applicant or we can just
18 wait to see what the next Board member has to say?

19 VICE CHAIR JOHN: Well, I realize that there's an
20 expense in hiring an architect to provide testimony to the Board
21 and to provide alternate designs. But there's nothing in the
22 record that convinces me that there isn't another way to have
23 proper egress from the kitchen, especially after reconfiguration
24 and so that's my issue and so it's the Applicant's burden to
25 provide the documentation in the record to support its burden of

1 proof. So I would just leave it at that.

2 CHAIRPERSON HILL: Mr. Smith?

3 COMMISSIONER SMITH: I have nothing to add. I agree
4 with Ms. John. It would be helpful for them to have an architect
5 and that may provide a more convincing, maybe, a more convincing
6 argument. But again, the burden is on them.

7 CHAIRPERSON HILL: Okay, Mr. Huffman. I'm going to
8 leave the record open for something that you may or may not want
9 to submit. There's another Board member that will be coming on
10 soon and I will continue this case for that other Board member.

11 Do you have any questions, Mr. Huffman?

12 MR. HUFFMAN: No, no questions. I guess maybe the one
13 thing, and it probably won't make a difference but I mean,
14 obviously we have an architect that drew all this up. It was
15 drawn up very intentionally the way it was drawn up because there
16 wouldn't be enough room to add stairs with a landing, you know,
17 straight stairs like we have now with a landing adjacent to it
18 because the stairs would extend into the alleyway and I think you
19 can see that by the fact that, a) it was drawn with, you know,
20 with the winding stairs.

21 If we really were just looking for a deck we would have
22 taken that extra three feet, four feet that it took to wind around
23 and just have the deck right up against the existing stairs.
24 That's why we didn't do that because it wouldn't fit which means
25 that so we have to have those winding stairs which means the

1 landing would fall right in the middle of our driveway. You
2 know, again you're going to have posts that are going to be right
3 in the middle of our driveway.

4 So, I mean, in that sense I mean, I can have my
5 architect go back and explain that, you know, put some kind of
6 affidavit or whatever to explain that but it's right there.

7 CHAIRPERSON HILL: Mr. Huffman, I guess if you can ask
8 your architect to supply some type of affidavit to what you just
9 said, okay, that could be helpful to the Board.

10 MR. HUFFMAN: I will do that.

11 CHAIRPERSON HILL: All right. Okay.

12 VICE CHAIR JOHN: Mr. Chairman? Mr. Chairman? I would
13 also like to know why the kitchen cannot be reconfigured to
14 provide proper access to the rear. That's my issue.

15 MR. HUFFMAN: And I, if I may. We did, our architect
16 did supplement, you know, when we filed our, I believe it was
17 our, one of the memos that we filed. I can't remember how, it
18 was the one after the Office of Planning filed their last one or
19 if it was our initial burden of proof but we did. Our architect
20 did, you know, provide a statement. I believe it was Exhibit G
21 where she went through all the various, you know, configurations
22 that we went through and even the Office of Planning did a nice
23 job of kind of summarizing those in their report where it's
24 basically, you know, we went through all the different walls
25 trying to find a different way and the, you know, the cost

1 effective way of doing this was, because our plumbing is in that
2 east corner where we want to move the sink. That was the reason
3 that, you know, that we had to do it that way. You know,
4 everything else, you know, if we moved the sink to the other wall
5 we, again, would have had to run the pipes under the outside and
6 that, you know, that's subject to freezing again and, you know,
7 in addition to the additional cost because then you have to have
8 the plumbing go all the way back to where the drain pipe is on
9 the other side.

10 So that was the reason we didn't do that and we went
11 through various other alternatives that we do it. There was one
12 suggestion that we put in an island. There's no room for an
13 island in that kitchen, you know, and even that, you know, if
14 you have an island, you know, you're talking about, you know,
15 you'd have like pipes going up under the island. So that wouldn't
16 solve the problem.

17 CHAIRPERSON HILL: Where's that exhibit, Mr. Huffman?

18 MR. HUFFMAN: I believe it was Exhibit G to our order.
19 I can pull it up here and --

20 CHAIRPERSON HILL: No, no, just tell me -

21 ZC VICE CHAIR MILLER: It's Exhibit 33, 35. Exhibit
22 35 and it has the, I mean it has the two exhibits 1 and 2 at the
23 back of it that the Applicant was referencing. I think it's
24 Exhibit 35.

25 CHAIRPERSON HILL: Mr. Smith, you had our hand up.

1 COMMISSIONER SMITH: Again, I'm not going to rehash
2 this. Mr. Huffman, yes, the drain line's on the east side of
3 the kitchen but your dishwasher does not butt up against the wall
4 in the corner of that house. You could have stopped the cabinets
5 just past the dishwasher. The sink is closer to your pocket
6 pantry and there's three feet of space on either side of the
7 dishwasher, that way you didn't have to move the door. So I'm
8 just going to lay that out.

9 So, again, if you want to help your case, you need to
10 have an architect that comes down and explains to me and half
11 this Board the reason why the door had to be moved. Because I'm
12 not convinced of that drain line. The drain line stops at the
13 dishwasher.

14 VICE CHAIR JOHN: Mr. Huffman, to be fair I'm looking
15 at my kitchen right now. There's a door to the right and it has
16 a little landing that allows me to egress to my backyard and I
17 would need your architect to explain to me why something like
18 that wouldn't work for you. It's a little four by four landing,
19 doesn't count in terms of lot occupancy and, you know, that's my
20 issue. So if you want to bring your architect down to explain
21 why that can't be achieved then I might find that there's an
22 exceptional condition.

23 CHAIRPERSON HILL: Okay. Well, Mr. Huffman, so you can
24 look back on this hearing and determine what is the best course
25 of action for you and I will leave the record open for anything

1 | you would like to submit or at the next continued hearing and/or
2 | I would submit an and/or if you want to bring the architect and
3 | if there's some way that the architect could explain to either
4 | one of my fellow Board members here how what they're thinking
5 | could possibly be a solution is not practically, you know,
6 | possible. So I'll do that and leave it at that, and Mr. Moy,
7 | can you hear me?

8 | MR. MOY: Yes, I'm here.

9 | CHAIRPERSON HILL: Okay. Great. Mr. Huffman, I'm
10 | sorry to do this to you. I don't know, I think my fellow Board
11 | member might be rejoining at the end of the month and so, and
12 | again, I don't mean to kick you down farther down the road here
13 | but you can see that I'm at an impasse and so I, rather than one
14 | of us switching over to a no just to get you moving along with
15 | your project, you can do whatever you want obviously, I'm going
16 | to continue this hearing.

17 | If Mr. Moy, we did get somebody again I'm hoping at the
18 | end of the month, that means what's our 8th hearing looking like
19 | -- oh, that's my two weeks away -- yes, what's the hearing on
20 | the 8th looking like?

21 | MR. MOY: Did you say November 8?

22 | CHAIRPERSON HILL: Yes.

23 | MR. MOY: We have seven cases that day, so I suspect
24 | that's doable if it allows Mr. Miller's attendance, November 8th.

25 | CHAIRPERSON HILL: Mr. Miller, are you available

1 November 8th?

2 ZC VICE CHAIR MILLER: Yes.

3 CHAIRPERSON HILL: Okay. All right, Mr. Huffman. If
4 you can submit whatever you want to submit by, I mean I'll give
5 you until November 3rd, okay, and then if you think that your
6 architect could provide some information as to why what we're
7 thinking might be possible, is it possible and the reasons why,
8 even if you have to repeat what you, you know, said before, you
9 know, just making it a concise exhibit so it's all there right
10 in front of the Board it would be helpful and, again, it's not
11 something that the Board wants to say no to, it's they're having
12 a problem with the standard which is the practical difficulty,
13 like why you can't do it and so that would be my suggestions.

14 Mr. Huffman, do you have any questions for me before I
15 let us all go?

16 MR. HUFFMAN: No, not at this time. Thank you all for
17 your time.

18 CHAIRPERSON HILL: Okay. Great. All right, Mr. Moy,
19 is that good then? So we'll have submissions by November 3rd
20 and we'll come back here on November 8th?

21 MR. MOY: All right. This will be a continued hearing
22 and are you allowing any supplemental OP reports or not?

23 CHAIRPERSON HILL: Yes, I don't know if OP is going to
24 give me anything more. Mr. Jesick, if you can come up with
25 something, good. You let me know, okay.

1 All right. Okay. I'll close the hearing and the
2 record. We'll see you for a continued hearing on the 8th. Thank
3 you. And, Mr. Miller, you will be joining us again. That's very
4 kind of you.

5 ZC VICE CHAIR MILLER: Okay. Well, enjoy the rest of
6 your BZA day.

7 CHAIRPERSON HILL: Thank you, Mr. Miller, and Mr.
8 Miller, I hope that you and your family are doing well.

9 ZC VICE CHAIR MILLER: Thank you. I hope yours are as
10 well. Thank you.

11 CHAIRPERSON HILL: Thank you. All right.

12 ZC VICE CHAIR MILLER: Bye bye.

13 CHAIRPERSON HILL: Bye bye. Okay. I's only been an
14 hour but I'll try -- hello, Chairman Hood.

15 ZC CHAIRPERSON HOOD: Good morning again everyone.

16 CHAIRPERSON HILL: Good morning. Let's see. I'm going
17 to see if we can take care of a couple, well, we're going to
18 take, well, if it's okay we're going to take care of an issue
19 that I believe I would have liked to do efficiently and then I
20 do think we'll just take a quick five minute break because I need
21 it before we talk about the next one which is very similar to
22 the one we just talked about.

23 So, Mr. Moy, if you could call Application No. 20594,
24 please.

25 MR. MOY: Thank you, sir. Before I do that I might

1 take a couple of seconds to go for the record in reference to
2 today's docket that appeal No. 20921 of 1501 Erie Street
3 Construction, LLC was postponed and rescheduled to February 7th,
4 2024. So other than that then, before the Board for Board action
5 is Application No. 20594 of Nezahat and Paul Harrison. I don't
6 think I need to read the caption but I'll say that the Board had
7 deliberated and voted on this application at its hearing and
8 decision on July 27th, 2022. So I'll leave the rest of that for
9 you, Mr. Chairman.

10 CHAIRPERSON HILL: Okay. Thanks. Thanks, Mr. Moy.
11 Okay. So I went back and reviewed this 20594 and what ended up
12 happening I think is we did not speak to the variance requests,
13 we only spoke to the special exception. We all deliberated and
14 agreed to the special exception and I do not believe that the
15 variance was something that we had intended to approve, but now
16 I just want to take the formal motion to deny the variance relief
17 requested.

18 So unless anyone has any questions, I'm going to go
19 ahead and make motion to approve Application No. 20594 for the
20 special exception to allow a theoretical subdivision and deny the
21 variance relief that was requested as we heard this case and
22 deliberated upon, and ask for a second. Ms. John.

23 VICE CHAIR JOHN: Second.

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

1 MR. MOY: Yes, sir. When I call your name if you'll
2 please respond to the motion made by Chairman Hill to deny the
3 request for the variance relief and this motion to deny the
4 variance was second by Vice Chair John.

5 Zoning Commission Chair Anthony Hood?

6 ZC CHAIRPERSON HOOD: Yes, to the motion.

7 MR. MOY: Mr. Smith?

8 COMMISSIONER SMITH: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Yes, to deny.

11 MR. MOY: chairman Hill?

12 CHAIRPERSON HILL: Yes, to deny.

13 MR. MOY: With no other member participating, Staff
14 would record the vote as four to zero to one and this is on the
15 motion that was made by Chairman Hill to deny the variance relief.
16 The motion to deny was second by Vice Chair John. Those voting
17 to deny the variance is Zoning Commission Chair Anthony Hood, Mr.
18 Smith, Vice Chair John, Chairman Hill. Again, the motion carries
19 on a vote of four to zero to one.

20 CHAIRPERSON HILL: Okay. Before we break actually, I
21 neglected there's an expedited review that Mr. Moy if you could
22 call real quick, please.

23 MR. MOY: Okay. So that expedited review calendar case
24 is Application No. 20977 of Rahul and Mary Aileen Nandi. This
25 is an application pursuant to Subtitle X, § 901.2 for special

1 exceptions under Subtitle D, § 5201 from the side yard
2 requirements, Subtitle D, § 208.7 and the lot occupancy
3 requirements of Subtitle D, § 210.1. Property located in the RF-
4 1B zone at 4439 Alton Place, N.W., Square 1590, Lot 17, and
5 that's all I have for you, Mr. Chairman.

6 CHAIRPERSON HILL: Thanks, Mr. Moy. Okay, you guys.
7 This again is an expedited review for us. I did have a chance
8 to review the record and that in particular the Office of
9 Planning's report that was in support of this application as well
10 as the ANC had submitted their recommendation of support. There
11 are neighbors in support and not that this is all how I believe
12 they're meeting the criteria but after reading their burden of
13 proof, that I also felt was done quite well, I would agree that
14 they are meeting the criteria for us to grant this particular
15 relief. I thought it was relatively straightforward. It does
16 not hurt that they have all the support that they have but I do
17 believe they are meeting the criteria for the side yard
18 requirements of Subtitle D 207 and also the lot occupancy
19 requirements of Subtitle D 210.1.

20 I don't have anything further to comment upon that.
21 Chairman Hood, do you have anything you'd like to add?

22 ZC CHAIRPERSON HOOD: No, I have nothing to add but I
23 would agree exactly that they're meeting the required as Subtitle
24 D 207 as you've already stated, Subtitle D 210.1.

25 CHAIRPERSON HILL: Thank you. Mr. Smith?

1 COMMISSIONER SMITH: I don't have anything to add. I
2 agree with your assessment of this case and will support the
3 application.

4 CHAIRPERSON HILL: Thank you. Vice Chair John?

5 VICE CHAIR JOHN: Thank you, Mr. Chairman. I don't
6 have anything to add and I'm in support of the application.

7 CHAIRPERSON HILL: Okay . Going not make a motion to
8 approve Application No. 20977 as captioned and read by the
9 Secretary, and ask for a second. Ms. John?

10 VICE CHAIR JOHN: Second.

11 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
12 take a roll call, please.

13 MR. MOY: When I call your name if you'll please respond
14 to the motion made just now by Chairman Hill to approve the
15 application for the relief requested. The motion was second by
16 Vice Chair John.

17 Zoning Commission Chair Anthony Hood?

18 ZC CHAIRPERSON HOOD: Yes.

19 MR. MOY: Mr. Smith?

20 COMMISSIONER SMITH: Yes.

21 MR. MOY: Vice Chair John?

22 VICE CHAIR JOHN: Yes.

23 MR. MOY: Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: I am just checking one other thing. Okay.

1 So the staff would record the vote as four to zero to one and
2 this is on the motion made by Chairman Hill to approve. The
3 motion to approve was second by Vice Chair John. Those voting
4 to approve the application Zoning Commission Chair Anthony Hood,
5 Mr. Smith, Vice Chair John and Chairman Hill. No other Board
6 members participating. The motion carries on a vote of four to
7 zero to one.

8 CHAIRPERSON HILL: Thank you, Mr. Moy. Okay, you guys.
9 If it's okay we'll just take a quick ten minutes. Is that fair?
10 We'll come back at 11.

11 (Break.)

12 CHAIRPERSON HILL: All right. Mr. Moy, you can call
13 our next case.

14 MR. MOY: Okay. All right. Thank you, Mr. Chairman.
15 After a quick recess the Board has returned to its public hearing
16 session. The time is now at or about 11:07 in the morning.

17 The next case in the Board's public hearing is
18 Application No. 20928 and this is of Matthew and Sarah Tucker.
19 This application is relief pursuant to Subtitle X, § 901.2 for a
20 special exception under Subtitle E, § 5201 from the rear yard
21 requirements of Subtitle E, § 207.1 and pursuant to Subtitle X,
22 § 1002 for an area variance from the lot occupancy requirements,
23 Subtitle E, § 210.1. Property located in the RF-1 zone at 616
24 7th Street, N.E., Square 860, Lot 135, and the only other thing
25 I have, Mr. Chairman, is that the Board last heard this

1 application at its hearing on September 20th. Participating at
2 that time was you, the Chairman, Mr. Smith and Zoning Commission
3 Chair Anthony Hood and of course if the Vice Chair has read the
4 record, then she would be able to participate. That's all I
5 have, sir.

6 CHAIRPERSON HILL: Okay. Great. Thank you. Vice
7 Chair John, are you up to date on this one?

8 VICE CHAIR JOHN: Yes, Mr. Chairman. I have reviewed
9 the record.

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

13 MR. TUCKER: Matt Tucker and my wife, Sarah, again, the
14 Applicants in question.

15 CHAIRPERSON HILL: Okay, Mr. and Mrs. Tucker. Mr.
16 Kirschenbaum, can you hear me?

17 MR. KIRSCHENBAUM: Good morning. Yes, I can hear you.
18 Jonathan Kirschenbaum with the Office of Planning.

19 CHAIRPERSON HILL: Thank you. Thank you for joining
20 us. Mr. and Mrs. Tucker, what has happened since the last time
21 you were with us?

22 MR. TUCKER: Sure. So actually it seemed before we
23 even concluded the hearing last time I had reached out to Mr.
24 Kirschenbaum on your request to see if there would be anything
25 that could possibly be processed either as a special exemption

1 or anything else we could do and Mr. Kirschenbaum's response back
2 was that given that the RF-1 zone allows lot occupancy only to
3 be increased up to 70 percent by a special exemption because the
4 existing structure is already well above that, anything that we
5 would have to do would have to be processed by a variance and
6 his quote was we can't think of any other ideas for how your
7 proposal could be done either by matter-of-right or by special
8 exemption and we're happy to talk if there's any proposal you
9 would like us to consider.

10 So that takes us to I guess the new Exhibit 31 which
11 would be the burden of proof. We also submitted Exhibit 30, some
12 additional pictures to try and give you a bit better kind of
13 context of what the public view would be of the proposed deck,
14 if that's at all helpful for me to go through, if not I can just
15 move towards the burden of proof.

16 CHAIRPERSON HILL: Either way, why don't you go ahead
17 and go over your burden of proof again if you'd like to.

18 MR. TUCKER: Okay. I mean, the only thing that's
19 changed has been the proposal for an alternative design and it
20 was discussed at length about if there would be some sort of way
21 for us to build some sort of alternative stair structure, if
22 there's a way to make that work and fit in the extremely limited
23 space in with the existing door.

24 So we ran into some trouble with that on just because
25 the space is so limited, if we put a landing in there you cannot

1 build steps straight back out and reach the ground without
2 smashing into the brick garage that's behind there and then we
3 could build a landing and you definitely can't fit there we think
4 just given the fact that it is double doors and they both open,
5 that a landing that would be in front of both of them would be
6 sensible.

7 So we tried to build with just one turn going down to
8 the right in the proposal which would also necessitate a turn,
9 so another landing, and then also building down towards that
10 direction of the property would also necessitate that we move the
11 air conditioning units that are in existence on the place. I
12 mean, that already occupies that entire side of the yard so we
13 would have to build and get rid of those.

14 We kind of set up a couple of price estimates and what
15 sort of cost it would be to move the air conditionings to the
16 roof. Our current estimate for the proposed deck is about \$5,000.
17 Even at the bottom end of everything that we are trying to do,
18 we're looking at at least 15 to 25, if not above because one of
19 the other things that happens when you put air conditioners on
20 the roof is you often have to reinforce the structure itself and
21 knowing our luck with construction projects I'm sure we would be
22 incurring additional cost on that alone. So, I mean, we're
23 looking at anywhere between five and 12 times the price of the
24 project or as originally proposed it to a stairs that would
25 necessitate moving the AC units and using that side of the yard.

1 The other thing to consider, and we hadn't even thought
2 about his until we listened to the last case is given the
3 placement of where the upper double door is and the downstairs
4 staircase is, the right side of that bisects it so that any sort
5 of support beam that would be used to support a landing would
6 block those stairs which would mean we would have to re-excavate
7 and move those concrete stairs coming up from the basement which,
8 you know, would be I'm sure a not fun cost as well to re-concrete
9 and redo all that in the back and given the direction that you
10 point those stairs you either would completely eliminate any sort
11 of usefulness of the back yard any further or would, again,
12 necessitate having to move the air conditioning units if you move
13 them going that direction.

14 So, you know, it brings us back to the same point where
15 we would request that the original project be approved. We would
16 press the same original variances and special exemptions and I
17 know the Office of Planning, you know, didn't agree with our
18 original project but I know that they can, and the Board can also
19 take into account the, you know, inconvenience and hardship that
20 would be felt by the Applicant in addition to the small narrow
21 lot size that we'd outlined at length in the previous hearing as
22 maybe necessitating the confluence of factors presenting the
23 hardship and granting the variance.

24 So that's kind of our pitch. Oh, and the other thing
25 too. For what it's worth I know the light obstruction to the

1 basement unit was a thing that also came up and we submitted as
2 the owners and users of that another letter of support of the
3 project, if that's at all beneficial too.

4 CHAIRPERSON HILL: Okay. Thanks, Mr. Tucker. Before
5 I get to questions, Mr. Young, is there anyone here wishing to
6 speak.

7 MR. YOUNG: We do not.

8 CHAIRPERSON HILL: Okay. All right. Does the Board
9 have any questions of the Office of Planning or the Applicant?
10 Go ahead, Ms. John.

11 VICE CHAIR JOHN: So, Mr. Tucker, I have a question.
12 So you're only short a foot and a half. I mean, you could build
13 a deck that's a foot and a half shorter and that would not count
14 to lot occupancy; right?

15 MR. TUCKER: Yes, that is correct. Unfortunately, the
16 exact same problem arises with that and that is the air
17 conditioning units are too tall and that would require them to
18 be moved back up to the roof and we'd be --

19 VICE CHAIR JOHN: Okay.

20 MR. TUCKER: -- back in the, yes.

21 VICE CHAIR JOHN: All right. So please explain to me
22 if there's an option that takes into account leaving the AC units
23 where they are and maintaining the clearance that you would need
24 to service the AC unit and how wide is that deck, proposed deck?
25 Is it the full length of the house?

1 MR. TUCKER: Yes. The proposal that we submitted is
2 the full width of the house which is 15 feet.

3 VICE CHAIR JOHN: I'm sorry. I didn't hear you.

4 MR. TUCKER: The proposed -- sorry. Yes, width side
5 to side of the deck is the full, a bit not quite the full but
6 almost the full 15 feet of the, I think there's like four inches
7 on either side of the backyard which is --

8 VICE CHAIR JOHN: Okay.

9 MR. TUCKER: -- yes.

10 VICE CHAIR JOHN: And the AC units are to the -- close
11 to the property line?

12 MR. TUCKER: Yes.

13 MS. TUCKER: They take up about like a third of our
14 property.

15 MR. TUCKER: (Indiscernible).

16 VICE CHAIR JOHN: I'm sorry. I'm having difficulty
17 hearing you.

18 MR. TUCKER: If you're looking back out the windows of
19 the house facing (indiscernible) they occupy almost the entire
20 right side of the yard that's bisected by the egress stairs from
21 the basement and they are, I guess yes, pretty close to the
22 property line of our neighbors.

23 VICE CHAIR JOHN: Okay. So there's egress from the
24 basement right now and I understand then that the AC units would
25 occupy about say five feet, to be conservative, to the right of

1 the, looking straight out the back window to the right?

2 MR. TUCKER: Yes, I would say about five by three and
3 a half feet.

4 VICE CHAIR JOHN: Right. So what if, you're already
5 above lot occupancy; right?

6 MR. TUCKER: Yes.

7 VICE CHAIR JOHN: So could you maintain, I guess you
8 would still need relief if you were to maintain the clearance
9 above the AC units so they can be serviced and you would build a
10 landing right over the AC units and then drop the deck down a
11 foot and a half that would be maybe two or three steps to the
12 right or to the other side. Did you consider that option?

13 MR. TUCKER: So (indiscernible) as I try to visualize
14 this if you don't mind if I just kind of repeat your words back
15 to you.

16 VICE CHAIR JOHN: Yes. I'm doing what you suggested.
17 I'm looking at the back of the house. Imagine I'm sitting facing
18 the back of the house.

19 MR. TUCKER: So you would build a landing at the height
20 of the doors that would be six feet by three and then --

21 VICE CHAIR JOHN: Yes.

22 MR. TUCKER: -- (indiscernible), so and then you would
23 go down?

24 VICE CHAIR JOHN: Yes. To the (indiscernible) --

25 MR. TUCKER: (Indiscernible) rest of the, except above

1 the air conditioning units, would you leave that uncovered or
2 would you build that up to the height of (indiscernible)?

3 VICE CHAIR JOHN: Well, the landing would be over the
4 AC units so that you would maintain the clearance and if you're
5 listening to the --

6 MR. TUCKER: Oh, so that would -- I got you. So that
7 would, but that would necessitate us having to move the rear
8 opening of the house --

9 VICE CHAIR JOHN: Okay.

10 MR. TUCKER: -- to get that over there which would be,
11 again, a cost concern for us just having to move that door
12 originally and re-stuccoed the entire house when we had a roof
13 leak and a lot of damage. That would probably be another, I
14 think we paid about 15 to 20 grand to get that project done
15 before. So, again, we're looking at for X the cost of the deck
16 just to move that and then re-stucco the back of the house before
17 we start building landings.

18 VICE CHAIR JOHN: And would you have a sliding door in
19 the middle of the house?

20 MR. TUCKER: A French double door.

21 VICE CHAIR JOHN: Uh-huh, is that what you have?

22 MR. TUCKER: Yes.

23 VICE CHAIR JOHN: Okay. I don't, let me think about
24 that. I don't have any questions at the moment.

25 CHAIRPERSON HILL: Right. Thanks, Ms. John. Mr. Smith?

1 COMMISSIONER SMITH: I think Ms. John may have asked
2 my question. I'm still struggling with the question of a
3 practical difficulty though. You're saying that you can't --
4 could you put in a, you know, curving stair, and you're saying
5 you can't have the stair run above the AC units because you have
6 to move the door. Was there any consideration to, you know, a
7 curving stair in any shape or form?

8 MR. TUCKER: So we did look at doing a curving staircase
9 but because of having to put that landing at the full width we
10 believe of the doors because they both open, like to have that
11 landing there and then build a spiral staircase down, there's no
12 way to really support the other side of the landing but we could
13 with the stairs going the other direction. We would either --
14 we would have to put a big column basically down straight into
15 the egress stairs down below and then we would have to excavate
16 and turn those stairs and likely also have to move the air
17 conditioning unit because the stairs would now be going up that
18 direction.

19 COMMISSIONER SMITH: Okay. So another question. Is
20 this, how wide is the door there now?

21 MS. TUCKER: Six foot.

22 MR. TUCKER: Six feet.

23 COMMISSIONER SMITH: Is this a regular door?

24 MR. TUCKER: It's a double French door.

25 MS. TUCKER: It's, yes.

1 COMMISSIONER SMITH: Oh, so you're putting in french
2 doors? Okay.

3 MR. TUCKER: Yes.

4 COMMISSIONER SMITH: Are you putting in French doors
5 or do they exist now?

6 MR. TUCKER: They exist now.

7 COMMISSIONER SMITH: Okay. Okay. That's all the
8 questions I have for now.

9 MR. TUCKER: Thank you.

10 CHAIRPERSON HILL: Mr. Kirschenbaum, can you hear me?

11 MR. KIRSCHENBAUM: Yes, I can hear you.

12 CHAIRPERSON HILL: Okay. MR. Kirschenbaum, did you
13 watch the first hearing?

14 MR. KIRSCHENBAUM: Well, I attended the first hearing.
15 I guess so.

16 CHAIRPERSON HILL: No, no, no, no. The one where we
17 were talking about --

18 MR. KIRSCHENBAUM: Oh, I'm sorry.

19 CHAIRPERSON HILL: -- (indiscernible) and Mr. Jesick
20 was on.

21 MR. KIRSCHENBAUM: It was in the background. I was not
22 sitting --

23 CHAIRPERSON HILL: Okay (Indiscernible).

24 MR. KIRSCHENBAUM: -- closely.

25 CHAIRPERSON HILL: So there was an argument for, and I

1 know that each case is different and that's correct, there was
2 an argument that was made by the Office of Planning for a
3 confluence of factors concerning why there was a practical
4 difficulty for that applicant putting the deck somewhere else.
5 I think the Board is kind of starting to struggle with the same
6 discussion which is that in that particular case the Office of
7 Planning had an opportunity to look at additional information
8 provided by the Applicant to get to a point where they believe
9 the confluence of factors applied.

10 My question to you, Mr. Jesick, is has the Office of
11 Planning gotten enough information that they can consider a
12 confluence of factors or does the Office of Planning believe that
13 this is, you're holding steady with your original report?

14 MR. KIRSCHENBAUM: For now I think we're holding
15 steady. I mean, it's still hard to get over the first prong of
16 the test which is the, you know, exceptional situation that exists
17 that is unique to this property.

18 I do want to just clarify the record that I believe the
19 conversation earlier was talking about the four foot rule. Am I
20 correct in that if you --

21 MS. TUCKER: Yes.

22 MR. KIRSCHENBAUM: -- did not, okay. So the yard
23 definite -- I do not believe in this case the four foot rule
24 comes into play because the yard definition says no building or
25 structure shall occupy in excess of 50 percent of the yard

1 required by this title. Usually when you see the four foot rule
2 at play it's because it's a much larger yard and whatever is,
3 you know, whatever deck or structure is being proposed is not
4 going to take up more than 50 percent of that yard.

5 So as far as, you know, I understand from reading the
6 Code, you know, I can't speak for what the Zoning Administrator
7 may or may not interpret, but this would not qualify for the four
8 foot rule because the proposed deck would occupy almost 100
9 percent of that required rear yard.

10 VICE CHAIR JOHN: So, Mr. Kirschenbaum, since I raised
11 it I think I was referring to the height of the deck, that if
12 the deck were below a certain height, I think it's four feet, it
13 would not count towards lot occupancy. Are we talking about the
14 same thing?

15 MR. KIRSCHENBAUM: We are, yes.

16 VICE C HAIR JOHN: Okay. So help me understand it
17 because clearly I don't.

18 MR. KIRSCHENBAUM: Yes, sure. There's sort of an
19 obscure rule in the yard definition and the yard definition in
20 Subtitle B ends with, like I said, no building or structure shall
21 occupy in excess of 50 percent of a yard required by this title.
22 So there's the rules about, there's the four foot rule and when
23 that can occupy a yard or an open space, however it cannot occupy
24 more than 50 percent and so over 50 percent, as far as I
25 understand, the four foot rule does not come into play.

1 VICE CHAIR JOHN: So my understanding was that in any
2 yard, any structure that's below four feet regardless of the
3 percentage of the yard occupied, would not count towards the lot
4 occupancy.

5 MR. KIRSCHENBAUM: We can talk to the Zoning
6 Administrator's office if you need further clarification but I
7 don't believe that's the intent of the way the zoning works.

8 VICE CHAIR JOHN: Okay. So that's why I would think
9 that in this case if the Applicant can meet the four foot rule,
10 then he would be short a foot and a half roughly --

11 MR. KIRSCHENBAUM: Right.

12 VICE CHAIR JOHN: -- which would be roughly two steps
13 down. Okay.

14 MR. KIRSCHENBAUM: All right.

15 VICE CHAIR JOHN: Thanks. Mr. Chairman, I don't have
16 any more questions.

17 CHAIRPERSON HILL: Thank you, Vice Chair John. Mr.
18 Smith, do you have any questions or Chairman Hood?

19 ZC CHAIRPERSON HOOD: I don't have any questions, Mr.
20 Chairman. I think -- I don't know if I agree with my colleagues.
21 I don't think I do with the Office of Planning, I mean, unless
22 I'm on -- maybe I'm on he wrong case and I did deal with this
23 case, but I must be looking at another case because when I look
24 at the pictures that were submitted, and I know the BZA's job is
25 to do the deviations from the zoning code, I think this is a

1 textbook case but I know when we write regulations sometimes we
2 don't capture everything and I know it's harder to deal with. So
3 I'm just trying, I'm really trying to understand it because those
4 pictures to me are a thousand words. All this stuff that I'm
5 hearing, and I agree that we've spent a lot of time on it but I
6 think that the Applicant has a very strong case and I'll just
7 leave it at that for now.

8 CHAIRPERSON HILL: Okay. Mr. Smith, you got anything?

9 COMMISSIONER SMITH: No.

10 CHAIRPERSON HILL: Okay. All right. Okay. I don't
11 know where we're going to go with this. We might end up back to
12 where we were a minute ago. Let's see. Okay. I'm going to
13 close the hearing and the record. Mr. Tucker, Ms. Tucker, don't
14 go anywhere. Mr. Kirschenbaum, don't go anywhere and we'll see
15 you guys in a little bit.

16 Okay. I'm conflicted and I'm conflicted enough that I
17 think I know where my colleagues are, or at least two of them or
18 actually I think I know where all three are, but maybe not. I
19 could go either way on this one. I think that there could be an
20 argument perhaps made for a confluence of factors if the Applicant
21 were to submit more information about why they can't again, move
22 the door in terms of a cost or what is the practical difficulty.

23 It's an area variance. They just have to show practical
24 difficulty; right? So this isn't a use variance and it's
25 something I wish I had brought up even on the earlier case that

1 might show more of a practical difficulty or, I'm sorry, that
2 might show more of an exceptional situation which is resulting
3 in a practical difficulty that the Office of Planning perhaps
4 might be able to agree with.

5 In this case that I'm having difficulty is that I recall
6 from the testimony that if they were able to do what they're able
7 to do, it was going to create a stairwell that came up against
8 that back brick wall by three feet and the stairwell and the deck
9 then would also be, and I'm just talking to like different issues
10 of the regulations, but like, you know, whether there's any harm
11 to the public good, you know, the downstairs neighbor who also
12 has said they're in agreement to this, would still have -- all
13 their light and air would still be taken away like if that
14 stairwell was there.

15 I guess the exceptional situation to me is that that
16 brick wall is there and the home is there and if they were to,
17 and I'm just talking to myself whether it's a good argument or
18 not, I mean, I going to see what my fellow Board members have to
19 say. Mr. Smith, do you have an opinion?

20 COMMISSIONER SMITH: I think my position hasn't changed
21 from the last time we've heard this hearing and I will state,
22 you know, up front that, yes, this is an area variance but it's
23 an area variance for an accessory structure. An accessory
24 structure is incidental to being able to use a property. So, I,
25 like Mr. Kirschenbaum struggled with using that first prong and

1 also I would say the second prong. I will also say the third
2 prong. The question is would covering the entire rear yard be
3 detrimental to the public good regardless of the building being
4 completely owned by one owner, is it detrimental to the public
5 good of anyone that lives in that basement unit to lose all their
6 air and light.

7 To that point, there are other remedies that the
8 Applicant can pursue. They could move the entrance from the
9 floor that they live on in order to be able to accommodate a
10 landing and a stair to the ground that does not require them to
11 move their AC units to be able to have access to the rear of
12 their property.

13 I do not believe that, you know, the question came up
14 about a confluence of factors. I think this is a separate
15 situation, completely separate situation from the previous case
16 where they needed to have some form of rear access to be able
17 to, just the way that that's set up, existed there. I don't
18 think that these two are similar, so I agree with the Office of
19 Planning's position on this that it doesn't meet the first prong
20 but I also believe that this doesn't meet the second or third
21 prong.

22 So I'm not supporting the variance.

23 CHAIRPERSON HILL: Okay. Ms. John?

24 VICE CHAIR JOHN: So I'm a little conflicted on this
25 one because, and maybe there isn't enough information in the

1 record. I have looked at this case as another situation where
2 the Applicant could comply by moving, by lowering the deck to
3 four feet but for the need to maintain clearance over the AC and
4 I accept the notion that it would be expensive to move the AC
5 to the roof. I get that, and I understand that it would be
6 costly. But I don't know if there aren't any other options that
7 would not require relief and so, especially since Mr.
8 Kirschenbaum is suggesting that I'm misunderstanding the four
9 foot rule.

10 So that's sort of where I am. I think having that
11 those french doors in the middle of the rear portion of the
12 property complicates the idea of the landing but without proper
13 drawings and without something in the record, I don't really know
14 if that's true. So I could see a confluence of factors argument
15 with the rear door and needing to accommodate the AC units, but
16 that's sort of where I am.

17 So I'd like to hear what Chairman --

18 CHAIRPERSON HILL: No, no, I'm great. I don't know,
19 Chairman Hood, if you have anything you'd like to add?

20 ZC CHAIRPERSON HOOD: I notice you all are using the
21 confluence of factors test and I'm going to use what I'm used
22 to, other policies, and it's pretty much the same thing and I
23 think there are other policies, and I'll say it with you all,
24 your term that you are using, I think there are the confluence
25 of factors because I'm looking at Exhibit 30 and I've been looking

1 at that picture now since previously and I'm like what is it that
2 I'm missing, and I get the argument about be it extraordinary or
3 be it different, you know, I get the first prong. I get that
4 and I was thinking maybe we move, do a full swath of the area.

5 But I believe there is an extraordinary and exceptional
6 situation. I also believe that the exceptional is a difficulty
7 and I don't believe there'd be any detriment to the public good.
8 The problem that I'm having with this is that this is confined
9 to the regulations and I've often said that at sometime when you
10 write regulations you can't capture everything and there are
11 certain situations that I think that need to come outside that
12 box, and this is one of them.

13 I listened to the previous case. I think there's a
14 distinct difference from what you all argued previously to this
15 one and no offense to Mr. Tucker and the family, when they say
16 yard they are not really working with much unless, like the Vice
17 Chair said, we have not exhausted and the additional information
18 will help us get to where we all can meet all the prongs and
19 everybody's on the same page and Mr. Chairman, when I looked at
20 Exhibit 30 I'm wondering what all the discussion's about and I
21 know that regulations are there, but that's what this Board is
22 to do is to deviate from the regulations when they see a situation
23 that has other policies or you all call it confluence of factors,
24 and I believe this is a textbook case.

25 Thank you, Mr. Chairman.

1 CHAIRPESON HILL: Thanks, Chairman Hood.

2 VICE CHAIR JOHN: So, Mr. Chairman, could I ask Mr.
3 Young to pull Exhibit 30?

4 CHAIRPERSON HILL: Sure. Mr. Young, if you want to
5 pull up Exhibit 30, sorry.

6 (Pause.)

7 CHAIRPERSON HILL: Maybe I lost Mr. Young. Oh, there
8 we go. Thanks. Appreciate it. Okay, Vice Chair John.

9 VICE CHAIR JOHN: Could you show the rear? Is that the
10 slide that shows the rear of the property? I believe there's
11 another one with a white picket fence.

12 CHAIRPERSON HILL: I think it's the one just above
13 that, Mr. Young.

14 ZC CHAIRPERSON HOOD: It's the one in the middle. It's
15 the middle, that's the one I've been looking at, Vice Chair.
16 Right there.

17 VICE CHAIR JOHN: Okay.

18 COMMISSIONER SMITH: I think it would have been helpful
19 if the Applicant, it's difficult to see anything going on in the
20 rear yard for me. I think it would be helpful if the Applicant
21 did actually have some pictures from the rear of the house. I
22 understand it's difficult to get there. If that means pointing
23 a camera out the window from their front door, that would be much
24 more helpful but we're looking at the image of not their back
25 yard.

1 CHAIRPERSON HILL: Mr. Young, if you could pull up
2 Exhibit 3.

3 ZC CHAIRPERSON HOOD: (Indiscernible).

4 CHAIRPERSON HILL: (Indiscernible). Pardon me?

5 ZC CHAIRPERSON HOOD: I'm sorry. Go ahead, Mr.
6 Chairman.

7 CHAIRPERSON HILL: Exhibit 3. Now that's where again
8 I saw it. You can see the french doors, you can see the and if
9 you scroll down you can see the air conditioning units to the
10 left of that unit in the basement. But in any case I don't know
11 where I am. I going to have to like think -- I have to think
12 about it regardless of what's going on and --

13 VICE CHAIR JOHN: Yes. So, Mr. Chairman, yes, a floor
14 plan would help to see, you know, the dimensions and where the
15 french doors are because this appears to show the AC units to
16 the left of the structure.

17 CHAIRPERSON HILL: No, that's the one the neighbor's
18 property. Oh, no, no, you're right. I'm sorry. Yes, to the
19 left.

20 VICE CHAIR JOHN: So if I'm facing the rear yard it
21 would be to the right whereas in the other picture it looked as
22 if the AC units were to the left

23 ZC CHAIRPERSON HOOD: Mr. Chairman, I would agree with,
24 all on the part about the pictures I would agree with Board member
25 Smith because I kept looking at the other photo because this one

1 here didn't really show me an expansive view. It showed me --
2 the other ones shows down the street and that was the best and
3 it leaves your own interpretation, and I was trying to
4 interpretate, but I would agree that if the Applicant, and I know
5 they may not be (indiscernible) would be the best to give us a
6 better view of exactly closest as opposed to a street view or
7 down the alley, whatever the case may be, that may be helpful.

8 VICE CHAIR JOHN: And, Mr. Chairman, floor plans would
9 be good for me with dimensions so I could, again, try to
10 understand why the AC units could not be accommodated with a
11 landing and having a four foot high deck with steps to the, you
12 know, with steps. So I'm not totally opposed to the variance
13 because I think I could find that there's a confluence of factors
14 with the right information in the record because, as you
15 mentioned, there's a wall in front of the rear door and I believe
16 that's the garage door, garage at the back, and having the french
17 doors in the middle would be an issue and they need to accommodate
18 the AC, and if the standard is just practical difficulty I think
19 there might be a way but there isn't enough information in the
20 record for me to get there and I think floor plans -- I don't
21 know what other Board members think -- but that's sort of what
22 I'm leaning towards.

23 CHAIRPERSON HILL: Okay. Well, I am very glad that
24 that appeal is not happening today. Now if, I don't know if
25 Exhibit 7, Ms. John, is what you're speaking of.

1 VICE CHAIR JOHN: Okay. Let's look at Exhibit 7.

2 CHAIRPERSON HILL: Mr. Young, if you could bring up
3 Exhibit 7, just that first exhibit there. That's -- yes, you
4 can zoom in Mr. Young. That's the full deck going from the whole
5 back, you know, whatever you want to call it, back yard, whatever
6 that whole thing is. May I leave that exhibit up and then please
7 bring back into the hearing the Applicant and the Office of
8 Planning, and Mr. Young, if you can just let me know when they're
9 both here or I can actually, maybe I can look here, but leave
10 that up, Mr. Young, please.

11 Mr. Kirschenbaum, can you hear me?

12 MR. KIRSCHENBAUM: I can, yes.

13 CHAIRPERSON HILL: Okay. Great. Thanks. I'm going
14 to see if I've got the Applicant back in here.

15 MR. TUCKER: Hello.

16 CHAIRPERSON HILL: I got them. Mr. and Mrs. Tucker,
17 thank you.

18 Mr. Kirschenbaum, you can see the little exhibit;
19 right? So that's the deck that's taking up the whole back
20 whatever you want to, area, right, back yard; correct?

21 MR. KIRSCHENBAUM: Correct.

22 CHAIRPERSON HILL: And, Mr. Kirschenbaum, just so I'm
23 clear because I remember there was a discussion about you could
24 put stairs but the stairs were going to have to be three feet
25 off of that wall. Is that, I mean I know that the Office of

1 Planning is not getting into redesign but I'm just trying to
2 understand the regulations from this picture. Like, what would
3 they be able to do?

4 MR. KIRSCHENBAUM: So they can do a landing that, again,
5 as far as we understand from the Zoning Administrator's office,
6 so zoning says you can provide a landing stair without counting
7 towards yard lot occupancy. The question, so that could be done
8 matter-of-right.

9 The question is how big that landing can be because
10 zoning does not exactly prescribe that. I believe the Zoning
11 Administrator's office sort of relies on the building code, so I
12 believe size of the landing would be four feet in depth and it
13 had to be at least the width of those french doors that are t
14 here. But that I am not, you know, I'm just telling you how I
15 understand it. That's not sort of --

16 CHAIRPERSON HILL: Got it.

17 MR. KIRSCHENBAUM: -- official from the Zoning
18 Administrator.

19 CHAIRPERSON HILL: I got it, and I'll let everybody ask
20 their questions too. Mr. and Mrs. Tucker, can you guys hear me?

21 MR. TUCKER: Yes.

22 CHAIRPERSON HILL: So if you provided a drawing that
23 what you guys could do, right, what you're able to do which is
24 the stairs and the landing there, that might help me understand
25 the exceptional situation that leads to a practical difficulty

1 | if I see what you're able to do and it seems as though it does
2 | lead to an exceptional situation or practical difficulty. That's
3 | something that might help me.

4 | MR. TUCKER: Okay.

5 | CHAIRPERSON HILL: And then in addition to that, it
6 | sounds like if, and I'll let Vice Chair John speak for herself,
7 | actually I'll just let Vice Chair John speak. Vice Chair John,
8 | is there something that you might like to see?

9 | VICE CHAIR JOHN: So what is the height of the deck?
10 | Is it, the proposed deck? Would it be five feet four inches from
11 | the ground?

12 | MR. TUCKER: I believe five foot six inch.

13 | MS. TUCKER: It should be on the last page of this
14 | drawing.

15 | MR. TUCKER: Mr. Young, I believe it is the last page
16 | of this five page exhibit that's currently up.

17 | VICE CHAIR JOHN: Okay. I just wanted to confirm it.
18 | Okay. That's the one that shows it, and let's go back to the
19 | previous diagram with the full length of the deck. Okay. And
20 | the AC units, as I'm looking at this diagram, would be below the
21 | french doors. Is that correct?

22 | MR. TUCKER: Madam Vice Chair, they would be at the top
23 | of this picture so they would be on the window side, not the
24 | french door side of the diagram.

25 | VICE CHAIR JOHN: Okay. And how wide are the french

1 doors again?

2 MR. TUCER: Six feet even.

3 VICE CHAIR JOHN: Six feet. Okay. Okay, so I agree
4 with you, Mr. Chairman. I would like the Applicant to explore
5 what could be done to create a landing that would accommodate the
6 height of the AC units and provide egress from the french doors
7 to help me understand the practical difficulty.

8 CHAIRPERSON HILL: Sure. Mr. Tucker, do you
9 understand?

10 MR. TUCKER: Yes. So just real quick in summary if
11 possible. So if we're able to provide an architectural kind of
12 design of what a full landing six feet across by, correct me if
13 I'm wrong, Mr. Kirschenbaum, by three feet deep is the max we
14 could do or is it --

15 MR. KIRSCHENBAUM: I believe it's four feet.

16 VICE CHAIR JOHN: Four feet.

17 MR. TUCKER: Four feet? We'll try to get you a menu
18 of options then and we can show kind of what that is going to
19 cause us to have to do with that bottom egress staircase and
20 provide kind of the where things are going to run into each other
21 and show what options would be to pursue other alternatives
22 basically. If we're able to show those, and then I believe,
23 Madam Vice Chair, you also requested floor plans. We can provide
24 those. Does this page 1 here satisfy what you need to see?

25 VICE CHAIR JOHN: Yes, it does. I had forgotten that

1 | this diagram was there. Did you have a diagram that shows the
2 | basement egress?

3 | MR. TUCKER: We can get you that.

4 | VICE CHAIR JOHN: There's none right now?

5 | MR. TUCKER: There's not a diagram but in I believe
6 | Exhibit 3 --

7 | MS. TUCKER: Photo 3.

8 | MR. TUCKER: Photo No. 3, you're able to see the
9 | relation of the --

10 | MS. TUCKER: Exhibit 3, photo 3 shows the back of the
11 | house where you can see the lower egress, the HVAC units and then
12 | the --

13 | MR. TUCKER: The foot of the french doors.

14 | VICE CHAIR JOHN: So that --

15 | MS. TUCKER: (Indiscernible) photos 1 and 2 before.

16 | VICE CHAIR JOHN: And that's still functional; right?

17 | MR. TUCKER: Yes.

18 | VICE CHAIR JOHN: Okay.

19 | ZC CHAIRPERSON HOOD: Let me just ask Mr. Tucker, the
20 | Tuckers a question. Is there a way, and first, and I know you
21 | probably mentioned this previously but it just escapes me, is
22 | there a way that you all -- have you exhausted everything to try,
23 | well let me ask it this way.

24 | What you have tried to do will not, it's not feasible.
25 | I mean, if you can try to come into compliance, first it's not

1 doable, it's not feasible. Is that a correct assessment?

2 MR. TUCKER: Yes, that's my understanding and I believe
3 Mr. Kirschenbaum's as well is that any additional structure at
4 this point must be processed as a variance. There's no other
5 option given the lot occupancy.

6 VICE CHAIR JOHN: Unless it's a landing.

7 MR. TUCKER: Sure, I'm sorry. Yes, any, yes. My
8 apologies.

9 ZC CHAIRPERSON HOOD: Is there a way that you could
10 take a better picture because I'm looking like down the street?
11 Is there a way we can get a better picture, maybe back up against
12 the brick? Is there a way we can do something similar with that
13 or do you --

14 MR. TUCKER: We can provide, yes, we'll get multiple
15 pictures. If it's also helpful we'll take the shot from the
16 doors looking down and then we can try to get up on the roof and
17 take a shot from the roof looking down if that's helpful as well.

18 ZC CHAIRPERSON HOOD: Well, I don't know. I'm not
19 going to ask you to get up on the roof because I don't want to
20 come back to a hearing and there was an accident, so if you could
21 just go and do what you can do without going up on the roof so,
22 and I'll leave it at that.

23 Thank you, Mr. Tucker and Ms. Tucker. Thank you, Mr.
24 Chairman.

25 CHAIRPERSON HILL: Thank you. Okay. Anything else

1 that you all might need? I guess if you can --

2 VICE CHAIR JOHN: So I have a question.

3 CHAIRPERSON HILL: That's fine.

4 VICE CHAIR JOHN: I'm sorry. Let's look at that
5 photograph again so I can understand what's happening. So the
6 height of the deck is measured from the top of the terrace; right?
7 Mr. Tucker?

8 MR. TUCKER: Correct, and so I guess the delta from
9 that brick terrace that you can see to the bottom of the french
10 doors in that photo is five feet six inches.

11 VICE CHAIR JOHN: Uh-huh. Okay. And the drain pipe
12 is at the corner of the house?

13 MS. TUCKER: Correct.

14 MR. TUCKER: Yes.

15 VICE CHAIR JOHN: Okay. Thank you.

16 MR. TUCKER: Thank you.

17 CHAIRPERSON HILL: Okay. All right, Mr. Tucker, if you
18 want to go ahead and supply all that stuff and if the Office of
19 Planning would be willing to just take a look at everything that
20 is submitted and if there is any change in opinion concerning a
21 confluence of factors which there may not be, Mr. Kirschenbaum,
22 and since we are doing the same thing here I'm going to ask that
23 everything get submitted in the record by the 3rd. Oh, sure, go
24 ahead, Ms. John.

25 VICE CHAIR JOHN: I wanted to ask Mr. Kirschenbaum.

1 Let's assume, let's look at a scenario where there could be a
2 landing to accommodate the french doors which would be two feet
3 more than that would be allowed, which would be four feet. So
4 the door is six feet wide. Let's say there was to be a landing
5 and stairs from the french doors, if that's a possible design,
6 how much -- what would be the lot occupancy at that, you know,
7 with that configuration? Right now they're at 77 percent. With
8 the full deck they would be a 96.4 percent or maybe close to 100
9 percent. What would they be with just the six by three foot
10 landing to accommodate stairs to the basement?

11 MR. KIRSCHENBAUM: I don't -- I wouldn't know that off
12 the top of my head.

13 VICE CHAIR JOHN: If the Applicant could provide that,
14 right. Assuming that's feasible.

15 MR. KIRSCHENBAUM: But that could be done matter-of-
16 right and not count towards, the landing and stairs does not
17 count towards lot occupancy.

18 VICE CHAIR JOHN: So I thought the landing had to be
19 four feet, not -- this way to get out of the french doors which
20 are six feet wide they would have to have a landing that's six
21 feet wide, not four feet.

22 MR. KIRSCHENBAUM: Right. Sorry, yes, and that is
23 because that is I believe, zoning does not prescribe any standards
24 for that question. The Zoning Administrator relies on the
25 building code and I believe, and again I am not an expert in the

1 building code and I cannot represent the Zoning Administrator,
2 but I believe that a landing serving a door like that would have
3 to be the entire width of the door.

4 VICE CHAIR JOHN: Exactly, which is six feet, not --

5 MR. KIRSCHENBAUM: Right.

6 VICE CHAIR JOHN: -- we're talking about four by three
7 or four by four which is fairly standard I think for a landing
8 based on --

9 MR. KIRSCHENBAUM: Right.

10 VICE CHAIR JOHN: -- what I've seen come before the
11 Board. So what if the Applicant could construct a landing that
12 would provide egress from those french doors which would mean
13 that the degree of the variance relief would be significantly
14 reduced?

15 MR. KIRSCHENBAUM: Well, again, I'm not, maybe I'm not
16 fully understanding the question. I don't think under that
17 scenario that we would be in variance territory.

18 VICE CHAIR JOHN: So that could be matter-of-right.

19 MR. KIRSCHENBAUM: Right. A landing, the stairs, like
20 the landing as far as I understand we can work, the Applicant
21 can contact the Department of Buildings and we can also help
22 them. As far as I understand, again, not an expert, the landing
23 has to be the width of those doors so that's six feet and then
24 it can be a depth of four feet.

25 VICE CHAIR JOHN: Okay.

1 MR. KIRSCHENBAUM: And I just wanted to add one other
2 thing while the Applicant, for the Applicants and exploring for
3 options, as Board member Smith alluded to earlier, you know,
4 there are concerns about the other prongs of the test in terms
5 of, you know, covering an entire rear yard and substantial
6 detriment to the public good and the intent of the zoning
7 regulations, I think, you know, if the argument here is that you
8 need to be able to have usable space outside in the rear of your
9 property, I think it would be helpful to see an option where you
10 could add a deck but it does not cover the entire rear yard and
11 also discuss, you know, why that can't be done.

12 Now of course that would require variance relief but
13 that would provide some open space on your property and, again,
14 I don't like designing in the air but in theory would be, you
15 know, not totally go against the entire intent of the lot
16 occupancy regulation. So if you could provide additional
17 information about that for us to evaluate, that would be very
18 helpful.

19 MR. TUCKER: Yes. What sort of setback do you think
20 is reasonable to consider?

21 MR. KIRSCHENBAUM: You know, I --

22 MR. TUCKER: Because it's still going to be up against
23 those windows and it's still going to be completely blocking that
24 light.

25 MR. KIRSCHENBAUM: Well, but there would still be a

1 little light available down to that yard. I mean, right now
2 under the proposal there would be none at all and that, your rear
3 property line, the majority of it is a brick wall. It's not like
4 there's an open alley there that would provide, you know, what
5 you get from an alley.

6 MR. TUCKER: There's not really light there to begin
7 with because that brick wall is 11 and a half feet tall, but I
8 see what you're saying and we will get you a design that has some
9 sort of setback. I can tell you off the top of my head we're
10 going to run into the issue where it's going to have to be at
11 least five feet long to clear the air conditioning units without
12 having to move them again and that's only an eight foot space
13 and that might need to be a bit longer. But I'll drop something.

14 MR. KRISCHENBAUM: That would be helpful. Thank you.

15 CHAIRPERSON HILL: Okay. Mr. Kirschenbaum was on mute.
16 Okay. Good. So, Mr. Tucker, I guess you could think about what
17 you want to do; right? Again, I can tell you that the variance
18 issue is very difficult for the Board, as you've seen. This has
19 taken, I'm really happy that an appeal didn't happen today, this
20 has taken a very long time for these two cases about this deck,
21 these deck things; right? I shouldn't say deck things.

22 We're here with a variance argument which, again, you
23 know, what is exceptional about your property that's leading to
24 a practical difficulty that is then not going to harm the zoning
25 regulations. Those are the three prongs; right? And you need

1 to prove those things to the Board for us to vote yes; right? If
2 you want to -- I don't know exactly what I would do if I were
3 you and I can't tell you. I'm just thinking this through now.
4 If you were to show the Boar what I just asked for which is the
5 landing and the stairs, right, and then why that is -- why you
6 are and in an exceptional situation that leads to a practical
7 difficulty that's not causing detriment to the public good and
8 the detriment to the public good that I'm also kind of struggling
9 with is that unit in the basement; right? Whether or not that
10 unit agrees to it or not, somebody else will move there and
11 somebody else will be there and they might be, you know, not in
12 the same opinion; right? So I'm just giving you my thoughts;
13 right?

14 And then Mr. Kirschenbaum seems to think, I don't know,
15 but maybe you could still get a deck there but maybe not all the
16 way and not have egress to the bottom, at least that's what I
17 think I'm understanding, and you'll still require variance relief
18 because you are over the lot occupancy but that's maybe something
19 that the Office of Planning could get behind. That also might
20 be an avenue for you to pursue to get back here.

21 I think you've got two votes, I don't know, I don't
22 think you have the votes right now, right, and I don't know if
23 the new person that's coming on will necessarily help your case;
24 right? So you can do what you want to do. You can submit what
25 you want to submit and I'm going to let you have until the 3rd

1 to do that, of November; okay? And then if the Office of Planning
2 at least has been, by the way you're very fortunate that you've
3 gotten to this point meaning Mr. Kirschenbaum's here, the Office
4 of Planning is engaged with this case, the Board dis engaged with
5 this case. I know it takes a long time to get here and it's a
6 lot of, and it's a long process but you're now here. Like, Mr.
7 Kirschenbaum is now, you know, engaged -- I keep using that word
8 -- you're at the front of the line; right?

9 So go ahead and see what happens with the Office of
10 Planning and, Mr. Kirschenbaum, if you want to submit a
11 supplemental report or not, whatever, by the 6th or the 7th of
12 do you need more time to review whatever they may want to submit
13 and if that's the case then tell me how much time you think you
14 might want. If you want like them to give you everything by the
15 27th?

16 MR. KIRSCHENBAUM: I appreciate you asking, Chairman
17 Hill. The 27th is about a week away. I don't know if that's
18 enough time for the Applicants to provide all this additional
19 information.

20 CHAIRPERSON HILL: The 1st?

21 MR. KIRSCHENBAUM: If it is for the Applicants, then
22 we would need about like a week or so to review and write a report
23 and have it reviewed internally.

24 CHAIRPERSON HILL: Okay. So, Mr. Moy, well first Mr.
25 Tucker, do you think you can get me stuff by the 27th?

1 MR. TUCKER: The 27th might be tight but if we can make
2 that deadline the end of the month, the 31st, we could get it in
3 there and the OP would still have a full business or full week
4 to review before the 8th, if that's possible.

5 CHAIRPERSON HILL: Would that be possible, Mr.
6 Kirschenbaum?

7 MR. KIRSCHENBAUM: Yes. If we can file by November
8 7th, as long as the Board has enough time for then to review our
9 report.

10 CHAIRPERSON HILL: Yes. If you file by the 7th then
11 we're going to have a continued hearing here on the 8th anyway
12 so we'll have time to discuss. So you file everything by the
13 31st, Mr. Tucker; right? Then the Office of Planning will have
14 until the 7th to give us something back and then we'll come back
15 here again on the 8th for a continued hearing, if Chairman Hood
16 is available.

17 MR. MOY: He is.

18 CHAIRPERSON HILL: Oh, okay.

19 ZC CHAIRPERSON HOOD: Sorry about that. I couldn't
20 find my mute. That happens sometimes. Yes, I will make myself
21 available.

22 CHAIRPERSON HILL: Okay. All right. So we'll do a
23 continued hearing 11/8. Okay, Mr. Tucker or Mrs. Tucker, do you
24 have any questions?

25 MR. TUCKER: No. We will -- I'll be on the phone with

1 | you, Mr. Kirschenbaum, again as soon as we have designs. We'll
2 | get those photos submitted and the additional documentation, and
3 | thank you again for bearing with us and spending some more time
4 | discussing (indiscernible). But I really appreciate every Board
5 | member's time and attention to our case and really appreciate
6 | everybody, including the Office of Planning, and everybody else
7 | along the way, so.

8 | CHAIRPERSON HILL: Thank you, and Mr. Tucker, my last
9 | -- oh, I'll let Ms. John --

10 | VICE CHAIR JOHN: My question is for Mr. Kirschenbaum.
11 | We've finished with Mr. Tucker.

12 | CHAIRPERSON HILL: Okay. My statement, Mr. Tucker, is
13 | that again whatever gets you possibly to the fastest resolution
14 | is what I would also try to figure out; right? So I'm just saying
15 | like I don't know if you have the votes here one way or the other,
16 | and you're welcome to do whatever you want to do, I'm just saying
17 | I don't know where the votes are right now. Like, you might not
18 | have the votes, but you can see if you can persuade the Board.

19 | Go ahead, Ms. John.

20 | VICE CHAIR JOHN: I wanted to ask Mr. Kirschenbaum a
21 | question on an unrelated matter. Now, I know you didn't listen
22 | to the previous case but my confusion was what's allowed for a
23 | landing with stairs in a situation like this and based on your
24 | testimony today I have been made to understand that this could
25 | be a matter-of-right to have a six foot landing with stairs based

1 on the Zoning Administrator's interpretation.

2 So would you be able to consult with Mr. Jesick on that
3 matter so that the Office of Planning would have a standard
4 policy, I don't want to say standard, a more -- -

5 MR. KIRSCHENBAUM: (Indiscernible).

6 VICE CHAIR JOHN: Yes, you know.

7 MR. KIRSCHENBAUM: I understand what you mean.

8 VICE CHAIR JOHN: Help me understand it a little better.
9 That's good.

10 MR. KIRSCHENBAUM: For sure.

11 VICE CHAIR JOHN: Okay.

12 MR. KIRSCHENBAUM: Absolutely. That makes sense and I
13 totally understand and we can work, you know, try and get
14 something sort of official from the Zoning Administrator's office
15 on that so there's --

16 VICE CHAIR JOHN: Because that case may have gone --

17 MR. KIRSCHENBAUM: -- more information about that.

18 VICE CHAIR JOHN: -- that case may have gone differently
19 because there's the same issue, where to put the egress from the
20 main, from the kitchen so, and how long could that landing be.

21 MR. KIRSCHENBAUM: Right. Sure. We will definitely
22 try to address that as best as we can and I appreciate the
23 question.

24 VICE CHAIR JOHN: Uh-huh.

25 MR. KIRSCHENBAUM: And I wanted to say it's nice to see

1 | you and welcome back to the Board.

2 | VICE CHAIR JOHN: It's good to be back.

3 | MR. KIRSCHENBAUM: Yes. It's good to have you.

4 | VICE CHAIR JOHN: Bye.

5 | CHAIRPERSON HILL: All right. Great. Wonderful.

6 | Okay, on that lovely note closing the hearing and the record.

7 | VICE CHAIR JOHN: No.

8 | CHAIRPERSON HILL: I'm sorry, I'm sorry. Thank you.

9 | Closing this portion of the hearing and leaving the record open
10 | for what I said, for the continued hearing on the 8th. Thank
11 | you, Vice Chair John.

12 | Okay. So I'd like, if we can, just do at least another
13 | case but I really want to take a quick five, ten minute break
14 | again, if that's all right and then I don't know whether lunch
15 | is going to happen. You all can let me know as we kind of go
16 | but at least let's try to do one or more two more and let's just
17 | take a quick five minute break, you know, whenever you all come
18 | back is whenever you all come back but I'm just going to be gone
19 | for a couple of minutes. Thank you.

20 | (Break.)

21 | MR. MOY: After a quick recess the Board has returned
22 | to its public hearing session and the time is at or about 12:16
23 | p.m.

24 | The next case before the Board is Application No. 20964
25 | of CHR, LLC. This is a self-certified application pursuant to

1 Subtitle X, § 901.2 special exception under Subtitle U, § 513.1(r)
2 which would allow a fast food establishment not meeting the
3 requirements for a matter-of-right use under Subtitle U, §
4 512.1(e). The property is located in the MU-5A zone at 1523 to
5 1547 Alabama Avenue, S.E, Square 5912, Lots 819 and 820.

6 The only preliminary matters I have for you, Mr.
7 Chairman, is that the Applicant filed two documents that were
8 blocked because of the 24 hour deadline. It is the circulation
9 plan for the site as well as the Applicant's PowerPoint
10 presentation so that's before you, sir.

11 CHAIRPERSON HILL: Okay. Unless the Board has any
12 issues I'd like to go ahead and allow the items into the record
13 because I don't that those are going to prejudice anyone and I
14 would like to see them.

15 Is the Applicant here, and if so if they could introduce
16 themselves for the record.

17 MR. YOUNG: I'm sorry. Which case did you just call
18 because I had a different one on my list.

19 CHAIRPERSON HILL: I think it's, did you call 20964,
20 Mr. Moy?

21 MR. MOY: Yes, it is. 20964 CHR, LLC.

22 MR. YOUNG: Okay.

23 CHAIRPERSON HILL: Okay Great. That's what I thought.
24 Sorry, Mr. Young, I think I rescheduled or I moved some things
25 around with Mr. Moy.

1 MR. MOY: Yes. I believe this should be Paul Tummonds,
2 Paul.

3 MR. TUMMONDS: Great. Thank you. Can everyone hear
4 me?

5 CHAIRPERSON HILL: Yes. If you could introduce
6 yourself for the record, please.

7 MR. TUMMONDS: Thank you. Good morning members of the
8 Board. I am Paul Tummonds with Goulston & Storrs. Zoning counsel
9 for this application.

10 CHAIRPERSON HILL: Mr. Tummonds, is there someone
11 you're trying to proffer as an expert in traffic engineering?

12 MR. TUMMONDS: Yes. Mr. Zeid, Will Zeid, of Gorove
13 Slade. We've proposed him as an expert in traffic engineering.
14 Mr. Zeid has been previously admitted as an expert by the Board
15 as well as the Zoning Commission, traffic and transportation
16 engineer.

17 CHAIRPERSON HILL: Okay. If Mr. Zeid has done that
18 before and has presented I do not see why he shouldn't be allowed
19 to present his testimony now, so we'll go ahead and allow that
20 to move forward.

21 Mr. Tummonds, if you want to go ahead and walk us
22 through why you believe your client is meeting the criteria for
23 us to grant the relief requested. I'm going to put 15 minutes
24 on the clock. I understand that the staff is dropping your
25 PowerPoint in to the record, but I do believe Mr. Young probably

1 has it so you can begin whenever you like.

2 MR. TUMMONDS: Sure. As I mentioned, Paul Tummons,
3 Goulston & Storrs. I'm joined by Brian Strott of the property
4 owner, William C. Smith, as well as Mr. Zeid. We're here to -
5 we are pleased to present BZA Application which seeks to construct
6 a Dunkin' Donuts store, a Dunkin' Donuts and Basin & Robbins
7 store with a drive through and the existing parking lot at the
8 shops at Park Village Shopping Center along Alabama Avenue, S.E.

9 The Office of Planning recommends approval for the
10 special exception application. The Department of Transportation
11 has no objection to the application and ANC 8C has submitted a
12 resolution of support into the record.

13 Based on these facts, we're willing to give an
14 abbreviated presentation today, mostly because it's an
15 interesting situation. For the drive through all we have to, we
16 have to basically just satisfy the general special exception
17 standards of § 901.2 and so with that, in order to construct this
18 drive through component we're really supposed to show that the
19 drive through use will not -- they will be able to provide
20 adequate queuing lanes on site and that this drive through use
21 will not negatively impact traffic patterns in the immediate area
22 or any adjoining properties.

23 I can have Mr. Zeid go through real quickly the queuing
24 lanes, but truly because of the large size of this site for those
25 who (indiscernible) this is the frontal on the Alabama Avenue,

1 the Giant supermarket is to the rear of this proposed site we're
2 showing here. It is just a sea of parking for lack of a better
3 term. In this sea of parking we're going to propose a new Baskin
4 Robbins and Dunkin' Donuts. The queue lanes will be in the back.
5 We think that this helps animate and activate the Alabama Street
6 frontage and we believe that by satisfying all of the requirements
7 for queuing lanes of Subtitle C, § 716 as well as the layout
8 we've shown here as evidenced by DDOT and OP's support that we've
9 satisfied those special exception standards.

10 So with that I'll have Mr. Zeid really quickly go
11 through how a car coming to this site would be able to access
12 the site, access the drive through, show where they order, where
13 they pick up and then how they leave the site. Mr. Zeid.

14 MR. ZEID: Good. Yes. For the record, William Zeid
15 with Gorove Slade.

16 So as Paul mentioned, we are displacing surface parking
17 with this pad site and if you look on here, so I'll call it the
18 western driveway and the eastern driveway, if you will. So the
19 western driveway, there's currently a little entrance into that
20 parking area right after you turn off the Alabama Avenue.

21 So with this design we'll be closing that entrance to
22 the parking and bringing that drive-by it will go all the way
23 down and around the back where you'll get to the beginning of
24 the, can't see there's a cursor here, the beginning of the
25 driveway lane. So at the sort of the bottom of the image here n

1 the middle, that's where you enter the drive though lane. Now
2 that point there, the nearest driveway on Alabama Avenue is about
3 300 feet away, if you will, so from the back of the queue to
4 Alabama Avenue we have an additional 300 feet within the site.

5 The number of the vehicles that we're showing her eon
6 the screen, this is not the expected queue based on the analysis
7 that we did. We're just showing you how many vehicles we could
8 physically stack in there. Keep in mind this is a design vehicle.
9 Each one of these is equivalent to a Chevy Suburban, so the real
10 storage of this queuing system is even larger than that. So we
11 have room for, I believe it was about 17 vehicles here which is
12 fantastic for a drive through. We usually do not have this much
13 room to work with. So we intentionally oriented the entrance to
14 that at the back so, you know, even though the worst possible
15 case the queue could never reach Alabama Avenue from this drive
16 through.

17 We did do a full comprehensive transportation review
18 study working with DDOT, so we did capacity analyses at nearby
19 intersections. We did a full statistical queueing analysis for
20 the drive through and every thing worked well within the margins
21 for the queueing.

22 MR. TUMMONDS: Great. Thank you, Mr. Zeid. That
23 completes our presentation. We're able to answer any questions
24 that you may have.

25 CHAIRPERSON HILL: Great. Thank you, Mr. Tummonds.

1 I'm going to turn to the Office of Planning and then I'll turn
2 to my Board members.

3 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman and
4 members of the BZA. Maxine Brown-Roberts from the Office of
5 Planning.

6 The Applicant is requesting a special exception review
7 to provide a drive through pursuant to Subtitle U, § 513.1(r) and
8 Subtitle X 901.2. As outlined in our report the intent of the
9 zoning regulations in this case is to mitigate any possible
10 adverse impacts on queuing and any potential impacts on a public
11 right-of-way. As described by the Applicant and also in our
12 report, and also in the DDOT report, we see that the possibility
13 of having any queuing on Alabama Avenue is negligible and that
14 all the queuing can be accommodated on site and therefore would
15 not adversely affect the use of neighboring properties and we are
16 not also recommending any specific conditions.

17 Th Office of Planning recommends approval of the drive
18 through facility. Thank you, Mr. Chairman, and I'm available for
19 questions.

20 CHAIRPERSON HILL: Thank you, Ms. Brown-Roberts. Does
21 the Board have any questions of the Applicant and/or the Office
22 of Planning?

23 ZC CHAIRPERSON HOOD: I do have a quick question, Mr.
24 Chairman.

25 CHAIRPERSON HILL: Okay.

1 ZC CHAIRPERSON HOOD: I have a quick question for Mr.
2 Zeid. First, I appreciate this case. This is much easier than
3 the last case I heard.

4 Let me just ask you this, Mr. Zeid. Yous ay 17 cars
5 and they won't, before we start interfering with Alabama Avenue.
6 Is that correct?

7 MR. ZEID: So, and actually I misspoke. I just pulled
8 the report. It's actually 19 vehicles fit in the queueing system
9 itself. Then we have 300 feet from the back of that before you
10 reach Alabama Avenue.

11 ZC CHARIPERSON HOOD: Okay.

12 MR. ZEID: So a ton of additional space beyond those
13 19 Vehicles.

14 ZC CHAIRPERSON HOOD: And that's not, that's very
15 seldom and I know, I would hope that this is not going to cause,
16 but that's very seldom that would all happen in one time anyway;
17 correct?

18 MR. ZEID: Correct, and those are the design vehicles.
19 So like I said those are Chevy Suburbans.

20 ZC CHAIRPERSON HOOD: Okay.

21 MR. ZEID: So 19 Chevy Suburbans in there.

22 ZC CHAIRPERSON HOOD: Okay. Thank you. Thank you, Mr.
23 Chairman.

24 MR. TUMMONDS: It's when the Secret Service comes and
25 they need their coffee.

1 MR. ZEID: Yes.

2 CHAIRPERSON HILL: All right. Anyone else?

3 VICE CHAIR JOHN: I have a question for Mr. Zeid. So
4 I am having trouble understanding these arrows, so the
5 circulation. So if we put that slide back up showing the 19
6 Chevy Suburbans, the cars would enter from which portion of
7 Alabama Avenue?

8 MR. ZEID: Yes. So the green lines on this map are
9 for vehicle circulation. Blue is the pedestrian (indiscernible).
10 So you can enter from either side. On the left, the driveway
11 that's on the left side of the screen Alabama Avenue, that is a
12 right-in right-out only because DDOT did a bike lane project and
13 actually put a flex post median. So there's no left turns at
14 that on the left side.

15 VICE CHAIR JOHN: Okay.

16 MR. ZEID: The driveway on the right side is full
17 movement so you can do rides-in, rides-out or lefts-in or lefts-
18 out and either one of those you would enter, you would travel
19 south until you get to that east/west drive aisle at the bottom
20 of the street here just off the page and then you would come up.

21 MR. TUMMONDS: (Indiscernible).

22 VICE CHAIR JOHN: Okay. Okay. That's the arrows,
23 that's the movement.

24 MR. ZEID: Yes, yes, yes. So you would go -- you would
25 travel down on those driveways until you reach that east/west

1 drive aisle, then you would turn on to that and at the middle
2 you would come up and there would be arrows and pavement. T
3 here'd be like markings on the pavement like you've seen it at
4 drive throughs saying, you know, drive through aisle this way and
5 there's two lanes initially that merge into a single lane --

6 VICE CHAIR JOHN: Yes

7 MR. ZEID: -- (indiscernible) the system.

8 VICE CHAIR JOHN: Okay. Yes, I got that. All right.
9 Thank you.

10 CHAIRPERSON HILL: Mr. Young, is there anyone here
11 wishing to speak?

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay. Does the Board have anything
14 else before I close? Mr. Tummonds, anything you'd like to add
15 at the end?

16 MR. TUMMONDS: No.

17 CHAIRPERSON HILL: Okay. I'm going to go ahead and
18 close the hearing and the record.

19 I thought this was pretty straightforward. I do
20 believe they're meeting the general standards for the special
21 exception and I also was comfortable with the traffic, not traffic
22 study, the testimony from the traffic engineer and I mean, again,
23 the large number of cars that are available. I don't have any
24 issues with this application.

25 Mr. Smith, may I get your thoughts?

1 COMMISSIONER SMITH: I agree with your assessment of
2 this case, Chairman Hill. I do believe it was a fairly
3 straightforward case. I do believe they meet the standards for
4 us to grant the special exception. I do believe they meet the
5 standards for the MU zone and the bigger issue for me was the
6 queuing issue and make sure that you don't see queuing on Alabama
7 Avenue.

8 So the way that they have designed this site to push
9 circulation deep into the site, that effectively negates any
10 queuing that may otherwise occur on Alabama Avenue. So, and DDOT
11 speaks to that, so I do believe they've met the burden of proof
12 for Subtitle X 901 and will support the special exception.

13 CHAIRPERSON HILL: Thank you. Chairman Hood?

14 ZC CHAIRPERSON HOOD: I don't have anything to add, Mr.
15 Chairman. I think the merits of this case require my approval
16 and I'll be voting in favor of this application. Thank you.

17 CHAIRPERSON HILL: Thank you. Vice Chair John?

18 VICE CHAIR JOHN: This is very straightforward. I
19 thought this was a good presentation and I'm going to give great
20 weight to the Office of Planning's report, and I will be voting
21 in favor of the application.

22 CHAIRPERSON HILL: Thank you. All right. I'm going
23 to make a motion to approve application No. 20964 as captioned
24 and ready by the Secretary, and ask for a second. Ms. John?

25 VICE CHAIR JOHN: Second.

1 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
2 take a roll call, please.

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

7 Zoning Commission Chair Anthony Hood?

8 ZC CHAIRPERSON HOOD: Yes.

9 MR. MOY: Mr. Smith?

10 COMMISSIONER SMITH: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Then staff would record the vote as four to
16 zero to one, the one being no other member participating and this
17 goes to the motion made by Chairman Hill to approve the
18 application. The motion to approve was second by Vice Chair
19 John. Those voting to approve is Zoning Commission Chair Anthony
20 Hood, Mr. Smith, Vice Chair John, Chairman Hill. The motion
21 carries, sir, four to zero to one.

22 CHAIRPERSON HILL: Thank you. Do you guys want to try
23 to do just one more real quick and then we'll take lunch? Okay.
24 All right. Mr. Moy, you can call our next one.

25 MR. MOY: The next case before the Board is Application

1 No. 20950 of Jose Reyes. This is a self-certified application
2 pursuant to Subtitle X, § 1002 from the matter-of-right use
3 provisions of Subtitle U, § 401 which would allow office use in
4 the cellar of an existing row building. The property is located
5 in the RA-2 zone at 1931 15th Street, N.W., Square 205, Lot 42,
6 and let's see. That's all I have, sir.

7 CHAIRPERSON IHLL: Thank you, Mr. Moy. If the Applicant
8 can hear me, if they could introduce themselves for the record.

9 MR. KEARLEY: Yes. Hi, my name is Gregory Kearley.
10 I'm the architect of record and I'm representing the owner for
11 the BZA case.

12 CHAIRPERSON HILL: Okay, Mr. Kearley.

13 MR. KEARLEY: Jose is unfortunately, was unable to make
14 it today because of a work issue. He apologizes but I will,
15 hopefully I will serve him well.

16 CHAIRPERSON HILL: Okay. No problem. Mr. Kearley, if
17 you could just walk us through your client's application and why
18 you believe that they are meeting the criteria for us to grant
19 the relief requested. I'm going to put 15 minutes on the clock
20 so I know where we are and you can begin whenever you'd like.

21 MR. KEARLEY: Thank you. Thank you Board for taking
22 the time today.

23 This is a use variance and it's my understanding that
24 in my speaking with the Office of Planning that they are
25 supporting this and also the ANC has I believe it was unanimously

1 has supported the application. I just wanted to start with that.

2 This use variance is I believe meets the criteria for
3 approval from the Board, 1) that the physical characteristics of
4 the property create an exceptional and undue hardship, 2) that
5 granting the application will not be of substantial detriment to
6 the public good and, 3) granting the application will not be
7 inconsistent with the general intent and purpose of the zoning
8 regulations.

9 So one of the issues here is the physical
10 characteristics and you cannot access from 15th Street the cellar
11 without enter into the first floor. So you have to enter the
12 first floor which there's a Certificate of Occupancy for
13 commercial use to access the cellar. Either you have to go out
14 to the back yard or and then down a step or you have to go through
15 an internal stair into the cellar. Since this is a historic
16 district, there's an impractical difficulty of doing a well in
17 the public space and the historic to create stairs. When you
18 look at the photo, which is part of the exhibit which I had
19 uploaded into the system, there's no way to have a well to access
20 the cellar to make it a residential unit. So with the physical
21 condition that is creating a hardship.

22 I also wanted to make sure everyone understands that
23 this is not a new use that we're asking for, it's an expansion
24 of a continued use. The first floor does have a C of O for the
25 office use and since the cellar can only be accessed via the

1 first floor, we want to have a continued use and expand that use
2 into the cellar level.

3 So when we're looking at the second prong of what we
4 need, that this will not be a substantial detriment to the public
5 good, that goes back to this is not a new use, rather extending
6 the existing use of the first floor to the cellar and then the
7 third thing is that this is not inconsistent with the general
8 intent and purposes of the zoning regulations and map. This is
9 sort of a unique property. It sits at the very end of an RA-2
10 zone district. It's the last building that butts up against an
11 Arts-1 to the north, an Arts-1 to the east and an MU-4 to the
12 west. So it sort of sits at this confluence which every other
13 zone district that we're touching actually allows for this
14 particular use. So by granting this, we do not believe that it
15 is being inconsistent with the general intent of the zoning
16 purposes.

17 So that's an abbreviated summary of why we believe that
18 we should be granted the relief. Again, the ANC has voted and
19 supports this unanimously and Office of Planning I believe, is
20 it Crystal Myers is here today, I've spoken with her and it was
21 my understanding from speaking with Crystal that the Office of
22 Planning supports the variance for the use of the commercial
23 space in the cellar, and I'm glad to answer any questions you
24 may have.

25 CHAIRPERSON HILL: Thanks, Mr. Kearley. Let me get to

1 the Office of Planning first, and then I'll turn to the Board.

2 MS. MYERS: For the record, Crystal Myers for the Office
3 of Planning. We are in support of this application. We thought
4 it was a reasonable request, it's for the cellar, and there are
5 physical aspects to the building that make it, we thought, it
6 meeting the test for variance there being an exceptional
7 situation.

8 So I stand on the record of the staff report, but of
9 course I'm here for questions. Thank you.

10 CHAIRPERSON HILL: Thank you. Does the Board have any
11 questions for the Applicant of the Office of Planning? Okay.
12 I'm going to go ahead and, Mr. Kearley, do you have anything
13 you'd like to add at the end? You're on mute, Mr. Kearley.

14 MR. KEARLEY: Thank you. There had been some talk
15 about why we can't have a residential use in the cellar and one
16 of the main reasons is because you do not have a access from the
17 street and it would not be granted because of life safety issues
18 for code. So we have a practical difficulty that the only use
19 that we really can have in this particular cellar is an extending
20 of the already permitted commercial use on the first floor to
21 then occupy the cellar, and one other thing to note is the intent
22 is not to have multiple tenants but to allow existing tenant or
23 future tenant to have both the floors. It's not that we want to
24 have one tenant because you have to, you actually have to navigate
25 through the one tenant space to get to the cellar.

1 So this is not to have multiple commercial tenants,
2 it's for the existing tenant and future tenant to be able to
3 occupy both of the spaces, and that's it.

4 CHAIRPERSON HILL: Okay. Thanks, Mr. Kearley. All
5 right. Does the Board have anything final they'd like to add?
6 All right. Mr. Kearley, I'm going to go ahead and close the
7 hearing and the record. Thank you very much for taking the time
8 to be with us today. Mr. Young, if you could please excuse
9 everyone from the hearing room.

10 Okay. I thought this was pretty straightforward. I
11 always am a little bit intrigued when we get a use variance that
12 actually gets approved, but the fact that this is -- the argument
13 that the Applicants are making is that it is an existing use on
14 the first floor and there's no way to activate that basement
15 other than what is being proposed is how I believe I can get to
16 the different prongs of the variance test to allow this use to
17 be in the cellar and as the Applicant has stated how could it be
18 used as housing or other uses due to the nature of the building
19 itself.

20 So I'm going to be voting in favor. Mr. Smith, do you
21 have anything you'd like to add?

22 COMMISSIONER SMITH: I don't have anything to add. You
23 know, I agree with you that it is always fascinating that we get
24 to a use variance that we can approve, but I think that they have
25 met the burden of proof for us to grant this use variance given

1 that it's fairly difficult to access this property, the cellar
2 of this property, and I don't believe that in this particular
3 case residential is the best use for the cellar space when the
4 upper floors are already commercial.

5 So I do agree with the assessment laid out by the Office
6 of Planning and will support the application as well.

7 CHAIRPERSON HILL: Thank you. Chairman Hood?

8 ZC CHAIRPERSON HOOD: I don't have anything to add, Mr.
9 Chairman. Thank you.

10 CHAIRPERSON HILL: Thank you. Vice Chair John?

11 VICE CHAIR JOHN: Thank you, Mr. Chairman. It's good
12 to see a good variance case for a change. So I'm in support of
13 the application. I believe it's fairly straightforward. There
14 is an existing Certificate of Occupancy that has office space on
15 the first floor and the tenant is the only one that can access
16 the cellar unit and the Applicant has already shown, has also
17 shown that it's not possible to have residential use on the first
18 floor because of HPRB requirements and code requirements and
19 actually having access to the first floor from the front of the
20 house.

21 So I am in support of the application. I'm going to
22 give great weight to the Office of Planning's report. Thank you.

23 CHAIRPERSON HILL: Thank you, Vice Chair John.

24 All right. I'm going to make a motion to approve
25 Application No. 20950 as captioned and read by the Secretary, and

1 ask for a second. Ms. John?

2 VICE CHAIR JOHN: Second.

3 CHAIRPERSON HILL: Motion made and second. Mr. Moy,
4 take roll call, please.

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

9 Zoning Commission Chair Anthony Hood?

10 ZC CHAIRPERSON HOOD: Yes.

11 MR. MOY: Mr. Smith?

12 MR. SMITH: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: And we have no other members participating,
18 the staff would record the vote as four to zero to one and this
19 is on the motion made by Chairman Hill to approve. The motion
20 to approve was second by Vice Chair John, members voting to
21 approve the application are Zoning Commission Chair Anthony Hood,
22 Mr. Smith, Vice Chair John, Chairman Hill. The motion carries
23 sir, four to zero to one.

24 CHAIRPERSON HILL: Thank you, Mr. Moy. Okay. You guys
25 want to take lunch and we'll try to come back at 1:15? Okay.

1 Thank you.

2 (Lunch recess.)

3 MR. MOY: Thank you, sir. The Board has returned to
4 its public hearing session after lunch recess and the time is now
5 at or about 1:24 in the afternoon.

6 The next case before the Board is application No. 20955
7 of Daryl and Daphne Womack W-O-M-A-C-K. Self-certified
8 application pursuant to Subtitle X, § 901.2. This is for a
9 special exception under Subtitle E, § 207.5 to allow a rear wall
10 extending further than ten feet. Property is located in the RF-
11 1 zone at 744 13th Street, S.E., Square 1045, Lot 129.

12 The preliminary I have for you, Mr. Chairman, is that
13 the Applicant filed an Affidavit of Maintenance within the 24
14 hour deadline so that's for you to allow into the record if you
15 wish, and that's all I have for you, sir.

16 CHAIRPERSON HILL: Thank you, Mr. Moy. Yes, Mr. Moy,
17 if you can go and allow that into the record because I'd like to
18 be able to take a look at it. I don't think it's going to
19 prejudice anyone unless the Board has any issues and if so, please
20 speak up. And if the Applicant can hear me if they could please
21 introduce themselves for the record.

22 MR. TERAN: Good afternoon members of the Board. My
23 name is Eric Teran and I'm the architect.

24 CHAIRPERSON HILL: Hi, Mr. Teran. If you want to go
25 ahead and walk us through your client's application and why you

1 believe they're meeting the criteria for us to grant the relief
2 requested. I'm going to put 15 minutes on the clock there so I
3 know where we are, and you can begin whenever you like.

4 MR. TERAN: Thank you. If, Mr. Young, if you could
5 please bring up the presentation.

6 MR. YOUNG: In the record, what exhibit is it?

7 MR. TERAN: If you could bring up the floor plans and
8 the 3D images, and the sun study.

9 CHAIRPERSON HILL: Do you know which exhibit that is,
10 Mr. Teran?

11 MR. TERAN: I could look right now.

12 CHAIRPERSON HILL: Because I don't have a presentation
13 in the record.

14 MR. TERAN: Yes. I think it's just the individual
15 files.

16 CHAIRPERSON HILL: Well, maybe if you tell us what
17 you'd like to see first.

18 MR. TERAN: Okay. I mean, I guess the floor plans
19 would be the best to start off, please.

20 CHAIRPERSON HILL: Which exhibit, Mr. Teran?

21 MR. TERAN: No. 6. Okay. Architectural plans and
22 elevations.

23 CHAIRPERSON HILL: Yes. All right. Let Mr. Young take
24 a moment.

25 MR. TERAN: Thank you, Mr. Young. So we're basically

1 just adding a screened porch above an existing deck and we're
2 asking for additional four foot eight as to the ten foot rule.

3 Next slide, please. The existing house with its also
4 existing deck, but that back portion is where we're making it
5 into a screened in porch.

6 Next slide, please. And so that on the right side is
7 the screened porch and we can look at the site photos afterwards,
8 but that's basically an existing deck and we're just building on
9 top of it. You can see the adjacent residence above where a 14
10 foot eight past it and so that's why we're requesting that extra
11 four foot eight.

12 Next slide, please. And that's just the roof of the
13 skylight.

14 Next side, please. A side view of the screened porch.
15 Everything basically from the floor is the existing deck and
16 below is existing and we're basically adding on top of that.
17 That's the rear view and the one on the left would be, if we're
18 standing at the dogleg looking back towards the alley.

19 Next slide, please. The view to the left is the view
20 that doesn't go past the 14 foot eight, it actually will be flush
21 with the neighbor to the south and then the north elevation is
22 what the neighbor would be looking at when they're looking south.

23 Next slide, please. And that's just a section of the
24 deck.

25 And then, Mr. Young, if you could bring up the 3D

1 images, Exhibit 10, please.

2 So here you can see what we're proposing on the left
3 and what's matter-of-right on the right and so at the summer
4 solstice there is no additional shading on to the property to the
5 north. As you can see the property to the south here, we're
6 basically flush with that building at their rear façade.

7 Next slide, please. Here at 12 p.m., we are creating
8 a little bit more of a shadow in the summer.

9 Next slide, please. And here any shadow that's being
10 additional. There's really not that much. It's actually more
11 the matter-of-right because we were sticking out closer to the
12 property line.

13 Next slide, please. So this would be the winter. I
14 think this is the most shadow that we'd be casting. As you can
15 see that's on the neighbor's house to the north.

16 Next slide, please. And a little bit more here again,
17 north at 12 p.m.

18 Next slide. And here basically everything's in shadow
19 at 3 p.m. in the winter. So this is what I wanted to show the
20 shadow studies that we're really not causing any more shadows or
21 light issues with the neighbors to the north, and then Mr. Young,
22 if you could bring Exhibit No. 5, just a site photograph. Just
23 so the member of the Board can see the existing deck.

24 CHAIRPERSON HILL: Which exhibit did you say, Mr.
25 Teran, sorry?

1 MR. TERAN: No. 5, colored photographs.

2 CHAIRPERSON HILL: Thank you.

3 MR. TERAN: And while Mr. Young's pulling that up, we
4 have received I think it's seven or eight letters in support
5 including the two adjacent neighbors and also the support from
6 the ANC.

7 And so that's the existing deck that you see back there
8 and we're just proposing to build the screen porch right on top
9 from those elevations that you saw and, Mr. Young, next slide,
10 please just so you guys can see the rest of the backyard and what
11 we're -- what the existing conditions are.

12 Once again, we're just building on top of the deck and
13 next slide, please. Just the stairs.

14 Next slide. So it will just become a screened porch.
15 Nothing else will be changing. Even the structure of the floor
16 will be remaining.

17 Next slide, please. And that's just looking back from
18 the patio to the alley and I think that's it. We have some 3D
19 images as well, but I don't think they're that necessary unless
20 the Board would like to see those, and I'm happy to answer any
21 questions.

22 CHAIRPERSON HILL: Okay. Before I get the questions
23 from the Board, if I could turn to the Office of Planning.

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

1 The Office of Planning is happy to rest on the record
2 in support of this application. We reviewed the application
3 against the criteria of § 5201 and found that it met those
4 criteria. So, again, we are recommending approval, but I'm happy
5 to take any questions.

6 Thank you.

7 CHAIRPERSON HILL: Thank you. Does the Board have any
8 questions of the Applicant and/or the Office of Planning? Okay.
9 Mr. Jesick, I think this was the one, there was some discussion
10 as to whether or not this relief was necessary. So I'm just kind
11 of going to ask again a little bit, like since it's not a
12 conditioned but I think this space could possibly be conditioned
13 at one point, so that's the way I'm kind of looking at it. But
14 do you know, fi the Office of Planning, maybe this is a self-
15 certified application, but do you think the Office of Planning,
16 do you know whether this is needed relief?

17 MR. JESICK: Based on past interpretations that we've
18 gotten from the Zoning Administrator, this would not be required
19 relief but the Applicant has let us know that he was told by DOB
20 that he should seek this relief. But it's possible that the
21 interpretation ahs changed. OP is not aware of that change but
22 we're happy to support this relief in case the Applicant needs
23 it at the time of building permit.

24 CHAIRPERSON HILL: Okay. Got it. All right. Mr.
25 Young, is there anyone here wishing to speak?

1 MR. YOUNG: We do not.

2 CHAIRPERSON HILL: Does the Board have any final
3 questions? Mr. Teran, do you have anything you'd like to add at
4 the end?

5 MR. TERAN: No, thank you. I appreciate your time.

6 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Teran.
7 All right. I'm going to close the hearing and the record.

8 I thought this was pretty straightforward. There was
9 some discussion about whether or not this relief would be
10 necessary because of it not being a conditioned space. However,
11 I think out of an abundance of caution and also if that area were
12 to be conditioned, although I think they would have to come back
13 to us probably for a change. I am also comfortable with the
14 shadow study that was put forward and the analysis that the Office
15 of Planning has provided as well as the support that the ANC has
16 provided as well as the neighbors on either side. So I'm
17 comfortable with the application, and will be voting in favor.

18 Mr. Smith, do you have anything you'd like to add?
19 You're on mute, Mr. Smith.

20 COMMISSIONER SMITH: Can you hear me now?

21 CHAIRPERSON HILL: Yes.

22 COMMISSIONER SMITH: Okay. I don't have anything to
23 add. I'm comfortable with the application as well and will
24 support it.

25 CHAIRPERSON HILL: Thank you. Chairman Hood?

1 ZC CHAIRPERSON HOOD: I too don't have anything to add
2 and I will be supporting this application. Thank you.

3 CHAIRPERSON HILL: Thank you. Vice Chair John?

4 VICE CHAIR JOHN: Sorry. I was trying to unmute. So
5 I'm in support of the application based on the discussion so far
6 as well as OP's statement that this is not conditioned space. So
7 for the purpose of the ten foot rule the measurement would be
8 from the back of the building, not the conditioned space. So
9 I'm in, again, I'm in support and I will vote to approve the
10 application.

11 CHAIRPERSON HILL: Thank you, Vice Chair John.

12 All right. I'm going to make a motion to approve
13 Application No. 20955 as captioned and read by the Secretary, and
14 ask for a second. Ms. John?

15 VICE CHAIR JOHN: Second.

16 CHAIRPERSON HILL: Motion made and seconded, Mr. Moy .
17 Would you take a roll call, please?

18 MR. MOY: Thank you, sir. When I call your name if
19 you'll please respond to the motion made by the Chairman to
20 approve the application for the relief requested. The motion was
21 second by Vice Chair John.

22 Zoning Commission Chair Anthony Hood?

23 ZC CHAIRPERSON HOOD: Yes.

24 MR. MOY: Mr. Smith?

25 COMMISSIONER SMITH: Yes.

1 RR. MOY: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill?

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: With no other members participating, staff
6 would record the vote as four to zero to one and this is on the
7 motion made by Chairman Hill to approve. The motion to approve
8 was second by Vice Chair John. In support of the motion to
9 approve Zoning Commission Chair Anthony Hood, Mr. Smith, Vice
10 Chair John and Chairman Hill. Motion carries, sir, four to zero
11 to one.

12 CHAIRPERSON HILL: Thank you, Mr. Moy.

13 You may call our next case, Mr. Moy. You're on mute,
14 Mr. Moy. Oh, sorry.

15 MR. MOY: No, it's all right. I was contemplating.

16 All right. The next case is Application No. 20957 of
17 Alade Interests, LLC. This is a self-certified application
18 pursuant to Subtitle X, § 901.2 for the following special
19 exceptions; Subtitle E, § 207.5 to allow a rear wall, a rear row
20 building to extend more than ten feet, Subtitle U, § 320.2 to
21 allow conversion of an existing residential building to an
22 apartment house. Property is located in the RF-1 zone at 722
23 Kenyon Street, N.W., Square 2891, Lot 116, and I believe that's
24 all I have for you, Mr. Chairman. I don't have any preliminary
25 matters here.

1 CHAIRPEROSN HILL: Thank you, Mr. Moy. If the Applicant
2 can hear me, if they could please introduce themselves for the
3 record. Can the Applicant hear me? Can you all hear me? Okay.

4 VICE CHAIR JOHN: I can hear you.

5 CHAIRPERSON HILL: Okay. Thank you. Hello? Can the
6 Applicant hear me? Hello, can the Applicant hear me?

7 MR. MOY: I believe, Mr. Chairman, the agent is Adam
8 Crain.

9 CHAIRPERSON HILL: Okay. Maybe Mr. Young can find Mr.
10 Crain. Oh, there we go. Mr. Crain, can you hear me?

11 MR. CRAIN: Can now. Thank you for promoting me.

12 CHAIRPERSON HILL: Great. If you can introduce
13 yourself for the record.

14 MR. CRAIN: Sure. My name's Adam Crain with 2Plys.
15 I'm the architect.

16 CHAIRPERSON HILL: Okay. Mr. Crain, are you choosing
17 not to use your camera?

18 MR. CRAIN: No. I'm still getting set up, it just took
19 a second.

20 CHAIRPERSON HILL: Okay. There you go.

21 MR. CRAIN: I'm not sure why I wasn't promoted. Also
22 the representative of the owners, Jide Alade, may be in. He may
23 be calling in I'm not sure, but he did sign up to testify and I
24 know he was looking to join as well.

25 CHAIRPERSON HILL: Jide Alade?

1 MR. CRAIN: Yes.

2 CHAIRPERSON HILL: Okay.

3 MR. CRAIN: But I can go ahead and present.

4 CHAIRPERSON HILL: Yes. That would be great. Mr.
5 Crain, if you can just walk us through your client's application
6 and why you believe they're meeting the criteria for us to grant
7 this relief that's being requested. I'm going to put 15 minutes
8 on the clock so I know where we are and you can begin whenever
9 you like.

10 MR. CRAIN: Sure thing. I'll be referring to --

11 CHAIRPERSON HILL: Mr. Crain, if you could speak to the
12 whole, there was one discussion about a condition for unit No. 3
13 and if you could speak to that when you're walking through the
14 application that would be helpful. Thank you.

15 MR. CRAIN: Not a problem. I'll be looking at Exhibit
16 No. 31 if we can pull that up. That's the latest architectural
17 plans. There we go. Okay.

18 So this is for 722 Kenyon Street, N.W. This is a three
19 unit special exception for an addition and conversion.

20 If we can go to the next slide, please. It shows an
21 overview of the project. We're doing what I think is referred
22 to as a courtyard scheme in the RF-1 zone with the lot being
23 2,700 square feet providing the required 900 square foot per
24 unit. There would be two units occupying the front building mass
25 and the third unit in the rear past the courtyard connected via

1 a meaningful connection.

2 Next slide, please. These are just some various 3D
3 views of that courtyard and the overviews of the building.

4 Next slide. Showing the site plan here. I believe
5 there is a permit that is approved and in place for a conversion
6 to two units on existing front mass which would be revised if
7 and when this BZA is approved for this connection and the third
8 unit at the rear.

9 We are providing two parking spaces at the rear access
10 via alley with trash situated just in front. I would go ahead
11 and talk about the condition from OP's report. They -- we
12 initially shared a roof deck on that rear unit on the far right
13 and that was removed as a requirement condition so we've already
14 gone ahead and updated the plans that are on the record with that
15 condition so that's been completely addressed.

16 Next slide. Just an overview of some of the layouts
17 here. As I discussed, you know, we have a court yard scheme,
18 two units occupying the front, two at the lower level, one unit
19 one at the lower two levels, one at the upper two levels and then
20 the rear mass would be a four level unit through (phonetic). The
21 ones in front are three bedrooms, the one in the rear is a four
22 bedroom unit.

23 Next slide. Showing color coordinated separation of
24 units.

25 We can continue. Next slide. Shadow studies that were

1 requested as part of the ANC. The ANC has provided a letter of
2 support here.

3 Go to the next slide. Just additional details on the
4 occupancy. We can keep going forward. Floor plans here just
5 showing access to the rear units from the cellar level via an
6 entry corridor.

7 Next slide.

8 CHAIRPERSON HILL: Mr. rain? Mr. Crain?

9 MR. CRAIN: Yes, sir.

10 CHAIRPERSON HILL: Just because I'm curious about that
11 meaningful connection. Like, how does that work with you guys?
12 So people are going downstairs into the cellar and --

13 MR. CRAIN: If we could back up one slide. All right.
14 So we're looking at the cellar floor plan there. Really the rear
15 unit it's accessed from the front and it also has an access from
16 the rear, but from the front we're starting the bottom left hand
17 side of the page there with concrete steps down to the cellar
18 level. We'll be by-passing the lower, unit one is lower level
19 through that long corridor you see working our way right. T
20 here'd be stairs going back up to grade and so if you're looking
21 at this breezeway on the bottom side of this courtyard, we're now
22 moving up to the first floor where you've got a french door exit
23 and a walk-out into that courtyard. So you're kind of dipping
24 down going past the front unit, then coming back up to grade and
25 that (indiscernible). -

1 CHAIRPERSON HILL: It's like, is it a tunnel?

2 MR. CRAIN: Uh-huh. It's going to feel like a tunnel,
3 yes it is.

4 CHAIRPERSON HILL: But the meaningful connection is
5 heated?

6 MR. CRAIN: The meaningful connection is heated, yes.

7 CHAIRPERSON HILL: Yes. Okay.

8 MR. CRAIN: And if you go to the very last slide it's
9 probably the most clear there. There we go. So this shows a
10 section through that area where you'd be going down continuing
11 past this entry area up to where you see windows that would exit
12 into the courtyard. So we try to have all units accessing that
13 little grass area. Then you go up a few more steps to
14 (indiscernible) the first floor there.

15 CHAIRPERSON HILL: Okay. Great. Thank you.

16 VICE CHAIR JOHN: Mr. Chairman, following up on that
17 question. What are the requirements for the meaningful
18 connection again? Doesn't it have to be above ground and
19 conditioned and a common space?

20 MR. CRAIN: I believe it meets all three of those.

21 VICE CHAIR JOHN: Okay. Can you walk me through that
22 again? Not just a (indiscernible).

23 MR. CRAIN: Sure. Not a problem.

24 VICE CHAIR JOHN: Is it part of the building, not the
25 courtyard?

1 MR. CRAIN: Right.

2 VICE CHAIR JOHN: Yes, it is, and so what we're looking
3 at in this section kind of right in the middle where the lowest
4 portion is with those windows, that is, and the section all the
5 way to the right and left, it's common and if we, well if we go
6 back to PDF page 9 which has the detailed floor plan again I can
7 reference.

8 There we go. On the first floor plan on the right hand
9 side, you'll see that shared access corridor that's labelled. It
10 also serves as parking access for the front two units. So they
11 could really walk through that rear tunnel connecting to the
12 front tunnel all the way to the front to access the parking and
13 trash there. So it is common. It is above ground, as you see
14 in the first floor and it is heated in core (phonetic) space.

15 VICE CHAIR JOHN: Okay. All right. Thank you. So
16 the tenants would be, the owners would be walking 54 feet to take
17 the trash out? Just curious.

18 MR. CRAIN: Maybe a little more, all the way to the
19 rear. Yes, and to be fair even if we didn't do this new unit,
20 they'd be having to walk all the way back to the alley anyway.
21 This is, it adds, you know, maybe thirty-forty extra feet to get
22 out there.

23 VICE CHAIR JOHN: Okay. Thank you.

24 CHAIRPERSON HILL: All right, Mr. Crain. Thank you.

25 MR. CRAIN: Sure.

1 CHAIRPERSON HILL: All right. I'm going to turn to the
2 Office of Planning.

3 MR. KIRSCHENBAUM: Good afternoon and hello again,
4 Chair Hill and members of the Board of Zoning Adjustment. I am
5 Jonathan Kirschenbaum with the Office of Planning.

6 We recommend approval of the apartment house conversion
7 in the RF-1 zone and we also recommend approval of the rear wall
8 extension relief as well. Our OP report when it was filed did
9 have a condition about that roof terrace on the top of the third
10 unit in the rear of the property. Since our report as issued,
11 as the Applicant stated, that has -- the plans have been revised
12 to remove the terrace so the condition, you know, I guess it's
13 up to the Board to decide if the condition should still be
14 provided to ensure that that deck doesn't get built, sort of
15 permitting but, you know, it's up to I think the Board to decide
16 what is appropriate.

17 I'm available for questions. Thank you.

18 CHAIRPERSON HILL: Thank you. Does the Board have any
19 questions for the Office of Planning or the Applicant? Mr. Young,
20 is there anyone here wishing to speak?

21 MR. YOUNG: We do not.

22 CHAIRPERSON HILL: Okay. I see Mr. Crain, yes, your
23 client has arrived.

24 MR. CRAIN: Yes. I just wanted to give Mr. Alade, he
25 joined and I think he might have some information. A subdivision

1 that was done, approved, and there was an issue in it being re-
2 issued. I figured he just wanted to make sure this was in the
3 record because it might alter the lot number.

4 CHAIRPERSON HILL: Okay. Mr. Alade, could you
5 introduce yourself for the record, please.

6 MR. ALADE: Yes. My name is Jide Alade and I'm the
7 owner of Alade Interests, the owner of this property. I apologize
8 but I was having some connection issues earlier. I had called
9 in on the phone and could hear you all but you couldn't hear me
10 but I'm now in the Webex and I'm able to hear, you are able to
11 hear me so thank you for that and thank you, Adam, for explaining
12 the project.

13 I also just wanted to mention that there was a slight
14 issue with the lot numbers and we had done a subdivision to make
15 this lot 2,700 square feet by adding 19 square feet, transferring
16 19 square feet from the adjacent lot to make this meet the
17 requirement and there was an issue with the recording, so the
18 Office of the, Surveyor's office and the Office of Tax and Revenue
19 and the -- did (indiscernible) they are doing a correction as we
20 speak basically, and I understand that there's going to be new
21 lot numbers that will be issued and I know this, the lot number
22 that's on this record is 116. So it's most likely going to be a
23 new lot number so I just wanted that to be in the record. They
24 had suggested that (indiscernible) --

25 CHAIRPERSON HILL: Mr. Alade. Mr. Alade, you're

1 breaking up. All I heard is they suggested.

2 MR. ALADE: (Indiscernible) wanted to explain that.
3 Are you able to hear me now?

4 CHAIRPERSON HILL: Now we can. I just, when you were
5 talking about the lot number. Mr. Alade?

6 MR. ALADE: Yes, yes, I am here. So basically what I
7 was saying was that there's going to be a new lot number. It's
8 not going to be 116 because the subdivision, the old subdivision
9 that was done is basically cancelled and it's being changed to a
10 new subdivision so it's going to be issued a new lot number. So
11 I just wanted to mention like the lot 116 is going to cease to
12 exist once the new lot number is entered into the record.

13 CHAIRPERSON HILL: Okay. I don't know, Mr. Alade, how
14 that affects the Board or I guess that would be something that
15 would happen during permitting or, Mr. Crain, you don't know.
16 Oh, sorry, go ahead, Mr. Kirschenbaum.

17 MR. KIRSCHENBAUM: No, I just -- and this is new
18 information to us as well. It does impact the Board in the sense
19 that the special exception for the apartment house conversion
20 requires a certain amount of land area. So I just want to make
21 sure that, you know, the Board knows that it's a, whenever
22 approval is given, whenever a new lot's done needs to have 2,700
23 square feet of land area.

24 I think the Board can sort of -- I think as a safeguard,
25 the Board could provide a condition in the order to require that

1 | there's 2,700 square feet of lot area to alert the reviewers at
2 | the Department of Building that that, you know, otherwise the
3 | reviewers at the Department of Buildings are going to see a short
4 | order that's just going to say special exception relief was given
5 | from the apartment house conversion and it probably would likely
6 | just leave it at that. Not to say that the Applicant won't do
7 | the right thing but to ensure that this property has the correct
8 | land area since what you are reviewing and approving is connected
9 | to the land area of the property.

10 | CHAIRPERSON HILL: That's fine. So it's 2,700 square
11 | feet?

12 | MR. KIRSCHENBAUM: Correct.

13 | CHAIRPERSON HILL: Okay. Mr. Alade, what did you say?

14 | MR. ALADE: I was going to say that that's perfectly
15 | fine and that's basically what we were going to suggest, that
16 | please make a condition such that there's no ambiguity moving
17 | forward. So thank you very much (indiscernible).

18 | CHAIRPERSON HILL: Okay. All right. Okay, t hanks,
19 | Mr. Alade. Does the Board have any questions of anyone? All
20 | right. I'm going to go ahead and close the hearing and the
21 | record. Please excuse everybody, Mr. Young.

22 | Mr. Smith, since I've been talking for like hours, you
23 | talk.

24 | COMMISSIONER SMITH: (Indiscernible). I didn't have
25 | any major issues with this particular case. I do believe that

1 the Applicant has met the burden of proof for us to grant special
2 exceptions in order for them to construct the third story with
3 the roof deck addition.

4 I do agree with some of the concerns raised by the
5 Office of Planning and I am also in support of that one condition
6 that they raised in their staff report to include, to ensure that
7 they would be building in accordance with what they proposed in
8 accordance with the architectural plans as shown in Exhibit 27.
9 So, like I said, I'm fairly comfortable with this one when I
10 reviewed it and listening to the testimony.

11 CHAIRPERSON HILL: Okay. I'd also want to put the
12 condition in about unit No. 3 just so there's no ambiguity again
13 about the roof deck. Let's see. Chairman Hood?

14 ZC CHAIRPERSON HOOD: I don't have anything else to
15 add. I think under Subtitle E 207.5 as well as Subtitle U 320.2
16 and special exception of 901.2 I have no problems with, I think
17 It meets it. The only issue that I have is a concern about the
18 lot changes. As long as it doesn't change anything that they
19 (Indiscernible) I don't have any issues. I just, I'm sure that
20 our legal folks will make sure that the lot, and it sounds like
21 just the lot number's going to change, the 116 and maybe 145.

22 So I don't think that's an issue as long as that
23 remains, everything just remains the same. Thank you, Mr.
24 Chairman.

25 CHAIRPERSON HILL: Thank you, Chairman Hood. Vice

1 Chair John?

2 VICE CHAIR JOHN: I have nothing to add. I agree with
3 OP's analysis and the comments so far and the recommendations
4 with respect to the conditions, although the rule is that the
5 Applicant has to build according to the plans that are submitted
6 in the record. It wouldn't hurt to add the condition just as a
7 heads up to Department of Buildings. Thank you.

8 CHAIRPERSON HILL: Okay. Thank you. Thank you all.

9 I'm going to make a motion to approve Application No.
10 20957 as captioned and read by the Secretary including two
11 conditions, one that there will not be a terrace or recreational
12 space on the roof of the rear portion of the building containing
13 unit No. 3 and that there is at least 2,700 square feet of lot
14 rea and that the drawings are drawn to Exhibit No. 27
15 specifications, and ask for a second. Ms. John?

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: The motion has been made and second.
18 Mr. Moy, could you take a roll call?

19 MR. MOY: Thank you, Mr. Chairman. Before I take the
20 roll call can I ask one question about the two conditions that
21 you're proposing? In the first condition you referenced plans
22 that are shown on which exhibit number, was it Exhibit 31?

23 CHAIRPERSON HILL: Exhibit 27.

24 MR. MOY: It's 27?

25 CHAIRPERSON HILL: No, wait.

1 MR. MOY: Will you double check that, sir?

2 CHAIRPERSON HILL: Yes, sorry. I think Mr. Smith might
3 have said 27. I think the most recent one it's our 31. Yes, 31.
4 Exhibit 31.

5 MR. MOY: Very good. Okay, so when I call your name
6 if you'll please respond to the motion made by Chairman Hill to
7 approve the application for the relief requested along with the
8 two conditions as cited in his motion. The motion to approve
9 was second by Vice Chair John.

10 Zoning Commission Chair Anthony Hood?

11 ZC CHAIRPERSON HOOD: Yes.

12 MR. MOY: Mr. Smith?

13 COMMISSIONER SMITH: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: Having no other Board members present, staff
19 would record the vote as four to zero to one and this is on the
20 motion made by Chairman Hill to approve, plus the two conditions
21 as cited in his motion. The motion was second by Vice Chair
22 John. Those members voting to approve the application is Zoning
23 Commission Chair Anthony Hod, Mr. Smith, Vice Chair John and
24 Chairman Hill. The motion carries sir, four to zero to one.

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

1 our next case when you get a chance

2 MR. MOY: The next case is Application No. 20956 of
3 Rachel Kahn K-A-H-N and Corey O'Brien. This is a self-certified
4 application pursuant to Subtitle X, § 901.2, special exception
5 under Subtitle E, § 5201 from the lot occupancy requirements of
6 Subtitle E, § 210.1. Property located in the RF-1 zone at 1216
7 Constitution Avenue, N.E., Square 1010, Lot 63.

8 The preliminary for you, Mr. Chairman, is that the
9 Applicant filed documents within our 24 hour block prior to the
10 hearing. One is a set of color photographs. I can't tell if
11 it's of or from the alley as well as the Applicant's PowerPoint
12 presentation. Thank you.

13 CHAIRPERSON HILL: Okay. If the Applicant can hear me,
14 if they could introduce themselves for the record.

15 MR. BOYETTE: Hi, this is --

16 CHAIRPERSON HILL: Hello? Sorry.

17 MR. BOYETTE: Good afternoon. This is Joe Boyette,
18 architect and agent for the Applicant, for the owner.

19 CHAIRPERSON HILL: Okay. Unless the Board has any
20 problems I'd like to go ahead and those exhibits into the record
21 so the Board may take a look while the presentation is moving
22 forward. Mr. Boyette, I guess if you could walk us through your
23 client's application and why you believe they're meeting the
24 criteria for us to grant the relief requested. I'm going to put
25 15 minutes on the clock so I know where we are and you can begin

1 whenever you like.

2 MR. BOYETTE: thank you. If you could put up Exhibit
3 24 which is the slideshow presentation which is just reformatted
4 plans and elevations from the application.

5 The subject property is on the north side of
6 Constitution Avenue.

7 Next slide. On the left is the existing condition and
8 on the right is the proposed condition. The home has an existing
9 one story addition on the back of the original home. That
10 addition is not within the rear yard but it does bring the lot
11 occupancy to 62.8 percent. The proposal on the right side is to
12 enclose a portion of the dogleg on the first floor only which
13 would increase the lot coverage by 56.7 square feet or 4.3 percent
14 and that would bring the total lot occupancy to 67.1 percent.
15 The rear wall of the proposed addition would sit back from the
16 neighbor's rear wall 2.4 inches and it would sit back 35 feet
17 seven inches from the rear property line.

18 Next slide. These are a view of the front of the home
19 and some views of the rear of the home and that dogleg which
20 currently has a fence at the, you know, on the open end of it
21 and then a view into the dogleg there.

22 Next slide. The existing, you know, the reason for the
23 addition is the cramped nature of the kitchen, mechanical room
24 and powder room in the back of the home so that's the existing
25 condition. On the right is the upstairs where there are

1 essentially three bedrooms and a bathroom.

2 Next slide. On the left showing an actual usable
3 kitchen, powder room and mechanical room, you know, tucked under
4 to one side and maintaining the three bedrooms on the second
5 level.

6 Next slide. This just shows the rear elevation. So
7 the one story addition infilling the dogleg with similar
8 materials. One window facing the rear yard. Skylights to bring
9 in a little bit more natural light into that space. The project
10 will not cast any shadows on the neighbor's property. There's
11 no issue as the façade is set back from the neighbor and the
12 addition is first story only and the possibility of it being
13 enclosed in the future is unlikely, like to be -- the possibility
14 of someone enclosing it on the second level is actually unlikely
15 because you would lose the middle bedroom which would turn the
16 house into, you know, from a three bedroom to a two bedroom so
17 that's pretty unlikely.

18 The project was approved by the ANC and it was approved
19 at the staff level by Historic, and that is it for my
20 presentation. If you have any questions, I'm available.

21 CHAIRPERSON HILL: All right. Thanks, Mr. Boyette.
22 Let's see. I'm going to first turn to the Office of Planning.

23 MS. THOMAS: Yes. Good afternoon, Mr. Chair, members
24 of the Board. Karen Thoams with the Office of Planning and we
25 will rest on the record of our report. Thank you.

1 CHAIRPERSON HILL: All right. Great. Does the Board
2 have any questions for the Applicant or the Office of Planning?.

3 VICE CHAIR JOHN: Just one question for the architect
4 as a point of information. So why would you lose the second
5 floor bedroom if you (indiscernible)?

6 MR. BOYETTE: The middle bedroom?

7 VICE CHAIR JOHN: Yes.

8 MR. BOYETTE: The middle bedroom only has a window into
9 the dogleg and so if you enclose the dogleg on the second level
10 that's no longer a bedroom because it doesn't have egress out of
11 the house.

12 VICE CHAIR JOHN: Okay. Got it. Thank you.

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

15 MR. YOUNG: We do not.

16 CHAIRPERSON HILL: Is that the O'Brien's I see there?
17 Would the O'Brien's like to introduce themselves?

18 MR. O'BRIEN: Sure. Corey O'Brien.

19 MS. KAHN: I'm Rachel Kahn. Nice to meet you.

20 CHAIRPERSON HILL: Okay, there you go. You waited so
21 long you might as well say hello. All right. Let's see. Okay.
22 Anyone else have any questions? All right. I'm going to go a
23 head and close the hearing and the record. Thank you all for
24 coming.

25 Okay. I mean, I think that the Applicant has met the

1 criteria for us to grant the relief requested. I didn't have
2 any issues with the special exception and any of the subtitles
3 or any of the criteria under those subtitles. I think that the
4 filling in of that dogleg on that first floor is pretty nominal
5 in terms of what they're trying to increase. I do note that CHRS
6 was in opposition and their opposition was that they were filling
7 in the dogleg that other properties had doglegs for. However, I
8 think that since they're only filling it in on that first floor
9 it's something that I'm comfortable with and that HPRB I guess
10 is in the staff level comfortable with the project.

11 So I'm going to, and then the ANC was also in support
12 as I may note as well as again the Office of Planning's
13 recommendation and their report that's in the record. So I'm
14 going to be voting in favor. Mr. Smith, do you have anything
15 you'd like to add?

16 COMMISSIONER SMITH: I have nothing to add. I agree
17 with your assessment and the Office of Planning's assessment of
18 this case. I note that the ANC is in support of the application
19 and I will support it as well.

20 CHAIRPERSON HILL: Thank you. Ms. John?

21 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have
22 nothing to add. I think it's a straightforward case.

23 CHAIRPERSON HILL: Thank you. Chairman Hood?

24 ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman. I
25 would agree with everything I've heard and I'll be voting in

1 support of the case. I did pause on the CHRS. I do have a lot
2 of respect for Chair Alberti but I believe that this case warrants
3 us to continue, and I would agree with your assessment about it
4 since it's only first floor.

5 Thank you, Mr. Chairman.

6 CHAIRPERSON HILL: Thank you, Chairman Hood.

7 All right. I'm going not make a motion to approve
8 Application No. 20956 as captioned and ready by the Secretary and
9 ask for a second. Ms. John?

10 VICE CHAIR JOHN: Second.

11 CHAIRPERSON HILL: The motion is made and seconded.
12 Mr. Moy, if you can take a roll call, please?

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

17 Zoning Commission Chair Anthony Hood?

18 ZC CHAIRPERSON HOOD: Yes.

19 MR. MOY: Mr. Smith?

20 COMMISSIONER SMITH: Yes.

21 MR. MOY: Vice Chair John?

22 VICE CHAIR JOHN: Yes.

23 MR. MOY: Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MR. MOY: We have no other Board members. Staff would

1 record the vote as four to zero to one and this was on the motion
2 made by Chairman Hill to approve. The motion to approve was
3 second by Vice Chair John. Members voting to approve the
4 application Zoning Commission Chair Anthony Hood, Mr. Smith, Vice
5 Chair John and Chairman Hill. The motion carries, sir, four to
6 zero to one.

7 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.
8 If we can just take a quick five minute or so break, everyone
9 just go ahead and take a little break for themselves and come
10 back when they can. Thank you.

11 (Break.)

12 CHAIRPERSON HILL: All right. Mr. Moy, can you hear
13 me?

14 MR. MOY: Yes, I can.

15 CHAIRPERSON HILL: I believe Vice Chair John had to
16 leave so there will just be the three of us and you may call our
17 next case when you get an opportunity.

18 MR. MOY: Okay. So the Board has returned to its public
19 hearing session and the time is now at or about 2:22 in the
20 afternoon.

21 The next case before the Board is Application No. 20960
22 of SV Real Estate, LLC. This is a self-certified application
23 pursuant to Subtitle X, § 901.2, special exception under Subtitle
24 H, § 6007.1(e) to allow a fast food establishment use. Property
25 located in the NMU-4/H-A. Property located at 1244 and 1246 H

1 Street, N.E., Square 1003, Lot 180.

2 Preliminary matters for you, Mr. Chairman, is that the
3 Applicant filed a waiver for the late filing under Exhibit 23 but
4 within the 24 hour deadline prior to the hearing there is an
5 Office of Planning supplemental report, and I believe I've
6 covered everything.

7 Thank you.

8 CHAIRPERSON HILL: Okay. Thanks. I would like to see
9 the Office of Planning's report if they could please add that in
10 to the record, Mr. Moy. If the Applicant can hear me, if they
11 could introduce themselves for the record, please.

12 MR. SULLIVAN: Yes. Thank you, Mr. Chairman and members
13 of the Board. My name is Marty Sullivan here on behalf of the
14 Applicant.

15 CHAIRPERSON HILL: Great. Thank you, Mr. Sullivan.
16 Mr. Sullivan, if you could walk us through your client's
17 application and why you believe that they are meeting the criteria
18 for us to grant the relief requested. I'll note also I guess if
19 you could kind of speak to that, the brick wall lot line issue
20 that I think there was some submissions about that, if I'm not
21 mistaken and if that you can speak to during your presentation,
22 and I'm going to put 15 minutes on the clock so I know where we
23 are and you can begin whenever you like.

24 MR. SULLIVAN: All right. Thanks. And also there's
25 some others with me here. I don't know if they're up on the

1 panel but Jim Cronenberg is the architect for the project and Dan
2 Ward is with the Applicant.

3 CHAIRPERSON HILL: Okay. Great. Let me see. Mr.
4 Cronenberg, you want to introduce yourself for the record.

5 MR. CRONENBERG: My name's Jim Cronenberg. I'm with
6 Grupo 7 Architecture + Interiors and we're the architects for the
7 project.

8 CHAIRPERSON HILL: Great. Mr. Ward, you want to
9 introduce yourself for the record.

10 MR. WARD: Yes, I'm Dan Ward. I'm the project manager
11 for the Applicant and Angel Barnwell is also on the call. She
12 is with the Applicant as well.

13 CHAIRPERSON HILL: Okay, Ms. Barnwell, you want to
14 introduce yourself for the record.

15 MS. BARNWELL: Hi. Good afternoon. My name is Angel
16 Barnwell and I am the director of business engagement for Slutty
17 Vegan.

18 CHAIRPERSON HILL: Okay, great. Great, Ms. Barnwell.
19 Nice to meet you and I'm glad that we're able to get that name
20 right out of the way right at the beginning.

21 Okay. Mr. Sullivan, you can go ahead and begin whenever
22 you like.

23 MR. SULLIVAN: Thank you, Mr. Chair. If we could have
24 the PowerPoint loaded, please.

25 Next slide, please. So the property is located in the

1 newly renamed MU-4/HA zone district and the 1244 H property is
2 improved with an existing two story row building and 1246 H
3 adjacent to it is vacant and the Applicant owns the property.
4 They intend to operate Slutty Vegan. It's a chain casual dining
5 fast vegan burger restaurant and the Applicant is proposing to
6 combine the two lots, slightly expand the first floor of the
7 existing building and locate the restaurant in the building.

8 So special exception relief is required for fast food
9 establishments in this zone. The 12 inch brick wall, I think
10 I'll wait until the end to get into the brick wall issue and then
11 I'll note that ANC has voted unanimously in support.

12 I'd like to go to slide 8, I think it is, or 6 maybe.
13 Slide 6 for the narrative.

14 Next slide. So I have, these are some notes about the
15 operation and the organization and Angel can speak to this as
16 well if you have questions about the operation. Slutty Vegan is
17 a Black and woman owned vegan burger restaurant founded in 2018
18 by Pinky Cole from Baltimore. The restaurant is not your typical
19 fast food. It should be considered casual dining or fast casual.
20 There's currently six locations in the Atlanta market, two in New
21 York City, one in Birmingham, Alabama and there's also locations
22 opening in Baltimore now and in Houston.

23 The restaurants are not franchises since all the
24 locations are owned and operated by Slutty Vegan, Inc. The
25 restaurant locations are typically take-out only. This location,

1 and a note of clarification here, was going to have some small
2 outdoor covered seating area but it's not now because of building
3 code issues with number of bathrooms and Jim can talk about that,
4 if there's any questions about that. So there won't be seating
5 on the outside and then if you have any other questions about
6 the use, Ms. Barnwell can speak to that.

7 So I'd like to go back to the second slide. Well, I'll
8 talk about the brick wall now. So there's a condition that states
9 if any lot line of the lot abuts an alley containing a zone
10 district boundary line for a residential zone, which we do, a
11 continuous brick wall of at least six feet high and 12 inches
12 thick shall be constructed and maintained on the lot along the
13 length of that lot line. The brick wall shall not be required
14 in the case of a building that extends for the full width of its
15 lot. So this building, if we could go to the next slide, please.

16 You'll see that it does not extend for the width of the
17 lot as it will be combined. Subject property is the vacant lot
18 on the right and the building on the left. So we're subject to
19 this requirement. The preference was to have a roll-up door in
20 that brick wall to allow for vehicular access in addition to
21 removal of dumpsters for trash collection and then that's still
22 preference actually.

23 But in discussions with the Office of Planning it was
24 determined that that maybe does not meet the definition of
25 continuous brick wall to have a larger door. But that having a

1 door as proposed now, which was our late submission, that four
2 foot wide door, meets the spirit and intent of the continuous
3 brick wall. We don't think that same continuous brick wall meant
4 to mean there was no access through the wall and in this case we
5 need it for trash collection specifically.

6 We've proposed that four foot wide door. I've since
7 discovered that that would prohibit dumpsters. It would allow
8 for individual containers of trash. If we were going to use a
9 dumpster we would like a six foot wide door and so if, so I'd
10 like to have further discussion with the Board on that at the
11 end of this to see if it's possible to have a six foot wide door
12 and have that still meet the definition of continuous brick wall
13 so that we can have dumpster collection at least.

14 So, next slide please, and I'll turn it over to Jim,
15 if Jim you could talk about the location and go through your
16 plans. Thank you.

17 MR. CRONENBERG: So as Marty stated, the subject
18 property is formerly two properties combined into one, so 1244
19 plus 1246 which is the vacant lot on the right.

20 Next slide, please. Existing property is a two story
21 building, two story townhouse style building with at one point a
22 garage added to the rear that brings it almost to the rear lot
23 line and you see, you know, reinforced chain link fence and
24 fencing above in this photograph. This is the area where we
25 would be proposing a continuous brick wall from the neighboring

1 property on the left, 1248 all the way over to the garage
2 structure on the right on 1244 and the question remains as to
3 how large of a door opening makes it not a continuous brick wall.

4 Next slide, please. And into the plans I guess.

5 Next slide. Marty, would it just be better for Slutty
6 Vegan to talk to directly or --

7 MR. SULLIAN: Yes. I think that would be great if Ms.
8 Barnwell could talk about this. We filed these as an example of
9 some of their other locations and the character of their
10 restaurant.

11 MS. BARNWELL: Absolutely. Can everyone hear me?

12 MR. SULLIVAN: Yes.

13 MS. BARNWELL: Okay. So, yes. Our restaurants have a
14 lot of character and the character flows in and out of each
15 location depending on the location. So each location size has
16 not been the same so we are able to decorate it based on the
17 restaurant itself so that we're able to keep the character of the
18 restaurant and the history of the community while bringing it
19 inside the restaurant with the décor that we have inside each of
20 the locations.

21 MR. SULLIVAN: And we have more photos on the next
22 slide, please.

23 MS. BARNWELL: And what you're seeing here are photos
24 from our -- that is our Harlem location, our Athens location and
25 I believe that is our Dallas location.

1 MR. WARD: The Harlem location brought in elements of
2 Harlem, the Apollo Theater and then the Athens, Georgia location
3 brought in elements from Athens, Georgia being a football town
4 with the George G on the wall. So the hope is to bring in some
5 history of H Street with a mural with this location.

6 MR. SULLIVAN: All right. Next slide, please. Thanks,
7 Dan. Jim, if you want o go through the plans.

8 MR. CRONENBERG: Yes. Thank you. Thanks, Angel. So
9 existing conditions plan is showing on the left the ground floor,
10 the right the second floor plan of the existing building.

11 Next slide, please. This is a seating plan. Maybe
12 next slide. Okay. A cross-section, I think we have a furniture
13 plan somewhere in the set here but this cross-section that is on
14 the bottom right side shows the open area still remaining on the
15 site on the left, the slightly expanded ground floor plan on the
16 right and the two story structure extending up beyond that. So
17 the reason for the smaller addition into the ground floor area
18 is to allow for the Slutty Vegan kitchen to be built and function
19 correctly. The existing building is not wide enough to
20 accommodate Slutty Vegan's operations.

21 Next slide. Further cross-sections and then the
22 longitudinal section from the front of H Street on the right at
23 the bottom and then the alley on the left.

24 Next slide. And more technical floor plans but the
25 walls shown the dark gray are the existing walls and then the

1 new walls shown as new construction. You see the front door. At
2 the far bottom left of the page is a small customer area for
3 queuing and ordering and then the customers would exist through
4 the door at the bottom right of the plan.

5 Next slide, please. Plenty of cross-sections and then
6 at the bottom left of the page is the proposed rear elevation
7 with this shows the four foot wide door to the property which,
8 if preferred, would be six feet wide in the continuous brick wall
9 shown.

10 COMMISSIONER SMITH: Mr. Cronenberg, before we leave
11 this page, section 4 that looks like there's a gate. Is that
12 the front? Is that looking from the front or is that an older
13 elevation that you didn't change?

14 MR. CRONENBERG: No, you're correct. It is -- this is
15 looking from the front to the back, about mid-way back of the
16 building between the customer area adjacent to the addition. In
17 the rear of the site there is a fence with a gate.

18 COMMISSIONER SMITH: To the rear? So that gate is
19 facing H Street. Am I correct?

20 MR. CRONENBERG: There is, forgive me, there is a flow
21 plan that would show this more clearly --

22 COMMISSIONER SMITH: Yes.

23 MR. CRONENBERG: -- and then I'm not sure where it is
24 in the stacking order here, whether it's back a page.

25 MR. SULLIVAN: I think it's back one.

1 COMMISSIONER SMITH: The back, yes.

2 MR. CRONENBERG: That's is, yes. So there's some I
3 guess three items. First at the H Street side at the bottom of
4 the page there is a fence to close off the outdoor area from the
5 H Street sidewalk.

6 COMMISSIONER SMITH: Okay.

7 MR. CRONENBERG: And then about mid-way back in the
8 plan there is a fence with a gate that --

9 COMMISSIOENR SMITH: Okay.

10 MR. CRONENBERG: -- that goes, the customer area from
11 the rear we would call, not in the zoning sense a rear yard, but
12 the rear yard area.

13 COMMISSIONER SMITH: Got you. Okay. Is more that's
14 at the back of the house. Okay.

15 MR. CRONENBERG: Exactly. Dumpsters --

16 COMMISSIONER SMITH: Thank you.

17 MR. CRONENBERG: -- and originally intended to
18 accommodate the parking spot that the brick wall took over.

19 COMMISSIONER SMITH: Okay, thanks. I'm tracking now.
20 All right. Thank you. Sorry to interrupt.

21 MR. CRONENBERG: No worries. Thank you. And so next
22 slide.

23 Next slide.

24 MR. SULLIVAN: So I'll take it from here, Jim. Thank
25 you. So the application meets the general requirements of 901.2.

1 It is in harmony with the general purpose and intent of the zoning
2 regulations and zoning maps and will not tend to affect adversely
3 the use of neighboring property. H 900.9 states that the NC 14,
4 I'm sorry for the name change there, the zone change is not in
5 there, Is intended to permit mixed use development at a moderate
6 density with an emphasis on arts and arts-related uses and as
7 described above the proposed restaurant use is not typical fast
8 food experience. Customers are greeted with singing and do
9 dancing. Exteriors of the building when permitted are painted
10 yellow and black lettering and the interior décor is designed in
11 an artistic way to incorporate components from the community.

12 The use of the neighboring properties will not be
13 adversely affected by the proposed use The directly adjoining
14 properties are also occupied by commercial uses and at least one
15 other restaurant use and while there are some residential
16 properties across the alley, the Applicant is proposing mitigated
17 measures that should ensure the proposed use will not affect the
18 use of neighboring properties, particularly the continuous brick
19 wall.

20 Next slide, please. Specific requirements for approval
21 of the special exception. The property is not located in the
22 formerly named NC-4 zone. The lot is located within 25 feet of
23 a residential zone but it is separated by an alley so we meet
24 that requirement. We've revised the plans to include the 12 inch
25 continuous brick wall with a door for trash removal. Refuse

1 dumpsters, if we can have them, if we have a six foot door and
2 not individual containers as well would be enclosed in a three
3 sided brick enclosure. The use does not include drive through.
4 The only customer entrance is at the front of the building and
5 these are the proposed hours of operation and other conditions
6 that relate to condition G that the use shall be designed and
7 operated so as not to become objectionable to neighboring
8 properties and we've worked on these conditions. We've gone to
9 two or three ANC meetings and we've secured ANC support for this,
10 in part based on these conditions and also they're very excited
11 about having this use here in this location.

12 Next side, please. That might be it. Yes, that's it.
13 So if you have any questions for any of us, thank you.

14 CHAIRPERSON HILL: Okay. I'm going to quickly turn to
15 the office of Planning and then turn to my fellow Board members.
16 Okay. Can I hear from the Office of Planning, please.

17 MS. THOMAS: Yes. Good afternoon, Mr. Chairman,
18 members of the Board. Karen Thomas for the Office of Planning
19 and we believe that this application has met the requirements for
20 the fast food at this location. It did satisfy the criteria and
21 we do not anticipate that there would be a negative impact to
22 the neighborhood.

23 With respect, we didn't have the, you know, back and
24 forth trying to work out what would be the best thing, you know,
25 to get trash through to the rear because we know that DDOT

1 wouldn't support trash coming to the front, and so we believe
2 that having the brick wall with the opening for the door would
3 support, would be consistent with the intent of the regulations
4 with respect to the separation of the zone and the impact on the
5 residential neighborhood. So we would support the opening with
6 the brick as having met the intent.

7 So with that, I rest on the record. I'll be happy to
8 take any questions. Thank you.

9 CHAIRPERSON HILL: Thank you, Ms. Thomas, and Ms.
10 Thomas, then the Office of Planning doesn't have any issues with
11 that opening being six feet wide to accommodate a dumpster?

12 MS. THOAMS: No.

13 CHAIRPERSON HILL: Okay. Mr. Sullivan, can you hear
14 me?

15 MR. SULLIVAN: Yes, I can, Mr. Chairman.

16 CHAIRPERSON HILL: Is six feet wide, that will
17 accommodate the dumpster?

18 MR. SULLIVAN: Yes. I'll defer to Mr. Cronenberg.
19 That's correct, right; Jim?

20 MR. CRONENBERG: It would -- we've checked that on the
21 four yard dumpster and that will fit. I think everyone's
22 preference was for more of a conventional garage door, like an
23 eight foot garage door, but a six foot double door would
24 accommodate a smaller dumpster needs.

25 CHAIRPERSON HILL: Okay. And then I'm just going to

1 ask the Office of Planning. With regard to the rolling gate
2 door, garage door, that might not be what the regulations had in
3 mind. Is that what the Office of Planning's thoughts were?

4 MS. THOMAS: Yes. You know, after much discussion in-
5 house staff-wise we didn't think that, you know, such a large
6 room indoor would be, you know, meet that intent.

7 CHAIRPERSON HILL: And, Ms. Thomas, again the reason
8 why I was -- I would imagine this is the case is because the
9 intent would be to have the brick wall there between there and
10 the residential neighborhood and if there were a rolling garage
11 door that door could be opened --

12 MS. THOAMS: Opened.

13 CHAIRPERSON HILL: -- and it would not meet the intent
14 perhaps of the regulations. But the two, so I'm just trying to
15 be clear, Mr. Cronenberg, about the six feet, because you said
16 six foot double doors. Are the two doors six feet each or are
17 the two doors combined six feet?

18 MR. CRONENBERG: The second, yes. It's two three foot
19 doors that would open (indiscernible).

20 CHAIRPESRON HILL: Okay. Because I would t hen put
21 that in as flexibility if that were something that would be
22 comfortable with the Board. Normally, that's something that we
23 would maybe want to see in plans but I thin that if we refer to
24 that and allow that flexibility to the plan, is that something
25 you could fix, Mr. Cronenberg, fairly quickly?

1 MR. CRONENBERG: Yes.

2 CHAIRPERSON HILL: Okay. So I might leave the record
3 open for that I guess as well. Mr. Smith?

4 COMMISSIONER SMITH: Chairman Hill, I'll just, before
5 I ask my question about this door. I'm comfortable with it being
6 six feet. Honestly that's more in character with what's behind
7 along this alley in the first place. If you take a look at the
8 alley it's mostly six foot doors going down there. It's one
9 roll-up door or one door down the alley that's wider than six
10 feet. So I think probably the intent is to reduce the c hance
11 of not just noise but the chance of rodents getting through so
12 the smaller opening is probably for the best. The alley is narrow
13 so you can't get a fairly large dumpster out into the alley in
14 the first place so I think probably keeping it at where they're
15 proposing the six foot door is probably all they need.

16 Mr. Cronenberg, are you opposed to that?

17 MR. CRONENBERG: No.

18 COMMISSIONER SMITH: Okay. My next question is to Mr.
19 Sullivan. I think you heard you correctly, you said that the
20 ANC is in support of this with conditions. So are you requesting
21 conditions based on hours of operation --

22 MR. SULLIVAN: I don't think -

23 COMMISSIONER SMITH: -- based on the PowerPoint?

24 MR. SULLIVAN: -- they've put them in their report, Mr.
25 Smith. I'm reading their report now. We represented to the ANC

1 about our operations and they were happy with these hours --

2 COMMISSIONER SMITH: Okay.

3 MR. SULLIVAN; -- and this is what I intended to
4 communicate. They didn't seem to condition their approval on any
5 specific condition, no.

6 COMMISSIONER SMITH: Okay. I just wanted to check. I
7 didn't see it in the letter but you said the term condition, so
8 I just wanted to validate. All right. Thank you.

9 MR. SULLVAN: Thanks.

10 CHAIRPERSON HILL: All right. Than k you. Anyone else
11 have any questions for the Office of Planning?

12 ZC CHAIRPERSON HOOD: Yes. Mr. Sullivan, what were the
13 hours again? I missed that, reading some other stuff here. What
14 are the hours?

15 MR. SULLIVAN: Those hours noon to 10 p.m., Tuesday to
16 Thursday and noon to 1 a.m., on Friday and Saturday. Closed on
17 Sunday and Monday.

18 ZC CHAIRPERSON HOOD: I get it. This is H Street so I
19 get that. Okay.

20 I do want to ask the Office of Planning a question.
21 When did we go, and I probably should remember this but I don't,
22 when did we go from NMU, from changing it from NC to NMU mixed
23 use. When did we do that? Was that recently?

24 MS. THOMAS: Yes. That's the recent part of the reorg.

25 ZC CHAIRPERSON HOOD: And that was done recently;

1 right?

2 MS. THOAMS: That was like, was it June, July?

3 MR. SULLIVAN: I think it was about a month ago was it
4 early September?

5 MS. THOAMS: Early September.

6 ZC CHAIRPERSON HOOD: Well that's good. We're showing
7 that we're moving.

8 MS. THOMAS: It was in August. It was in August.

9 ZC CHAIRPERSON HOOD: Okay, good. Thank you. I do
10 have another question. I was not following, and you may have
11 mentioned and maybe I just didn't follow it. Wouldn't be the
12 first time. The address next door, was that -- did you mention
13 that was an alley or was there a structure there? I can't
14 remember.

15 MR. CRONENBERG: It's been a vacant paved lot.

16 ZC CHAIRPERSON HOOD: Paved. So there was something
17 previously? There was a structure there.

18 MR. CRONENBERG: There's currently an existing curb cut
19 from H Street into that area so I can't attest to what it is was
20 used for but it appears to have been a driveway or a parking
21 area.

22 ZC CHAIRPERSON HOOD: okay. It must have been a long
23 time because it's like that side's been forever. Okay. Other
24 than that, I don't necessarily have any problems with the
25 programmatic (phonetic) of the gate, following my colleagues, I

1 don't have any problem with the programmatic and I know this this
2 is a good use and I would agree with the ANC.

3 Thank you, Mr. Chairman.

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

6 MR. YOUNG: We do not.

7 CHAIRPERSON HILL: Okay, great. Ms. Barnwell, can you
8 hear me?

9 MS. BARNWELL: I sure can. Can you hear me?

10 CHAIRPERSON HILL: Yes. Ms. Barnwell, my wife watches
11 this on occasion and she is texting me, FanGrowing me about you
12 and your organization and Ms. Pinky Cole. So if this happens
13 I'm sure going to be going to Slutty Vegan I'm sure at some point
14 in time in my life.

15 MS. BARNWELL: Well, I'm happy to hear that and just
16 know that we are super excited to come to the community.

17 CHAIRPERSON HILL: Okay. It's a lovely place to be.
18 All right. Anybody else want to FanGrow a little bit before go?
19 No?

20 COMMISSIONER SMITH: Sure. No, I'll FanGrow. I have
21 been to a Slutty Vegan I've been to the one in Sweet Auburn so
22 it's great to see that you have chosen your next location to be
23 the District. So if this does go through welcome to the District
24 and best of luck in the rest of the permitting process. Look
25 forward to eating there, you know, when you decide to open.

1 MS. BARNWELL: Thank you very much.

2 ZC CHAIRPERSON HOOD: All right. With everybody else,
3 I sure hope it's on Uber Eats because my wife and I, my grandkids
4 have taught us how to do that now so we're using that and, Mr.
5 Chairman, I thought you were going to say what my wife always
6 tells me, and I keep mispronouncing names, but anyway thank you,
7 Mr. Chairman. Thank you.

8 CHAIRPERSON HILL: All right, Chairman Hood. All
9 right, Ms. Barnwell. Thanks for letting us share.

10 MS. BARNWELL: Thank you very much.

11 CHAIRPERSON HILL: Okay. Mr. Sullivan, anything at the
12 end?

13 MR. SULLIVAN: No, I don't. Thank you, Mr. Chairman
14 and Board members.

15 CHAIRPERSON HILL: Okay. Going to close the hearing
16 and the record. Thank you all very much for coming.

17 Okay. I do believe that given all of the work that
18 they've done with the community and their application and the
19 record, I am comfortable with how they're meeting the criteria
20 for us to grant the relief requested within the general
21 requirements of 901.2 as well as the specific requirements of H
22 6007.1(e) which is also speaking to the brick wall.

23 I think, Mr. Smith, what you mentioned was the one six
24 foot wide door. Was that correct?

25 COMMISSIONER SMITH: Uh-huh.

1 CHAIRPERSON HILL: Right. So that would be something
2 that I think we could allow for some flexibility in the design
3 and I also believe that if the Applicant can still hear me, which
4 I'm sure they can, if they could -- if the architect could please
5 submit that into the record as soon as possible the updated
6 drawing, that will help for the permitting process and I will
7 leave the record open for that.

8 Other than that, I would agree with the analysis of the
9 Office of Planning has provided as well as the support of the
10 ANC and I have nothing else to add. Mr. Smith, do you have
11 anything that you'd like to add?

12 COMMISSIONER SMITH: I think all that needs to be said
13 has been said. I do agree with the analysis presented by the
14 Office of Planning and will support the application with the
15 flexibility for the rear door.

16 CHAIRPERSON HILL: Chairman Hood?

17 ZC CHAIRPERSON HOOD: I would agree with everything
18 that has been said and I'll be voting in favor of this
19 application.

20 Thank you.

21 CHAIRPERSON HILL: Thank you. I'm going to make a
22 motion to approve Application No. 20960 as captioned and read by
23 the Secretary including the flexibility for the one six foot wide
24 door on the rear brick wall, and ask for a second. Mr. Smith?

25 COMMISSIONER SMITH: Second.

1 CHAIRPERSON HILL: The motion is made and seconded. If
2 you could take a roll call, Mr. Moy.

3 MR. MOY: When I call your name if you'll please respond
4 to the motion made by Chairman Hill to approve the application
5 for the relief requested along with providing for flexibility for
6 the I believe the rear door, you said it's one of the -- it's
7 the six foot wide door, I believe?

8 CHAIRPERSON HILL: Yes, in the brick wall in the back.

9 MR. MOY: Okay. The motion was second by Mr. Smith.

10 Zoning Commission Chair Anthony Hood?

11 ZC CHAIRPERSON HOOD: Yes.

12 MR. MOY: Mr. Smith?

13 COMMISSIONER SMITH: Yes.

14 MR. MOY: Chairman Hill?

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: And we have two members not present today and
17 also just one other addition, Mr. Chairman. You allowed into the
18 record the updated drawings; correct?

19 CHAIRPERSON HILL: Yes. For the six foot wide door in
20 the back of the brick wall.

21 MR. MOY: Very good. Thank you.

22 CHAIRPERSON HILL: Thank you.

23 MR. MOY: So once again staff would record the vote as
24 three to zero to two and this is on the motion made by Chairman
25 Hill. The motion was second by Mr. Smith. Those voting to

1 approve the application is Zoning Commission Chair Anthony Hood,
2 Mr. Smith, Chairman Hill, no others. Motion carries, three to
3 zero to two.

4 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy, you
5 may call our last case when you have a moment.

6 MR. MOY: The last case before the Board in its public
7 hearing session is Application No. 20963 of Thomas Schultz. This
8 is a self-certified application pursuant to Subtitle X, § 901.2,
9 special exception under Subtitle C, § 1501.1(c) from a penthouse
10 height requirement Subtitle C, § 1501.1(e)(2)1. Property located
11 in the RF-1 zone at 1315 Corcoran Street, N.W., Square 240, Lot
12 25.

13 Preliminary matters here, Mr. Chairman, as I understand
14 it is that this morning the Applicant made a filing so that's
15 clearly within 24 hours and I believe the documents include a
16 revised or updated self-certification, one. Two, a request to
17 amend the application and three, I believe a motion but I'll
18 leave that to the Applicant to cite for you, and that's all I
19 have. Thank you, sir.

20 CHAIRPERSON HILL: Okay. All right. If the Applicant
21 can hear me, if they could introduce themselves for the record.

22 MR. SULLIVAN: Marty Sullivan with Sullivan & Baros
23 here on behalf of the Applicant.

24 CHAIRPERSON HILL: Okay, Mr. Sullivan. Unless the
25 Board has any issues, I'd like to go ahead and allow into the

1 record the information that the Secretary has spoken about which
2 includes a request it looks like perhaps for a postponement. Mr.
3 Sullivan, I'll let you go ahead and explain what it is that you
4 have put forward before the Board.

5 MR. SULLIVAN: Okay. So this case was initially
6 prompted by a zoning referral memorandum issued in about, in
7 January I believe it was and we didn't file that zoning memorandum
8 with thecae. Instead I self-certified.

9 I didn't agree with the zoning memorandum. It had
10 three points to it and in the end we ended up asking for relief
11 for point two which was what has been before, has been found in
12 our application and so, I don't want to get too far into it, but
13 basically the issue was is it a habitable penthouse or a
14 mechanical penthouse because according to the regulations if it
15 was a mechanical penthouse we would need the relief. We've since
16 accepted the fact that we're not getting an answer out of DOB on
17 that that we'd like and so we asked for the relief.

18 We spent the last eight months trying to get an answer
19 out of DOB on items one and three in that zoning memorandum.
20 Item No. 1 is impossible so we're never going to include that in
21 our relief. Item No. 3 we disagreed with too but we never got
22 any clarification on it.

23 We finally got a communication from DOB yesterday after
24 about ten requests and it wasn't really a substantive response
25 either but in light of the response, I thought it was important

1 to include relief for item three which is uniform and equal height
2 of the walls of a penthouse. If this is a stairway penthouse it
3 doesn't need that relief. My concern is that maybe DOB would
4 say that it's not a stairway penthouse, maybe it's something a
5 little more than that and so I wanted to include that relief and
6 that's what I filed an additional request for.

7 In addition to that, the office of Planning hasn't
8 written a report. I think they were ready to support it today
9 but haven't seen the amended relief. There's an ANC meeting on
10 November 1st. I don't know if they'll need to see it in a meeting
11 or not. They didn't really have any concerns about it and
12 nothing's changed in the plans but it gives us the opportunity
13 to go back.

14 So if we could get a November 8th date, that gives OP
15 time to write a report. It gives the ANC time to weigh in and
16 it gives the Board time to digest the amended relief which, again,
17 didn't change any plans, it just added another area of relief to
18 this.

19 CHAIRPERSON HILL: Okay. My only thing, Mr. Sullivan,
20 is there waw two cases that we already kicked to November 8th
21 and I think now this is going to be the tenth. Is that right,
22 Mr. Moy?

23 MR. MOY: It would be actually nine because we had or
24 rather you had granted a postponing to one of the cases to review
25 today.

1 CHAIRPERSON HILL: Okay. Because we continued two
2 cases, but anyway I'll do it this way.

3 MR. SULLIVAN: But we could do today too. I mean if
4 it was, it might be unusual but if the Office of Planning didn't
5 have an issue with it and the Board would have to weigh in and
6 we don't really, we haven't heard from the ANC because we haven't
7 asked them yet. We just filed this.

8 CHAIRPERSON HILL: That's all right. Mr. Sullivan, I
9 would rather wait --

10 MR. SULLIVAN: Yes, sir.

11 CHAIRPERSON HILL: -- and just have it as organized as
12 possible. So let's go ahead and do that. We'll get, can the
13 office of Planning hear me?

14 Ms. Myers, do you want to introduce yourself for the
15 record?

16 MS. MYERS: Sure. Crystal Myers for the Office of
17 Planning.

18 CHAIRPERSON HILL: Great. This has been a long day for
19 some reason. I don't know, or it's felt like it. Ms. Myers,
20 you're thumbs up. Is it 11/8 will work for the Office of
21 Planning?

22 MS. MYERS: Yes. That's perfectly fine.

23 CHAIRPERSON HILL: Okay. All right. All right, then
24 we will postpone this case to 11/8 and, Mr. Sullivan, do you need
25 anything from us?

1 MR. SULLIVAN: No, I don't think so. Thank you.

2 CHAIRPERSON HILL: Okay. And who's Mr. Beidler?

3 MR. SULLIVAN: Michael Beidler is the project
4 architect.

5 CHAIRPERSON HILL: Okay. All right. I was just
6 curious. Okay. All right. Then, I'm going to go ahead and
7 close this portion of the hearing and the record. We will
8 postpone this to 11/8. Thank you very much.

9 Mr. Moy, is that it?

10 MR. MOY: That's it for me, sir.

11 CHAIRPERSON HILL: Great. So Slutty Vegan, so Slutty
12 Vegan.

13 MR. MOY: (Indiscernible).

14 CHAIRPERSON HILL: Slutty Vegan on H Street.

15 COMMISSIONER SMITH: It's good food.

16 CHAIRPERSON HILL: No, no, I'm sure. I mean, it looks
17 delicious. The place looks cool. There was a place, there was
18 another vegan place on H Street. I can't remember the name of
19 it now. Anyway, okay.

20 You all need anything? You all want to say anything
21 or are we don? Okay. We stand adjourned. See you all later.

22 ZC CHAIRPERSON HOOD: All right. See you later.

23 CHAIRPERSON HILL: Bye bye.

24 (Whereupon, at 3:10 p.m., the above-entitled
25 hearing was adjourned.)

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: 10-18-2023

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and accurate
record of the proceedings.

JULIE SOUZA