

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 20, 2023

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Conference, pursuant to notice at 9:30 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA L. JOHN, Vice-Chairperson
CARL BLAKE, Member
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice-Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation
RON BARRON
MICHAEL JURKOVIC
JONATHAN KIRSCHENBAUM

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CRYSTAL MYERS
KAREN THOMAS

OFFICE OF ZONING ATTORNEY ADVISOR PRESENT:

RYAN NICHOLAS, ESQ.

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

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

9:36 a.m.

BZA CHAIR HILL: Good morning, ladies and gentlemen of the Board of Zoning Adjustment. Today is 12/20/2023. My name is Fred Hill, Chairman of the Board of Zoning Adjustment. Joining me today is Vice Chair Lorna John, Board members Carl Blake and Chrishaun Smith, and Zoning Commissioners Rob Miller and Chairman Anthony Hood.

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

If you're experiencing difficulty accessing the Webex tool with your telephone call-in, then please call our OZ hotline number at 202-727-5471 to receive Webex call-in instructions. It's also listed on our screen.

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

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

6 In today's hearing session, everyone who is
7 listening on Webex or by telephone will be muted during the
8 hearing, and only persons who have signed up to participate
9 will be unmuted at the appropriate time. Please state your
10 name and home address before providing oral testimony or a
11 presentation.

12 Oral presentations should be limited to a summary
13 of your most important points. When you're finished
14 speaking, please mute your audio so that your microphone is
15 no longer picking up sound or background noise.

16 All persons planning to testify in opposition or
17 in favor should have been signed up in advance. If this is
18 an appeal, only the parties are allowed to testify --

19 (Audio interference.)

20 BZA CHAIR HILL: All participants completed the
21 oath of affirmation as required by Subtitle Y-408.7.
22 Requests to enter evidence at the time of an online virtual
23 hearing, such as written testimony or additional documents
24 other than live video, which may not be presented as prior
25 testimony, may be allowed pursuant to Y-103.13 provided that

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

9 At the conclusion of each case, an individual who
10 was unable to testify because of technical issues may file
11 a request for relief to file a written version of the planned
12 testimony to the record within 24 hours following the
13 conclusion of public testimony in the hearing. If additional
14 written testimony is accepted, then the parties will be
15 allowed a reasonable time to respond as determined by the
16 Board.

17 The Board will then make its decision at its next
18 meeting session, but no earlier than 48 hours after the
19 hearing. Moreover, the Board may request additional specific
20 information to complete the record. The staff will specify
21 at the end of the hearing exactly what is expected and the
22 date when a person must submit the evidence to the Office of
23 Zoning. No other information shall be accepted by the Board.

24 Finally, the District of Columbia Administrative
25 Procedures Act requires that the public hearing on each case

1 be held in the open and before the public. However, pursuant
2 to Section 405(b) and 406 of that Act, the Board may,
3 consistent with its rules and procedures and the Act, enter
4 into closed meetings on a case for purposes of seeking legal
5 counsel on a case pursuant to D.C. Official Code Section 2-
6 575(b)(4) and/or deliberate on a case pursuant to D.C.
7 Official Code Section 2-575(b)(15), but only after providing
8 the necessary public notice and the case for the emergency
9 closed meeting after getting a roll call vote. Mr.
10 Secretary, do we have any preliminary matters?

11 MR. MOY: Good morning, Mr. Chairman and other
12 members of the Board. I do have a brief announcement
13 regarding preliminary matters intended for today's docket,
14 so I'll go as quickly as I can, Mr. Chairman.

15 BZA CHAIR HILL: Sure.

16 MR. MOY: First, there are several cases that have
17 been granted postponement and continuance to future
18 rescheduled dates. The first is 20957 of Alade, A-L-A-D-E
19 Interests, LLC has been administratively rescheduled to
20 January 17, 2024 for further review by the Board.

21 Application number 20946 of 4885 MacArthur
22 Boulevard, LLC has been granted a continuance to February 14,
23 2024. Case application 21017 of Phillip H. Bishop has been
24 amended and rescheduled to March 6, 2024, and case
25 application number 21016 of Madison Acquisition III, LLC has

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1 been withdrawn by the applicant.

2 Finally, Mr. Chairman, as you are aware, you have
3 reviewed and granted waivers to allow late filings to the
4 applicable case records, which I will get to in a moment,
5 pursuant to Subtitle Y, Section 206.7 and Subtitle Y, Section
6 103.13. And, of course, any other late filings today through
7 the course of the live hearing should be presented to the
8 Board by the applicant or other parties or witnesses.

9 For specifics, there's the applicant self-cert,
10 which goes to case 21013 of Southern Veterinary Partners,
11 21011 Laurie Mankin and George Oliver. This is a Capitol
12 Hill Restoration Society letter in support, 21012 Jean
13 Destefano, CHRS letter in support, and finally, case 21015
14 Elisabeth Kidder and Daniel Spurlock, once again a letter,
15 a late letter from the Capitol Hill Restoration Society,
16 although this letter is in opposition to the application.
17 So, I know I've been talking very quickly, but I think I have
18 covered all of the matters and that's it for me unless you
19 or the Board have any questions. Thank you.

20 BZA CHAIR HILL: Okay, great, thank you. All
21 right, good morning, everyone. I know that Vice Chair Miller
22 is with us for one case, and I would like Mr. Moy to go ahead
23 and call that case. Mr. Moy, if you could?

24 MR. MOY: Thank you, sir. This is application
25 number 20919 of William Huffman and Colleen Bevins. This is

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1 a self-certified application pursuant to Subtitle X, Section
2 1002 for a variance from the lot occupancy requirements of
3 Subtitle E, Section 210.1, and pursuant to Subtitle X,
4 Section 901.2 for a special exception under Subtitle E,
5 Section 520.1 rear yard requirements, Subtitle E, Section
6 207.1, for a property located in the RF-1 zone at 1005 Quebec
7 Place, NW, Square 2903, Lot 65.

8 As the Board is aware, this was first heard at the
9 Board's hearing on July 12, 2023, and more recently at the
10 Board's hearing on November 8, rescheduled to November 29,
11 and of course, now today is December 20. And participating
12 is the Chairman, the Vice Chair John, Mr. Smith, and Zoning
13 Commissioner Rob Miller.

14 BZA CHAIR HILL: Okay, great, thank you. If the
15 applicant can hear me, if they could introduce themselves for
16 the record, please?

17 MR. HUFFMAN: William Huffman, applicant, and with
18 me today is Colleen Bevins, a co-applicant. We both reside
19 at 1005 Quebec Place, Northwest, which is the location of the
20 subject property.

21 BZA CHAIR HILL: Okay, great. Thanks, Mr.
22 Huffman. All right, so everyone recalls, we have had this
23 hearing continued several times, and I just wanted to have
24 the applicant with us one last time if the Board had any
25 additional questions for the applicant. There are additional

1 information into the record that the applicant has put
2 forward, as well as a second supplemental report from the
3 Office of Planning.

4 And I just wanted, before we close the hearing and
5 had an opportunity to deliberate amongst ourselves, give the
6 Board a chance to ask any final questions of the applicant.
7 I do not have any additional questions. Does any of my
8 fellow Board members have any additional questions?

9 MEMBER BLAKE: Mr. Chairman, this is Carl Blake.
10 I've read into the case and am participating in this, I
11 believe.

12 BZA CHAIR HILL: Yes, Mr. Blake, you are. Thank
13 you.

14 MEMBER BLAKE: And I do have a couple of quick
15 questions just to refresh. I've gone through all of the
16 documents in the record and I have a few questions of things
17 I just want to clarify just for my personal thought process.

18 First of all, to the applicant, I'd like to find
19 out how long ago was the kitchen redone? I believe you may
20 have bought the building with the kitchen that way, but I'm
21 just kind of clarifying when you acquired that or when that
22 kitchen was redone?

23 MR. HUFFMAN: Well, we purchased the property in
24 2019 and the kitchen was in place at that time. Looking back
25 at older records, I believe it went back to 2008, where there

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1 was some last renovations to the property prior to that, at
2 least as far as the kitchen. I don't know exactly. You
3 know, that's the oldest I can go back though. I don't know,
4 you know, if it was -- it could have been in that same
5 location prior to that. I don't know.

6 MEMBER BLAKE: Okay, and also, when I look at the
7 rear yard, it appears that there's a huge slant where the
8 drain is for the car, where you park your car currently, but
9 when I look at that in the rendition that you have, it's a
10 flat surface. Are you changing that or is it going to remain
11 flat? It's just the illustration is just off?

12 MR. HUFFMAN: I think possibly the illustration's
13 just off. It's going to -- I'm sorry, where you say it's
14 flat? I mean, the driveway itself --

15 MEMBER BLAKE: Well, your driveway slants down --

16 MR. HUFFMAN: Correct.

17 MEMBER BLAKE: -- right, in the -- if you look at
18 the picture, the renditions that you provided for us in the
19 exhibit, even at the first one, it has a picture of a
20 relatively flat driveway. I was wondering if that had been
21 changed.

22 MR. HUFFMAN: Oh, no, it has not been changed and
23 we don't -- we really couldn't change it to move it to a flat
24 driveway because it needs to be sloped to meet to the alley.
25 If it went, you know, flat, then there would be no access

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1 underneath the kitchen or ability to access, you know, under
2 the house at all.

3 MEMBER BLAKE: Now, currently on the deck exhibits
4 you have, you have a picture of a grill, and that grill --
5 where do you typically have your grill right now?

6 MR. HUFFMAN: We have one in the front yard, but
7 we don't use it because it's so far away from the kitchen.
8 I mean, we have used it, you know, a few times, but we do
9 have one in the front yard.

10 MEMBER BLAKE: Okay, and is your -- and the area
11 underneath where the car is, do you sometimes pull that out
12 and use that as recreational space or no?

13 MR. HUFFMAN: Not really because, you know, again,
14 the slope goes pretty much kind of down almost to, you know,
15 to the house. You know, there's a little bit of flatter
16 space there, but no, there's really, you know, there's not
17 much use. I mean, I suppose I've, you know, whatever, used
18 it for working or setting things, you know, boxes or
19 something, but certainly not for recreational space. It's
20 just, it would be too small under there.

21 MEMBER BLAKE: Sure. Now, one of the last
22 questions that I remember from reading the transcripts from
23 the last hearings is the issue was you thought you could not
24 put a landing in and stairs, and I want you just to clarify
25 to me why you cannot put a landing and stairs in that spot?

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1 MR. HUFFMAN: Because the -- in our last, there
2 was an affidavit that our architect filed which had some
3 renditions of the, you know, possible, you know, the landing
4 space and that, and basically, you know, the landing,
5 wherever the landing would be placed, the poles would be so
6 close to the, you know, the car door, it would block entry
7 to the car door and therefore, you know, we wouldn't have the
8 parking space essentially. It wouldn't be a functional
9 parking space at that point.

10 MEMBER BLAKE: Would it block all of the doors or
11 just one door?

12 MR. HUFFMAN: It would block the driver's side
13 door, but then the passenger side door is already, like the
14 way you pull it in, it's already -- there's only like 12
15 inches on that side as it is. That's why we park --
16 typically, we come in and we part at, you know, slightly at
17 an angle so that you could, that way with an angle, you can
18 get out of the passenger side, but then, you know, the poles
19 would -- you know, I mean, basically, you wouldn't be able
20 to park a car there almost because the pole would almost be
21 -- you know, you'd be scraping the driver's side door.

22 MEMBER BLAKE: So, that utility pole has a bearing
23 on your ability to park the car?

24 MR. HUFFMAN: Well, are you talking -- there's a
25 utility pole further back --

1 MEMBER BLAKE: Yeah.

2 MR. HUFFMAN: -- at the edge of the property?
3 That does, I mean, partly because it -- we can only come in
4 from the one direction as it is, you know, so we have to come
5 in, I guess, from the north towards the south down the alley,
6 and that's the only way we can pull in, so it does impact us
7 that way.

8 MEMBER BLAKE: And if you were to back in as
9 opposed to going in with the front, would that be a much
10 easier adjustment with the utility pole?

11 MR. HUFFMAN: I think it would be probably much
12 more difficult, you know, because then we would have to, I
13 guess we'd have to come in from the, you know, drive in from
14 the other direction down the alley, which is kind of a
15 difficult place to get to the way it's set up, but in either
16 circumstance, I guess the poles would still block the doors
17 to the house.

18 It would either -- again, there's a retaining wall
19 on the -- it's a lower retaining wall, but it's a retaining
20 wall on the western property line which blocks the doors from
21 that angle, and even if we were to back in with a landing,
22 it would still, you know, hit the car door with the, you
23 know, from the, I guess in that sense, it would be the
24 passenger side if you're backing in, and you wouldn't be able
25 to -- there would be no access out of the driver's side

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1 because you'd be hitting the retaining wall if you back in.

2 MEMBER BLAKE: Okay, and the last question I have
3 for you is how do you currently use the lower level?

4 MR. HUFFMAN: It's basically a glorified garage
5 right now. It's just packed.

6 PARTICIPANT: Parking.

7 MR. HUFFMAN: Oh, are you talking like the lower
8 basement? Is that --

9 MEMBER BLAKE: Yes.

10 MR. HUFFMAN: Yeah, yeah, it's basically just a
11 glorified garage. It's just full of boxes. I've got two
12 kayaks. I've got all of my yard equipment, just all of my
13 tools and everything like that, and that's basically what it
14 is right now.

15 MEMBER BLAKE: Okay, but it's an RF-1 zone. Do
16 you have a C of O for that unit?

17 MR. HUFFMAN: No, we do not.

18 MEMBER BLAKE: Okay.

19 MR. HUFFMAN: Yeah, not a separate one, no. It's
20 got -- the ceiling height, I mean, it goes down to like 65
21 inches at some point, so it's really, it's definitely not a,
22 what they would call, I think, a habitable, you know,
23 dwelling or area, so.

24 MEMBER BLAKE: Okay, thank you very much. I have
25 no further questions.

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1 MR. HUFFMAN: Thank you.

2 MEMBER BLAKE: You're on mute. I'm done.

3 (Pause.)

4 COMMISSIONER MILLER: You were on mute before.
5 Did you ask us a question?

6 BZA CHAIR HILL: That's so funny. I'm on mute.
7 I thought Commissioner Miller was -- I said Commissioner
8 Miller has a question and then I said I think he's on mute,
9 and so I've been waiting for you, Vice Chair Miller, so I
10 apologize. Did you have a question, Vice Chair Miller?

11 COMMISSIONER MILLER: I did not have a question.

12 BZA CHAIR HILL: Oh.

13 COMMISSIONER MILLER: And I thank Board Member
14 Blake for rejoining us so we can perhaps reach a decision in
15 this case finally, and I appreciate my fellow Board members
16 scheduling this for the first case since I have some
17 logistical issues here. Thank you.

18 BZA CHAIR HILL: Okay, thank you. All right,
19 well, now I'm not going to mute myself, okay. So, all right,
20 then I'm going to go ahead and close this portion of the
21 hearing, well, I'm going to close the hearing and record.
22 So, the applicant can go ahead and wait and see what happens,
23 and I wish you all the best, and have a nice day.

24 MR. HUFFMAN: Thank you.

25 BZA CHAIR HILL: Thank you. Okay, so this has

1 gone on for some time, and I also do appreciate that we have
2 a full Board now here, and so I can go ahead and start these
3 deliberations, I think, and see kind of where we are.

4 I mean, I do think that it is a unique situation
5 in terms of this application and the size of the lot, and
6 also the different testimony that we've heard from the
7 applicant, as well as the Office of Planning and other
8 members of the community that are in the record, including
9 the ANC.

10 So, just in terms of like the ANC, I mean, the ANC
11 didn't have any problems with this application, and the ANC,
12 in this particular area, did not necessarily speak to the
13 standards of the relief that's being requested. However, the
14 real one that we're, I think, sticking with is the variance,
15 and what I'm kind of --

16 I was going to vote yes, and the reason why I was
17 going to vote yes again is that there's an area variance
18 wherein there needs to be a practical difficulty shown. I
19 think that it is a unique situation that in -- because of the
20 layout of the kitchen, because of the way that the car is,
21 they're utilizing the parking pad, and that the deck, that
22 if they wanted to, the pole, if they would try to, you know,
23 put a deck in a different manner, there would be a pole there
24 that would make the parking pad unusable.

25 I do get a little conflicted because it can be

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1 done. It's just that they would lose the parking pad, right?
2 And so, you know, it's kind of like well, do you have one
3 thing or another thing, you know, in terms of what their
4 ability is to make use the property.

5 However, I think, again, the fact that one just
6 has to show a practical difficulty for area variance is what
7 is allowing me to vote in favor of it in terms of they did
8 provide architectural renderings and drawings, as well as an
9 affidavit from the architect that shows how it can't be done
10 in a different way without the need for the variance.

11 And so, I'm going to go ahead and vote in favor
12 of this and those are my reasons. I'll also note that the
13 Office of Planning would agree with the arguments that the
14 applicant has made and they are also voting in favor. Vice
15 Chair Miller, I'm going to start with you if I could next.

16 COMMISSIONER MILLER: Okay, thank you, Mr.
17 Chairman. So, when we had the hearing in July, over five
18 months ago, there were questions raised, legitimate questions
19 raised by fellow Board members regarding that first and
20 second prong of the variance test.

21 And the applicant, I think, at that hearing,
22 verbally provided a description of the confluence of factors,
23 the plumbing, the spacing of the columns, where this door
24 needs to be, and if you wanted to have access from the
25 kitchen to the stair going down to the parking pad, and just

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1 the ability, the spacing of that parking pad.

2 So, I think at the hearing, a couple of Board
3 members asked the applicant to provide, to supplement the
4 record with additional information, and they had an architect
5 provide, at Exhibit 41, subsequent to that hearing, I
6 believe, the information, basically validating their
7 description of the practical difficulty and the circumstances
8 that led to the condition that needed to have the location
9 of the door where it is, the stairs were it is, and the deck
10 that they want to have, and a parking pad that's usable.

11 So, with all of that provided in Exhibit 41, I
12 appreciate the applicant having provided that supplemental
13 information. The Office of Planning changed its
14 recommendation when they had heard the description of the
15 confluence of factors and the supplemental information.

16 So, as you said, Mr. Chairman, the Office of
17 Planning supports both the variance request and the special
18 exception relief for the rear yard. That never really has
19 been in question here, but it's obviously related, but --

20 So, we have the support of the Office of Planning,
21 and the support of the Advisory Neighborhood Commission 4C,
22 and the support of the two adjacent neighbors. There's no
23 detriment to their light or air. It's an open deck,
24 slightly, you know, expanded a bit from what is there
25 currently. The lot occupancy is expanded a bit. It's above

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1 what's allowed currently.

2 I mean, in its current configuration, the lot
3 occupancy exceeds the limit, and this would exceed it a
4 little bit more, but there's no detriment to the public good.
5 Most of the, many of the houses along this alley have that
6 same type of configuration of a deck and a parking pad that
7 goes, you know, and takes up the rear yard.

8 So, I think that we can proceed with a favorable
9 vote on the application. I do though respect the difference
10 of opinion that we've had previously, but I'm prepared to
11 move forward, Mr. Chairman. Thank you.

12 BZA CHAIR HILL: Thank you. Mr. Blake, do you
13 want to hear from the others or do you want to go next? I
14 can't hear you, Mr. Blake, sorry. Now you're on mute.

15 MEMBER BLAKE: Sorry, sir. I can hear the other
16 Board members or I can go now, either way.

17 BZA CHAIR HILL: Why don't you go ahead and go now
18 then?

19 MEMBER BLAKE: Okay, I've reviewed this case
20 carefully and I do believe that the applicant has come up
21 with exceptional condition. When you look at the elements
22 of the land as well as the configuration of the building on
23 the land, the applicant has demonstrated exceptional
24 condition caused by the confluence of factors.

25 When I looked at it, I saw a small lot, and I saw

1 the fact that the main level was a full story above the
2 ground level in the rear, and I thought about the topography.
3 That was important to me because it sloped downward and
4 created some almost useless space with water gathering and
5 stuff down in the lower level.

6 I also noted the utility pole, which I thought
7 about in an alley like that towards the end, it's hard to
8 navigate in and out, and so things like that kind of
9 influence kind of how you come in and out of the property.
10 I thought about the conditions of the building, which
11 resulted primarily from the open air structure of the
12 kitchen.

13 What's interesting about this and other things we
14 may look at is that this was a renovation done a few years
15 ago, and a lot of times during that period of time,
16 renovations were done, you know, flips, I guess, you'd call
17 them, and they weren't as 100 percent thought out as they
18 could be. Your goal is to get something done effectively
19 that works and looks nice.

20 I looked at a picture of their kitchen in the
21 first, in one of the slides, and I was saying that kitchen
22 looks relatively new. It didn't look like someone was like
23 from the drawing board saying I'm going to put a kitchen in.
24 Let me do it this way and make a deck. I saw a kitchen that
25 was done, that I would have said what a nice kitchen, and

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1 then discover that it's not functioning well with the pipes
2 freezing up every winter because of the exterior spot.

3 Trying to find a solution for that is just not a
4 matter of reconfiguring it in any kind of way because you've
5 got a lot of kitchen already there. The simplest adjustment,
6 the most practical one was to move the sink to the area that
7 they talked about, and the dishwasher, to make sure it was
8 warm and so forth.

9 So, it wasn't just a matter of like well, we have
10 nothing here. Let's just kind of do something. It was a
11 done kitchen that they're going to have to tweak to deal with
12 this problem. So, I found that to be a legitimate issue that
13 creates a unique circumstance. Thought it was good. Turns
14 out it's not.

15 And the relocation of the rear stairway, because
16 they want to still have a staircase, it does need to remain
17 on the east side of the property, but it is true that a
18 landing would provide access from doors in the middle to the
19 stairway. The question is a landing. A landing, basically,
20 by our definition, is a, you know, something that provides
21 egress from the door to the stairs, and no extra stuff
22 basically.

23 In this instance, we have a deck described, and
24 also, a deck can also provide, obviously be a landing
25 providing access to a staircase, but in this particular case,

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1 we have -- if you were going to plainly describe the landing,
2 it would come out and basically go from the edge of the door
3 far end to the staircase on the right. It would probably be
4 around four feet by eight or nine feet.

5 The issue is, of course, he had talked about the
6 pillar going down. The reality of it is you could expand it
7 a little bit to accommodate for that and you still would be
8 providing primarily the use for a landing. We describe --
9 if you think about a deck, a deck is basically a landing
10 which allows the path to travel, but it's a deck structure
11 because it provides other things other than simply getting
12 to the staircase.

13 In this case, you've got about a 50/50 mix between
14 landing and deck, which will have the appearance of a deck,
15 so it's a deck. So, it's tough to look at a deck and say you
16 can justify a variance because it's a deck, but in this
17 particular case, I thought about it in terms of the standard
18 that we look at, and the standard would basically be, you
19 know, as you pointed out, a practical difficulty.

20 In other words, an applicant has to show that
21 strict compliance with the regulations is burdensome, not
22 impossible. So, it is possible to create a landing. It
23 wouldn't be exactly the way they've described it. You've
24 actually expanded it a little bit so that you could push your
25 pillar out and you could make a landing. However, would it

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1 be practical?

2 The more I think about it, if you look at a
3 landing, it would provide egress to the stairs on the main
4 level in the alley and it would also alleviate the plumbing
5 problem, but if you look at the proposed design, it gives you
6 egress to the alley, it alleviates the plumbing problem, it
7 creates --

8 It preserves the parking, which is important in
9 an environment -- you know, in an urban area like this, it's
10 important to preserve parking, and it also creates a
11 functional outdoor space, which the applicant does not have
12 right now.

13 The grill doesn't typically hang out in the front
14 yard. You like it in the back yard off the kitchen, and the
15 basement doesn't provide that. So, while I can talk about
16 the positives that come out of it like creating a functional
17 outdoor space, it is a factor, I think, to consider, if you
18 look at the specifics of this particular case.

19 So, to me, it all ties together, and I do believe
20 that strict compliance, that is making a strict functional
21 landing as opposed to a landing that has some additional
22 space to accommodate the pillars and so forth so it doesn't
23 eliminate parking, is meeting the standard for the first
24 prong, A and B.

25 I agree that it's not inconsistent with the zoning

1 regulations, and we've also gotten commentary from the ANC
2 and others that it does not impact the neighboring properties
3 as well. So, I'm comfortable with the variance, area
4 variance in this particular case, and I also am supportive
5 of the lot occupancy as well, so those are my comments.

6 BZA CHAIR HILL: Thank you, Mr. Blake. That was
7 great. Welcome back. Mr. Smith?

8 MEMBER SMITH: Mr. Blake, yeah, that was very
9 thorough, and you have sufficiently caused me to be torn on
10 this particular case. So, if you don't mind, I would like
11 to hear from Ms. John first before I give my comments.

12 (Laughter.)

13 BZA CHAIR HILL: All right, well, everybody, we'll
14 take -- I'll give you all like 15 seconds here. That was a
15 lot of information that Mr. Blake went and processed through,
16 so just take a minute.

17 VICE CHAIR JOHN: Okay, I'll go ahead.

18 BZA CHAIR HILL: Okay, go ahead.

19 VICE CHAIR JOHN: So, I had difficulty with this
20 case, you know, when I first heard it, but I, you know, felt
21 that there was an exceptional condition because of a
22 confluence of factors, and I could understand that the
23 applicant had to reconfigure the kitchen in order to
24 accommodate the pipes bursting continually, and so I was able
25 to agree with the applicant on that point.

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1 Where I had difficulty was whether or not there
2 was a practical difficulty, but in reviewing Exhibit 41 again
3 in preparation for this hearing, I looked at how the landing
4 could be constructed. Because for me, if it's possible to
5 build a landing with sufficient egress, then there is no
6 practical difficulty.

7 When I looked at the architect's presentation, it
8 appears that there would be a practical difficulty in
9 locating the landing, as Mr. Blake said, from the far edge
10 of the door, which is in the center of the structure, but a
11 landing could be built even though the architect was
12 skeptical of whether or not one could be built without
13 needing a variance.

14 In fact, a landing can be built without a variance
15 because it's not counted in lot occupancy and it does not
16 need to be as small as I initially thought it did. It can
17 provide a path of travel from the door, and the door is in
18 the middle, so the landing could go to the side of the door,
19 the far side of the door about four feet and continue along
20 to the stairs.

21 However, I accept the argument that the landing
22 would interfere with the posts, and that that would create
23 a practical difficulty, and that for a variance, the
24 applicant doesn't need to show an impossibility in building
25 the landing, but just that it would create a practical

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1 difficulty.

2 So, I will support the application, and I will
3 support the special exception as well which goes with the lot
4 occupancy, and I won't reiterate all of the other comments
5 made by the Board members which I agree with in terms of how
6 the application meets the remaining criteria. So, again, I'm
7 in support. Thank you, Mr. Chairman.

8 BZA CHAIR HILL: Thank you, Vice Chair John. Mr.
9 Smith?

10 MEMBER SMITH: So, we've heard this case I don't
11 know how many times and we started probably towards the tail
12 end of the summer, and in the various discussions that we had
13 at that particular time, I was one of the Board members that
14 was struggling in those hearings about whether there would
15 be the practical difficulty for the landing, and I wasn't
16 convinced during those times that the kitchen layout would
17 raise to the level of a practical -- the combination of how
18 the kitchen was laid out would create a confluence of factors
19 that would lead to a practical difficulty.

20 I will say that in analyzing Exhibit 41, like
21 Board member Blake and Vice Chair John have stated, it has
22 pushed me more to the fence. It has pushed me -- you know,
23 I think in previous situations, they did not meet the
24 practical difficulty, but kudos to the applicant for
25 providing that additional detail on the different design

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1 configurations that they have attempted to incorporate into
2 the design where they would attempt to meet the regulations.

3 There are iterations here that have shown that
4 they can meet the spirit of the regulations to create a
5 landing in compliance with the zoning regulations, but as Mr.
6 Blake stated and Ms. John stated, for area variance, the
7 applicant must show that the strict compliance with the
8 zoning regulations has created a high burden for them, not
9 so much an impossibility for them to meet the regulations.

10 So, I do buy that argument in analyzing Exhibit
11 41 that they do have a practical difficulty in being able to
12 access the rear of their home, to access the parking pad, and
13 I do support the variance and also the special exception, so
14 I will vote in support. I guess, what do they say closer to
15 Christmas? What does Dr. Seuss say in How the Grinch Stole
16 Christmas? My heart grew ten sizes that day? So, I will
17 vote in support.

18 BZA CHAIR HILL: Okay, this is great, okay, or
19 not, whatever. I mean, we're just following along with what
20 we're supposed to do, and so in that case, I appreciate
21 everyone's time. I do appreciate all -- I mean, I wish that
22 I had been as articulate as some, but I do appreciate all of
23 the effort and time that has gone into this case, and it has
24 taken a while to get here.

25 I'm going to go ahead and make a motion to approve

1 application number 20919 as captioned and read by the
2 Secretary, I know we've spent a lot of time talking about the
3 variance, but also for the special exception for a rear yard,
4 and ask for a second. Ms. John?

5 VICE CHAIR JOHN: Second.

6 BZA CHAIR HILL: The motion has been made and
7 seconded. Mr. Moy, if you could take a roll call, please?

8 MR. MOY: When I call your name, if you'll please
9 respond to the motion made by Chairman Hill to approve the
10 application for the relief requested. The motion to approve
11 was seconded by Vice Chair John. Zoning Commissioner Vice
12 Chair Rob Miller?

13 COMMISSIONER MILLER: Yes.

14 MR. MOY: Mr. Smith?

15 MEMBER SMITH: Yes.

16 MR. MOY: Mr. Blake?

17 MEMBER BLAKE: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Chairman Hill?

21 BZA CHAIR HILL: Yes.

22 MR. MOY: The staff would record the vote as 5 to
23 0 to 0, and this is on the motion made by Chairman Hill to
24 approve. The motion to approve was seconded by Vice Chair
25 John, who also voted to approve, as well as approval from

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1 Zoning Commissioner Rob Miller, Mr. Smith, Mr. Blake, Vice
2 Chair John, and Chairman Hill. The motion carries, sir, on
3 a vote of five to zero to zero.

4 BZA CHAIR HILL: Thank you, Mr. Moy. All right,
5 Commissioner Miller, thank you so much for taking the time
6 to be with us today. We really appreciate it.

7 COMMISSIONER MILLER: Thank you, and happy
8 holidays to all of my fellow Board members and the public
9 that is watching. Thank you.

10 BZA CHAIR HILL: Thank you. Thank you, Vice Chair
11 Miller. Have a good day.

12 COMMISSIONER MILLER: You too.

13 BZA CHAIR HILL: All right, so we have back with
14 us Chairman Hood, I believe.

15 ZC CHAIR HOOD: I'm back. Good morning, everyone.

16 BZA CHAIR HILL: Good morning, Chairman Hood. All
17 right, let's see, the next case I think -- oh, I don't know
18 what we're doing next, Mr. Moy. I was going to follow along
19 with whatever you all have organized us to do.

20 (Whereupon, the above-entitled matter went off the
21 record at 10:17 a.m. and resumed at 11:09 a.m.)

22 MR. MOY: The next case is application number
23 20928 of Matthew and Sarah Tucker. This is an application
24 pursuant to Subtitle X, Section 901.2 for a special exception
25 under Subtitle E, Section 5201, on the rear yard

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1 requirements, Subtitle E, Section 207.1, and pursuant to
2 Subtitle X, Section 1002 for an area variance from the lot
3 occupancy requirements of Subtitle E, Section 210.1, property
4 located in the RF-1 zone at 616 7th Street, NE, Square 860,
5 Lot 135.

6 As you'll recall, Mr. Chairman, this was last
7 heard at the Board's hearing back on September 20. This was
8 continued a number of times because of quorum issues. And
9 participating according to my records is the Chairman, Mr.
10 Smith, Vice Chair John, and Zoning Commissioner Chair Anthony
11 Hood. So, that's what I have for the record, sir.

12 BZA CHAIR HILL: Okay, all right, could the
13 applicant please introduce themselves for the record?

14 MR. TUCKER: Good morning, Board members, Matt
15 Tucker and Sarah Tucker, the applicants at 616 7th Street,
16 NE here.

17 BZA CHAIR HILL: Okay, great. So, as in the
18 previous case where we had a similar discussion about the,
19 a deck actually, I wanted to have an opportunity for my
20 fellow Board members to ask any final questions of this
21 particular applicant.

22 In this case, again, we have some similarities to
23 the other case that had a variance, an area variance for a
24 lot occupancy, for a deck in someone's rear property. The
25 difference between this one is that the Office of Planning

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1 did not agree with the applicant's argument concerning the
2 criteria for them to grant the variance.

3 However, there was the ANC that did provide their
4 support, and also I would note that, you know, we got a
5 letter from Commissioner Eckenwiler who does have interest
6 in a lot of our zoning issues, and then also there was
7 support from different people in the area, as well as CHRS.

8 And so, those are some of the points in the record
9 that I would also continue to direct my colleagues towards,
10 but as the last time, I wanted to give an opportunity to my
11 Board members if they had any questions of the applicant, or
12 even in this case, I see the Office of Planning.

13 Does anyone have any questions of the applicant?
14 One second for the applicant. I mean, do I have any
15 questions from my Board members? Well, hold on, let me just
16 see if the applicant's question changes any of the questions
17 I might have for my -- what questions did the applicant have?

18 MR. TUCKER: Can I just make one statement on the
19 Office of Planning and their recommendation or am I not
20 allowed to still testify?

21 BZA CHAIR HILL: Yeah, sure, you can go ahead and
22 make your statement.

23 MR. TUCKER: I just want to say I've been going
24 back and forth with Mr. Kirschenbaum. Like a key part of our
25 argument here for why, you know, the impracticality of any

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1 sort of right-of-way construction of a staircase or anything
2 like that, it is inherently cost prohibitive to us. The
3 Office of Planning is not able to consider the economic
4 argument that we made in their recommendation.

5 So, while they didn't recommend that we go
6 forward, I would just want to put out there that I think
7 their analysis on the full case is actually incomplete
8 compared to the full argument of practical hardship and
9 difficulty we are making and I just wanted to make that kind
10 of clear from my perspective.

11 BZA CHAIR HILL: Sure, Mr. Tucker. That's not
12 such a bad comment. Go ahead, Mr. Blake.

13 MEMBER BLAKE: Sure, I have a couple of questions
14 of the applicant as well as the Office of Planning. With
15 regard to the applicant, what are you trying to accomplish?

16 MR. TUCKER: We are trying to gain use of the rear
17 of the house. So, from the top two levels, which is the main
18 unit of the house, we have absolutely no right-of-way access
19 to the backyard. There is an alley that runs on our
20 neighbor's property that we can use in emergencies, but
21 because of that, we have absolutely zero access to our rear
22 yard.

23 About two years ago, we had some emergency water
24 leakage damage and had to completely repair and rebuild the
25 back wall. While that happened, we put in a new opening, the

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1 French door that you see there. As you can see in the other
2 pictures, at the time, we assumed that the deck permitting
3 process would be relatively easy since all of our neighbors
4 down the row had the exact same thing we're asking for
5 permission now. Flash forward two years later, here we are,
6 basically.

7 MEMBER BLAKE: Okay, so your goal is to make sure
8 you have access to the yard. How big is the yard exactly?

9 MS. TUCKER: It is 15 by eight and half or about
10 that.

11 MEMBER BLAKE: And that includes -- there's a
12 portion -- I looked at the plat and a portion of the yard
13 goes past the garage. Is that actually part of your property
14 or is that part of the tax lot behind?

15 MR. TUCKER: No, we believe that is part of -- the
16 part that goes kind of -- like there's the garage kind of
17 thing that kind of runs here and then there's that little
18 bump out?

19 MEMBER BLAKE: Right.

20 MR. TUCKER: We don't think that's actually ours,
21 but the gate was placed there when we bought the place, so
22 we haven't --

23 MEMBER BLAKE: I got that. I thought that
24 exactly. You know, one of the issues that came up with
25 regard to this thing was trying to find a unique condition

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1 with the property, and the unique condition that you
2 described largely was the fact that it was a small lot, and
3 it is a small lot, but the other lots along the way are small
4 as well.

5 Your lot may actually be smaller than the rest,
6 but without clear understanding of that, it's hard to say.
7 Your lot is small. That little bump out that looks like it's
8 part of your lot that isn't would actually make your lot
9 smaller, but I'm not sure exactly what the dimensions and
10 measurements are there.

11 The other difficulties that you talked about, you
12 didn't talk about with regard to -- so those are some
13 extraordinary issues that are linked to the land, small lot,
14 et cetera, locked in, what have you. There were particularly
15 some property or building-specific extraordinary elements.
16 Did you identify -- what did you identify there in terms as
17 extraordinary?

18 MR. TUCKER: Sure, so some of the other
19 extraordinary elements that we identified in addition to the
20 smallness is the exact relation of the French doors to the
21 basement egress steps makes it, where those steps sit,
22 impossible to put any sort of -- if you were to do a 4x6
23 landing to try and build some of the staircase designs that
24 we put in our updated thing, anything that would involve that
25 landing is going to land a column smack in the middle of the

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1 second and third steps there, completely blocking that egress
2 point, so like that is a huge cause for concern and
3 impracticality.

4 And in some of those, we tried to price out how
5 much it would physically cost to dig up those steps and have
6 them face a different direction, and in all of these
7 instances, we wind up with a project that ends up, you know,
8 \$25,000, \$35,000 instead of a \$5,000 deck, and that's kind
9 of --

10 MS. TUCKER: Additionally, I would add to -- in
11 addition to where the steps are placed and then that rear
12 wall that does abut our property, there's also two HVAC units
13 in that small backyard right now, and those were included in
14 the costs, that any other options were moving --

15 MR. TUCKER: We'd have to move those to the roof
16 and that would be also extremely expensive.

17 MEMBER BLAKE: Okay, so, and when I look at the
18 analysis that you did, because I took a look at the options
19 and it looked like, in looking at those -- and we talked a
20 little bit about the financial part and we'll come back to
21 that. When I looked at the relationship of the French doors
22 to the stairs, I mean, you did put them there.

23 Had you not thought -- I mean, there's no -- just
24 so you know, as an area variance, self-created issues are not
25 -- we can work with that, but I just want to make sure. You

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1 put the doors where they are, so the location of the doors
2 where you put them is what makes that difficult, correct?
3 Did you think through that when you did it? I'm just
4 curious. Did you --

5 MR. TUCKER: No, we -- there was --

6 MS. TUCKER: No, obviously, we looked, we naively
7 looked at our neighboring properties and saw that three of
8 the six houses on our block that are in a very similar layout
9 to us had a deck, and we were not thinking that this would
10 result in this big of an issue as it has. And then also with
11 -- I mean, it's just a small lot, so, yeah, we could look
12 into moving it, but --

13 MR. TUCKER: I mean, but then if we were looking
14 at shifting these doors over, I mean, we'd have to reopen
15 that entire back wall, re-brick, change things. We did just
16 completely re-waterproof and stucco that back wall, because
17 I mentioned we did have that pretty substantial water issue.
18 So, I mean, like I'm very hesitant to even consider doing
19 something like that just because we finally got stuff back
20 where they actually, it's actually habitable again.

21 MEMBER BLAKE: One of the issues when you talk
22 about your economic concerns is that is a factor we can
23 include as part of our analysis, but if it's the primary
24 factor, it's a little bit problematic for a variance if it's
25 an economic argument.

1 The other thing is I looked at the tables and
2 charts you did, the examples of ways you might comply through
3 a stair and landing, which we talked about earlier. The
4 landing would allow you to do a set of stairs to get access
5 to the rear yard. That is doable with the requirement that
6 you may have to shift your HVAC system a little bit or -- but
7 I don't necessarily think that you necessarily have to move
8 your stairs.

9 When you do an economic analysis and you put a
10 large number in like move a stair, dig out and move a stair,
11 the numbers are a little bit skewed. So, the cost of that
12 is so substantial that the actual staircase was not very
13 much, and the incremental costs I look at there would be the
14 moving of the HVAC systems. They don't necessarily have to
15 go to the roof. They may just have to be relocated within
16 the yard or up under the gate.

17 So, it's not exactly -- the numbers that you put
18 in your economic analysis are very good and I think most of
19 the analysis that you made are economically based, but we
20 have to make sure that when we look at those numbers, we have
21 to be, you know, within the context of apples to apples. Do
22 you really need to move that to that extreme?

23 MR. TUCKER: So, to answer that, my understanding
24 is that the HVAC systems are typically on the side of the
25 house where you have all of your duct work and where all of

1 that is run, and that is the side of the house that they are
2 on now. So, I would be -- without -- I mean, yeah, I don't
3 know how we could move them to the other side of the house
4 because then that would --

5 (Simultaneous speaking.)

6 MEMBER BLAKE: No, I didn't discuss moving it to
7 the other side of the house. I was just saying shift them
8 around a little bit. If you have two very large AC systems
9 in one spot, you could move them back. The issue you talked
10 about was placing the pillars for your deck.

11 MS. TUCKER: Yeah --

12 (Simultaneous speaking.)

13 MEMBER BLAKE: So, if you just shifted them inches
14 or feet, you'll probably maybe accomplish that. I'm just
15 saying that's something that could occur. Your extreme was
16 I've got to put them on the roof or nothing, or I have to
17 change the whole staircase, which I think was a little bit
18 of -- you know, those numbers can get very big at that
19 extreme.

20 So, that's the only reason why, when I looked at
21 the economic analysis, I was like, I pushed back a little bit
22 because it's a little bit of an extreme economic analysis.
23 It didn't really sit with me in terms of, you know, a
24 practical -- as a property owner myself, I would look at how
25 do I accomplish this cost effectively, and I would say that

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1 application would be, you know, a little bit -- that's an
2 extreme. That's the only thing. I just wanted to clarify
3 that.

4 The fact that the other neighbors in the block
5 have it, and it may have preceded the zoning regulations, and
6 it may be, or they may not have gotten things. We actually,
7 I don't think we can actually look at that as a good criteria
8 only because it's effectively a de facto rezoning if we were
9 to just say it for that reason.

10 So, this argument, as I looked at it, needs to be
11 built on, you know, an extraordinary condition either with
12 the property and land, the land and the building of property
13 that leads to a burdensome impact on you, right, if you think
14 about it. So, I'm just looking for your support to help us
15 there.

16 I think the Office of Planning looked at that and
17 said, you know, you focused on the property, the land itself,
18 which was not unique, and so we didn't have a lot of
19 building-specific issues that were different from what you
20 said with the doors. And incrementally, you've introduced
21 the doors, the HVAC system, and now a big leak or something,
22 but I'm trying to just get a better sense of some of the --

23 (Simultaneous speaking.)

24 MR. TUCKER: Yeah, I'm happy to walk you --

25 MEMBER BLAKE: Your argument would be greatly

1 strengthened if you could give us some more --

2 MR. TUCKER: Sure, so that's kind of --

3 MEMBER BLAKE: -- issues.

4 MR. TUCKER: -- the crux of those issues, is to
5 take them, like, and that's kind of what we're asking, is to
6 take all of these into consideration as one, to take a
7 confluence of factors, to present the actual confluence of
8 factors that is present at this house that is unique to us.

9 And the only reason we're even mentioning that the
10 other neighbors have decks is not for any sort of zoning
11 approval or because of them. It's also just to show that
12 like the pattern of the house wouldn't be effected if the
13 relief were to be granted. It was just trying to show that,
14 but with that said, also because they have them, we can't
15 actually see what they have different from us in terms of,
16 you know, factors.

17 But from our standpoint, it is both the fact that
18 our house is uniquely short, that back lot is uniquely, it
19 is about three feet too narrow and dramatically shorter than
20 what is the standard zone in the RF-1 zone. So, I mean,
21 that's -- take it as it is. We have about a 624 square foot
22 lot. The standard size lot of the RF-1 zone, I believe, is
23 1,800 square feet, so that's factor number one. We have a
24 substantially small --

25 And now if you look at, kind of if you pull back

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1 in the neighborhood and you look at kind of what we have
2 around us, we have that kind of six houses in a row that are
3 uniquely small compared to the rest of the neighbors, and I
4 believe the Office of Planning would back me up on that.

5 So, take it with those, and then we're looking at
6 kind what makes our house in that six unique, and that is the
7 presence of exactly where our doors are, the fact that they
8 exist, and not every house has the same openings. That makes
9 it unique to our house in particular.

10 Then if look down to the ground floor, it's the
11 presence of that, you know, 12-foot high garage that runs
12 halfway through our property, that does not block the
13 sunlight and does not block the light of all of the houses
14 on the bottom end of the row.

15 Then you look at the fact that if -- you know,
16 where those basement egress steps are, we can't -- we still
17 would have to sink a column down and block those steps, which
18 could create a whole, you know, other host of issues for us
19 if we weren't to rotate them, if we were to try to build some
20 sort of right-of-way 4x6 landing with either a spiral
21 staircase or something else construction.

22 And then on top of that, it is also the presence
23 and the actual location of those air conditioning units that
24 you can see in the exhibits that we provided, that because
25 of where they are, we would have a really hard time without

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1 moving them, and because I believe they need to stay on that
2 side of the house to match where the HVAC system is and to
3 match where the heat pump is, and whatever else, you know,
4 the condensate and whatever else is supposed to come out of
5 the house that sometimes, you know, gets trapped, but would
6 be to move those up to the roof.

7 And our estimates actually, I mean, don't even
8 include what I think we would likely have to do, which would
9 be to do increased structural support and increased
10 waterproofing on the roof of the house if we were to move the
11 air conditioners up there. So, I mean, I think actually
12 think our estimates are low compared to what we would have
13 to do if we were going to try to comply and do some sort of
14 right-of-way construction.

15 So, I think it is those covalence of factors, that
16 we have an extremely small lot, we are uniquely situated in
17 this row in terms of the garage, in terms of the fact that
18 we have no alley access, we have no side yard access. You
19 know, to the extent that you can and can't consider those
20 decks, the point remains that they do have access to some
21 usability of the rear yard, call it whatever you want,
22 whereas we do not.

23 So, that's where kind of that unique -- that is
24 the argument that we're making, that we are unique in that
25 sense that we do believe we have hit the, you know, the

1 variance tests, that we have hit the branches. I mean, if
2 we are denied the variance, you know, you're basically saying
3 you're going to have to pay, you know, X percentage more, or
4 two, four, five times the costs to actually get access to
5 your backyard, whereas your neighbors have that --

6 MEMBER BLAKE: What was the --

7 MR. TUCKER: -- they have openings. So, that's
8 kind of our extenuating difficulty here.

9 MEMBER BLAKE: What was the mechanism to access
10 the yard historically?

11 MR. TUCKER: We -- as far as I'm aware, we don't
12 think there was one, but if you look down the row, five out
13 of the six houses have some mechanism, either -- the one at
14 the end that has the entire side yard as well has a
15 staircase, and then the other ones have decks that have the
16 openings in the back.

17 MEMBER BLAKE: Okay, but your unit had no opening
18 whatsoever?

19 MR. TUCKER: As far as we know, when we purchased
20 it, it did not have that access. We believe that at some
21 point there was a door.

22 (Simultaneous speaking.)

23 MEMBER BLAKE: -- created that doorway. That was
24 the only -- before, it was just a blank wall, no --

25 MR. TUCKER: No, there were windows there, and

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1 then we believe probably sometime in the '90s that there was
2 at one point a door and a staircase, but we're not sure about
3 that, and the owner who we bought it from has passed away,
4 so.

5 BZA CHAIR HILL: But, Mr. Tucker, don't you access
6 it from the unit below?

7 MS. TUCKER: Yes, yeah.

8 MR. TUCKER: Yeah, we can -- sorry, yes, sorry,
9 yeah.

10 MS. TUCKER: Thank you.

11 MR. TUCKER: Basement, yeah.

12 BZA CHAIR HILL: All right, you go through the
13 basement to get there, and you guys own that basement,
14 correct?

15 MS. TUCKER: Correct.

16 MR. TUCKER: Correct.

17 BZA CHAIR HILL: Okay, is that --

18 MS. TUCKER: We --

19 BZA CHAIR HILL: Is that an independent legal
20 unit?

21 MS. TUCKER: Yes.

22 MS. TUCKER: It's separately metered, yeah.

23 BZA CHAIR HILL: Got it.

24 MEMBER BLAKE: Does it have an independent C of
25 O?

1 MR. TUCKER: It does.

2 BZA CHAIR HILL: But you guys own it?

3 MR. TUCKER: Yes.

4 MS. TUCKER: Correct.

5 BZA CHAIR HILL: Okay.

6 MR. TUCKER: We own it and it is a storage unit.

7 It sits vacant.

8 BZA CHAIR HILL: Okay. Okay, anybody else? Go
9 ahead, Vice Chair John.

10 VICE CHAIR JOHN: So, you showed us a photograph
11 where there are steps coming up through a patio. Do those
12 steps go down to the end of unit?

13 MR. TUCKER: The basement unit, correct.

14 VICE CHAIR JOHN: To the basement unit? So,
15 there's a patio off the basement unit?

16 MS. TUCKER: The patio is really, when we
17 purchased this house it was overgrown. It's never been used
18 and we bricked it over so that plants wouldn't grow, and
19 nobody would dig in the yard that we have that's not being
20 used.

21 So, yes, there is bricks right now.

22 VICE CHAIR JOHN: Okay.

23 I just thought it was odd, and that's why I had
24 difficulty trying to figure out where that was. I just
25 needed to confirm that my understanding was correct that the

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1 basement, the occupant of the basement unit, would have to
2 walk up those steps up to the enclosed patio, to get outside
3 through that door that you're not sure is on property that
4 belongs to you, right?

5 MR. TUCKER: Correct.

6 MS. TUCKER: The dorm was existing when we
7 purchased the property.

8 MR. TUCKER: Yes, the dorm, uh huh.

9 VICE CHAIR JOHN: I understand; I understand that.
10 But just how that occupant would get out, you know, out to
11 the alley or whatever is out there, they would have to come
12 up to -- how wide is that little opening?

13 MS. TUCKER: Three feet.

14 MR. TUCKER: Three-and-a-half feet, maybe.

15 VICE CHAIR JOHN: Pardon?

16 MS. TUCKER: About three feet.

17 VICE CHAIR JOHN: Okay.

18 So it's about three by three by three?

19 MS. TUCKER: Three by four.

20 MR. TUCKER: Yes.

21 VICE CHAIR JOHN: Pardon?

22 MS. TUCKER: I think it's four feet, but yes.

23 VICE CHAIR JOHN: Four by three? Okay, all right,
24 thanks. Just clarification. I always had trouble
25 understanding what that was.

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1 And you're saying that to even put a landing there
2 based on the architect's submission in your file, in your
3 record, I believe it might be Exhibit 15, I'm not quite sure.

4 But the posts would have to go over those steps?

5 MR. TUCKER: Yes, the posts from any landing would
6 block those steps.

7 VICE CHAIR JOHN: Okay.

8 All right, thank you.

9 ZC CHAIR HOOD: Mr. Chairman, oh, I'm sorry, let
10 me let Board Member Blake to first.

11 BZA CHAIR HILL: That's all right, I'll come back
12 to Mr. Blake also, or Chairman Hood, go ahead.

13 ZC CHAIR HOOD: Since I've been around on this
14 case and the hearings for so long, I think I'll yield to Mr.
15 Blake.

16 BZA CHAIR HILL: Okay. Mr. Blake, you want to go
17 ahead?

18 MEMBER BLAKE: Mr. Tucker, could you talk a little
19 bit about Ms. John was talking about the diagram where you
20 had indicated you could do. And I did think it was
21 interesting schematic where you could do a spiral staircase
22 off of a landing. I think one of the things you did in that
23 case was you put a spiral staircase in, you put a landing in
24 to the rear of the door, it was a six-foot-wide door. And
25 I think you had four-feet wide and it went, and I think the

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1 spiral staircase touched it immediately, and then you had --
2 that's the reason why you had the problem with it dropping
3 into the staircase, correct?

4 MR. TUCKER: No, we have the issue with the
5 anything dropping into the staircase by the landing by itself
6 because of the way the French door is placed on the back
7 wall. Anything that -- my understanding, in order to build
8 right-of-way construction, we would have to do a four-by-
9 whatever the width of that door. And anything that comes out
10 four feet is going to always hit from that middle corner, is
11 always going to drop a column directly in between.

12 MEMBER BLAKE: Right, right, right. But I think
13 the -- and that we should definitely get -- I think one of
14 the difficulties of not having an architect's input on this
15 is that if you were to actually think about the regulation
16 about the landing, it doesn't necessarily have to be just at
17 that door.

18 It just, the purpose of that landing is so that
19 it's for no other purpose but for getting towards the stairs.
20 So it could actually go a little bit further over, so that
21 you could actually make sure that post comes down on the
22 other side of the staircase, and ditto on the other side.

23 And it's not that long of a run. So it's not as
24 though you know, your house has probably got a beam that size
25 for all 17 feet.

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1 So, it's not that significant a run that you
2 couldn't have posts on either side on a spiral staircase
3 coming off the side down.

4 And if you think how spiral staircases run, you
5 might well actually avoid your HVAC system. But that, I'm
6 not trying to design the thing for you.

7 I'm just saying creatively speaking, when you put
8 those particular posts where you put them, it just happened
9 to be the worst place you could possibly put them.

10 And I think that with professional insight, you
11 might have an understanding that there is actually a much way
12 to do it to make it work.

13 Now don't forget, this is an area variance so the
14 fact that it's maybe possible does not mean it's not, you
15 know, it doesn't, it's not a burden.

16 I'm just saying when you look at this, there are
17 some ways. And I think it's a little bit hard when the Board
18 sees, and I think the Office of Planning, we'll have to ask
19 them, as well.

20 If they look at something like, I think you can
21 do it and for some reason, because it seems like it makes
22 sense.

23 The other thing I would just mention is given the
24 amount of space you have in that yard, it is true you should
25 try to get as space, as much space as you can.

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1 The balcony may actually, the balcony I call it.
2 The landing is a small setting which allows you to have then
3 access to the whole yard.

4 But you're absolutely right. You have to figure
5 out what fits your needs given what you have in place.

6 So I just, when you look at those diagrams that
7 you've done if you want to point to them, you can see, and
8 I wanted you to speak to it, but I don't think it's
9 necessary.

10 If that landing were larger, it would still
11 accomplish what these, this intent of the zoning regulation
12 and provide you the egress to the lower level.

13 But I think it's in the context of what you have
14 demonstrates it is possible.

15 My other question is before the Office of
16 Planning.

17 MR. TUCKER: My understanding on that is anything
18 that is not that strict four-by-six landing, is going to
19 necessitate a variance.

20 Because our house already sits above the 80
21 percent threshold, anything we do if we were to build a four
22 inch little balcony off the back of our house, that would
23 necessitate a variance.

24 That's been what's been explained to us before in
25 our previous cases.

1 MS. TUCKER: Other than a landing for a step.

2 MR. TUCKER: For a step, which would be an
3 exemption from the zoning. But the second you go larger than
4 that or anything and try to get greedy, I believe we would
5 be back in variance territory, and back here in a year.

6 VICE CHAIR JOHN: That's not entirely true.

7 MEMBER BLAKE: I don't believe that's the case.

8 VICE CHAIR JOHN: That's not entirely true, but
9 I believe your architect did submit information in the
10 record. I think it's Exhibit 15 showing where in his
11 opinion, the landing would be difficult to accomplish under
12 the circumstances.

13 And so, yes, I just wanted to clarify for anyone
14 who is listening that the landing doesn't have to be four-by-
15 four. It would be as I discussed earlier, from the door
16 which is a French door.

17 So, it would start at the far end of the French
18 door, maybe a couple of feet more. It's whatever the ZA
19 would think is sufficient to provide a proper exit in those
20 circumstances.

21 It could go a little bit farther than where the,
22 you know, the end of the door across from the circular
23 stairway. But that would be I guess, a final determination
24 by the ZA.

25 Of course if I'm misstating that, the Office of

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1 Planning can always correct me. But it is not true that it
2 has to be exactly four-by-six. There's a little leeway
3 there.

4 That doesn't mean there's no practical difficulty.
5 I'm just saying you know, what the, what I understand the
6 regulation to be.

7 Thank you, Mr. Chairman.

8 BZA CHAIR HILL: Thank you, Vice Chair John.

9 All right, before I go to the Office of Planning,
10 go ahead, Chairman Hood.

11 ZC CHAIR HOOD: Thank you, thank you, Mr.
12 Chairman.

13 Mr. Tucker, I am looking at the supplemental from
14 the Office of Planning and what struck me, I know we've spent
15 a lot of time in trying to ask there's difficulty and now I'm
16 starting to get confused.

17 My question to you, Mr. Tucker, is the French
18 doors. Did you, I heard you earlier mention and I may have
19 missed this previously, mention that you, did you place the
20 doors, did you cut the doors out and put the doors there or
21 was that like that when you bought the facility, when you
22 bought the house?

23 MR. TUCKER: Yes, so when we, like I said, we had
24 a water issue and had to re-do the entire rear roof inside
25 of that, in the back of the house completely.

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1 Yes, we placed doors basically where there would
2 previously have been a window.

3 ZC CHAIR HOOD: So it used to be a window there
4 previously?

5 MR. TUCKER: Yes.

6 ZC CHAIR HOOD: And then the doors. Okay.

7 And as I think, Board Member Blake brought out
8 some issues that I hadn't thought about. So, when you were
9 doing this, was it, and a lot of times you know, I don't
10 always like to put the burden on the homeowner because let
11 me go back.

12 Office of Planning's report says, and this is what
13 I thought all the time, and I helped write some of these
14 regulations over the years.

15 While the desire to have a deck is certainly not
16 unreasonable, and I think I've said this previously, I'm just
17 trying to figure out how we get there.

18 Because when I look at your property, I think you
19 have some difficulties. So I'm just trying to figure out how
20 do we get there.

21 And I know the Board does things a little
22 differently from the zoning regulations, which the Zoning
23 Commission writes.

24 So, I'm just trying to figure out how we get
25 there. We've been talking about this so much. We've got

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1 bigger things going on in this city than this little area.

2 And I'm not putting the Board down or what their
3 process is down, but I just know that this is real hard on
4 a homeowner. And trust me, I'm going through something
5 similar myself and I sit on the Zoning Commission.

6 So I just think the burden all the time, do we
7 burden -- let me ask you. Do you feel like the system
8 burdens you too much? I'm asking you that.

9 And this has nothing to do with the case, but do
10 you feel like this system is burden? Because this is a lot
11 of time on this yard.

12 MR. TUCKER: We filed this application in October
13 of 2022 and we're still here.

14 ZC CHAIR HOOD: Okay, all right.

15 All right, I think that you have a case, strong
16 case. I'm not sure where everyone else is. I just think
17 that this is, and I get the landing. Look, I'm just trying
18 to help you get to where you can get to.

19 Because you know, everyday homeowners unless I'm
20 missing something, don't do this. You don't do this every
21 day.

22 So I just want, because when the Office of
23 Planning's first, and I'm going to stop in a minute, Mr.
24 Chairman.

25 It says, while the desire to have a deck is

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1 certainly not unreasonable. That's what it says, and I'll
2 leave it at that.

3 Thank you, Mr. Chair.

4 BZA CHAIR HILL: That's all right Chairman Hood.
5 I think you're helping some of this discussion, and I
6 appreciate the clarity.

7 And I'm going to throw in my two cents before we
8 now go around and around, and whatever it is. This has gone
9 on a while because we are here because this is an area
10 variance.

11 Meaning that if the Zoning Commission had this
12 some way that it was a special exception, we wouldn't be
13 struggling with this as much.

14 So, and by the way, I don't want to spend
15 freaking, you know, and I know you and I are both saying the
16 same thing, Chairman Hood.

17 I don't want to spend as much time as we've spent
18 already on this tiny deck, considering there are other things
19 that we need to be spending our time on, which we're going
20 to be here by the way, a pretty long day now.

21 So I would then request -- anyway, if there's any
22 way that this can get to a special exception rather than a
23 variance. And the homeowners, by the way, they're trying to
24 do what they can do. They could have just probably tried to
25 build the deck and nobody would say anything because they

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1 can't even see the deck from where it is.

2 So they're actually trying to do it the legal way
3 as opposed to just throwing it up there and finding somebody,
4 you know, out back to do it without permits, right.

5 And so, I will therefore, continue to lobby my
6 board members into what is being said right now. We're
7 currently sharing our, expressing our opinions on this, as
8 you have now had the chair of the Zoning Commission express
9 his opinion.

10 Which is to say, they were trying to make it
11 easier for this to happen to begin with anyway. So they
12 didn't know that it was going to be this problematic.
13 Otherwise, they probably would have done something so that
14 it wouldn't be wasting our time to be here.

15 It's also not the Office of Planning's fault,
16 because they're trying to also do what they are trying to do
17 with the regulations.

18 However, we're going to give them a chance to talk
19 as much as we want again. But the Zoning Commissioner, I'm
20 sorry, the chairman of the Zoning Commission just threw out
21 his nickel, and I, as the chairman of the BZA, have thrown
22 out my nickel.

23 So, who has a question for anybody? Okay, Vice
24 Chair John, please.

25 VICE CHAIR JOHN: I would like to add my nickel

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1 to that discussion because you know, this is a common design
2 in the city where these houses are built with no egress on
3 that first floor.

4 And so, I see that there's going to be an issue.
5 And Mr. Commissioner, I think this is something that we could
6 look at for the future.

7 And the vice chair of the Commission was also here
8 this morning on a similar situation. So, I would suggest
9 that we look at this area.

10 BZA CHAIR HILL: Okay, does anybody have any more
11 nickels before we go to -- I don't mean anything from the
12 Office of Planning, but Mr. Smith, you apparently have a
13 contribution? Please, go forward.

14 MEMBER SMITH: Sure, I'll add some cents, adding
15 two cents. I agree with everything that is stated. And I
16 think I brought this up at one of the hearings in this.

17 This is as Ms. John stated, this is a common issue
18 across the city, or you know, in general, across the region
19 where we have our row houses on tight lots, and we have
20 zoning regulations that require, that have lot occupancy
21 requirements, that open space requirements, that floor area
22 ratio requirements.

23 And oftentimes, decks and balconies get caught in
24 those regulations as the applicants, the Tuckers, are in this
25 particular case.

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1 So you know, I share in the sentiment that
2 Chairman Hood stated, and Vice Chair John stated, that this
3 is something that's probably you know, this is getting
4 outside of our realm of regulation.

5 This is something that probably the Zoning
6 Commissioner probably can look at. I've seen situations
7 where decks and balconies are excluded from lot occupancy and
8 FAR if they're open, if they remain open, up to a certain
9 size.

10 So, that could be six feet from the rear of a
11 building or extending from the wall of a building, as long
12 as they remain open.

13 But that's just food for thought in the future.
14 That doesn't help them now. Right now they're looking at a
15 special exception in the area variance, and we're tasked with
16 evaluating this project against those particular regulations.

17 But going forward given that we've had two cases
18 that are very similar, well somewhat similar in nature. And
19 we see these fairly often, this may be something that the
20 Zoning Commission may want to look at, and the Office of
21 Planning may want to look at to address going forward.

22 So, two things.

23 ZC CHAIR HOOD: I want to make it clear. I want
24 to add, now I'm going to add another nickel. So mine is now
25 ten cents.

1 I will say this. One of the things that I have
2 heard previously, you know I get it from both ways, is that
3 every time one of us comes to the BZA, we always say well,
4 the Zoning Commission needs to look at something.

5 And they say, Hood, those regs have been in place
6 since '58 and now 2016, operate with them. That's what the
7 BZA's for.

8 So, I get it both ways. So I just want to make
9 sure that the BZA understands while I'm going, and what I
10 would also like, Mr. Chairman, is that there be a errata
11 sheet when we have issues like this.

12 Because I can't remember what we do, and what you
13 all do altogether. Neither can the vice chair. Sometimes
14 it's good for staff and us to, when the BZA has these issues,
15 to give us the sheet and we can look at them, and we can go
16 to the Office of Planning, and we can start working with
17 them.

18 I think that would be more organized. Because
19 you're telling me now by the time I leave this hearing and
20 go to my next hearing, I'll probably be done forgot this.

21 So, I usually ask Mr. Moore to work with Michelle,
22 and also be good if the BZA with these issues that keep
23 coming up, not leave it to the commissioners, but also to be
24 able to express that to them.

25 And then we can take it up and try to work with

1 the Office of Planning and see how we can make these, make
2 the Tuckers' lives a lot easier and stop putting the, so much
3 burden on the homeowners.

4 That's where I am. Because I have the burdens,
5 too. And I understand, Mr. Tucker, believe me I'm right
6 where you are right now and I sit on the Zoning Commission.

7 So I'll leave it there. Thank you, Mr. Chairman,
8 that's my other five cents.

9 BZA CHAIR HILL: Okay.

10 All right, does anybody have any questions for any
11 -- I don't have any questions for the Office of Planning.
12 Does anybody have any questions, I think Mr. Blake, you had
13 a question for the Office of Planning?

14 MEMBER BLAKE: I do. I would like the Office of
15 Planning just to address the, the issues that we raised in
16 terms of the confluence of factors and their report.

17 I do have one question for Mr. Kirschenbaum.

18 BZA CHAIR HILL: All right, Mr. Kirschenbaum, do
19 you want to introduce yourself for the record, please?

20 MR. KIRSCHENBAUM: Yes, good morning, Jonathan
21 Kirschenbaum, with the Office of Planning.

22 MEMBER BLAKE: How you doing? Would you mind just
23 walking me just briefly through, obviously the size, it's
24 very clear from your report the size of the lot was not
25 unique.

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1 Were there any unique factors that you could
2 though point to, such as that, that garage that came abutting
3 with no, you know, no relief whatsoever, no setback from the
4 garage for their backyard or anything like that.

5 Can you just talk about something that would in
6 fact, make their lot unique?

7 MR. KIRSCHENBAUM: Well, no, I mean it has to be
8 said in our OP report or supplemental report. We do not find
9 that there are any unique conditions with this property.

10 MEMBER BLAKE: Why would that not be a unique
11 condition, the garage sitting on the property line?

12 MR. KIRSCHENBAUM: I guess I don't quite
13 understand the question how -- I mean, it might even be --
14 (Simultaneous speaking.)

15 MEMBER BLAKE: Is it typical that we have a
16 setback of some sort from each property?

17 MR. KIRSCHENBAUM: No. And the alley that the
18 applicant talked about is not an alley, it's a tax lot. So,
19 all of the properties along that row, you know, their rear
20 lot lines are joining with another lot.

21 MEMBER BLAKE: Okay.

22 Did you see any building-specific issues that we
23 could point to?

24 MR. KIRSCHENBAUM: I did not, no.

25 MEMBER BLAKE: So, your issue is not the practical

1 difficulty but it's more or less there are no unique
2 conditions?

3 MR. KIRSCHENBAUM: Correct. We're just going to
4 get through the first, we really could not get through the
5 first prong of the variance test, which is that there has to
6 be a unique situation with -- there has to be a condition
7 with the property that is unique to that property.

8 MEMBER BLAKE: Okay, thank you.

9 BZA CHAIR HILL: Okay.

10 I lost the Tuckers there. We did have the Tuckers
11 there. Okay, great.

12 All right, do any of my fellow board members have
13 anything before we adjourn?

14 (No audible response.)

15 BZA CHAIR HILL: Okay. All right, Mr. And Ms.
16 Tucker, we'll see what happens. You will obviously watch
17 next and I hope you guys have a good day.

18 MR. TUCKER: Thank you for spending so much time
19 with us.

20 BZA CHAIR HILL: Thank you.

21 (Pause.)

22 BZA CHAIR HILL: Okay. I can start, and then I
23 think what I'll do after that is I'll go to Chairman Hood.
24 And then I guess we'll go to Mr. Blake.

25 We'll stick with the same process that we had last

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1 time. Then we're going to go and see where we get. Maybe
2 we get to Vice Chair John after that.

3 So, I am comfortable with the argument for the
4 variance. And the unique conditions to me are the garage,
5 I think, that Mr. Blake threw out at the end I think is
6 something that is unique. Like, there's not many properties
7 that are built next to a garage there.

8 I think that it is a confluence of factors that
9 is getting me to the uniqueness of the property. The fact
10 that we, the Board, can take into expense, I'm sorry, can
11 take into our deliberation, expenses.

12 I think to move those HVAC units are actually
13 going to be expensive. I think that the fact that that door
14 is there, and the door is there, and the way that it's there,
15 is also unique.

16 I think that the way that that door got there in
17 that the applicants saw its neighbors with a similar deck and
18 door, they thought they were going to go ahead and put a door
19 there. I think that's unique.

20 I think that the fact that they can't access the
21 rear, other than through a separate C of O property, I think
22 that's unique.

23 I think that I don't see that the alternate deck
24 options were something that is possible.

25 I think those, the confluence of factors that I've

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1 just mentioned, result in a practical difficulty that they
2 can't get to put something there without triggering a
3 variance.

4 And so, I'm going to be voting in favor. I don't
5 think it's a problem with the zoning regulations in terms of
6 like, what is hoped for, for that zone as the third prong.

7 Give me one second.

8 (Pause.)

9 BZA CHAIR HILL: Yes, I don't think that granting
10 this will have any detriment to the public good. And so I'm
11 going to be voting in favor of the variance.

12 I also did not have an issue with the rear yard,
13 as also the Office of Planning said that they didn't have an
14 issue with the rear yard.

15 I will again reemphasize that I don't think this
16 can be necessarily even seen from the street. I think that
17 the neighbors were comfortable with this. The ANC is
18 comfortable with this. The ANC, who does take a hard look
19 at these things, is comfortable with this.

20 So, I'm going to be voting in favor again.

21 And, may I turn to you, Chairman Hood?

22 ZC CHAIR HOOD: Yes, thank you, Mr. Chairman.

23 I would agree with you. I'll be voting to support
24 this application. I think this, there's a lot of uniqueness.
25 It depends on how you phrase it.

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1 And when I look at the Office of Planning's
2 recommendation, it's for me it's how you word it, the
3 wordsmithing.

4 And I appreciate their analysis, but my analysis
5 is kind of aligned with yours, Mr. Chairman, as far as
6 uniqueness. That's why I asked about the doors.

7 Yes, it may have been self-created but remember,
8 what happened, why was the doors put in that position. What
9 was going on prior to that. You know, that may be beyond and
10 before the zoning, before the zoning application.

11 I think that the Tuckers had to do what they had
12 to do with a small, limited amount of area in the back. And
13 I think the bump out, and I appreciate Board Member Blake
14 bringing that up, the bump out also I think makes their
15 property unique.

16 And just the area of trying to maneuver back there
17 and also for me, the practical difficulty and hardships. You
18 know, it's not a lot of money for them right now.

19 And, to be able to move the HVAC units and all the
20 other things that need to be possible to try to make this
21 work, I think it puts the burden on the homeowner.

22 And I do not think it will affect the zone plan.
23 By no means will this affect the zone plan.

24 And I do know that I think you know, yes, there
25 may be some tightening up of the regulations to relax it, but

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1 unfortunately you can't do a regulation that's going to fit,
2 that's going to be the catch-all. And obviously, this is not
3 the case.

4 But I will be voting in favor of this application.
5 I think they meet what has been requested, and I think that
6 they in this very unique, especially when it comes to being
7 able to do certain things.

8 So, you uniqueness brought on uniqueness is how
9 I look at this case. So I'll leave it there.

10 Thank you, Mr. Chairman.

11 BZA CHAIR HILL: Thank you, Chairman Hood.

12 Mr. Blake, do you have some thoughts?

13 MEMBER BLAKE: I do, but I'd like to go not now.

14 BZA CHAIR HILL: That's fine.

15 Vice Chair John, are you interested in going next?

16 VICE CHAIR JOHN: So, I thought that there was an
17 exceptional condition and in that respect, I disagree with
18 the Office of Planning's analysis.

19 And that's because this is really a very small
20 lot. Yes, it is not you know, it is not the smallest lot but
21 622 square feet is really quite small. So I would look at
22 that.

23 I'd look at the placement of the HVAC units in the
24 property. And I'll credit the applicant's testimony that you
25 know, they have to be in that location because of the other

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1 systems that support the HVAC system.

2 And, the fact you mentioned Mr. Chairman, that the
3 access to the property has to be through a separate C of O
4 property, which I had not considered until you mentioned, you
5 mentioned that particular thing.

6 And so, because you know, for a confluence of
7 factors, each feature does not have to be the exceptional
8 condition. But it can relate in some way to a situation that
9 causes exceptional difficulty.

10 And, I believe there was recent case law on how
11 the Board should look at the issue of the confluence of
12 factors.

13 So in terms for the practical difficulty, I accept
14 the architect's representation of why it would be difficult
15 to build a landing in this situation.

16 And for me, that's always the issue in these cases
17 because if the regulations allow a landing, then there's no
18 reason to build a deck.

19 And so, the architect's statement is that the
20 landing, it would be difficult to build a compliant landing
21 in this case.

22 And I will credit the drawings that I saw, as well
23 as the, I think there was one other thing. Well, it might
24 come back to me. Oh, movement of the HVAC units to the roof,
25 which some people do.

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1 And that's always an expensive undertaking because
2 you have to move you know, all of the vents, and you have to
3 you know, whatever. Anyway, so that's expensive.

4 And the applicant is just trying to put in a
5 \$5,000.00 deck. So when you compare the cost of moving the
6 unit to the roof, you know, I think that's a practical
7 difficulty.

8 It doesn't mean it's impossible, but just not,
9 just burdensome.

10 So, with respect to how it would impact you know,
11 the zone plan and privacy, and light, and air to the, to the
12 neighbors, I think the, the deck is open to the air and there
13 is no impact in terms of light, and air, and privacy.

14 So I am in support of this application and yes,
15 so that's it, Mr. Chairman.

16 BZA CHAIR HILL: Thank you, Vice Chair John.

17 Mr. Smith?

18 MEMBER SMITH: I'll start with this particular
19 case similar to the way we struggled with the -- the other
20 case we had heard previously. It does come down to the
21 question that was raised previously. On the strict
22 application of the zoning regulation was the applicant
23 demonstrated that the regulations have imposed an undue
24 burden on them to construct this deck?

25 I do believe that under, and I already know I

1 respect the Office of Planning's perspective on this, but
2 given the testimony provided by the applicant and also the
3 Exhibit 36 provided by the applicant and by the architect
4 showing the practical difficulty of constructing some form
5 of a landing and on this very tight lot with the combination
6 of factors of where the height of the French doors are, the
7 depth of the deck -- I mean the depth of the rear yard, the
8 placement on the HVAC units and also, to me, the walkway, the
9 walkway coming from the basement unit.

10 I do believe that applicant has shown that they
11 have met the burden of proof for us to grant the area
12 variance. And I won't belabor some of the conversations that
13 have taken place by my board members, but I do believe that
14 they have met the burden of proof for us to grant the
15 variance in order to construct this reasonably-sized deck.

16 BZA CHAIR HILL: Thank you, Mr. Smith. Mr. Blake?

17 MEMBER BLAKE: I have read into the case and fully
18 gone through all the materials of the document. I'm prepared
19 to work and vote on this case.

20 I do believe the applicant has met the burden of
21 proof to grant the relief, meeting the variance standard.
22 I do think it's a very small lot. And what comes out to me
23 is that the construction of a landing and staircase, while
24 I think would actually be doable, would actually eliminate
25 a lot of usable space to the point that you would have -- you

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1 would get what you want by regulation, but you have a very
2 teeny space to actually use for a barbecue pit or anything
3 else. You can put a deck chair out there. It would be a
4 very unpleasant space based on the configuration that they'd
5 have to create to make that work. I would say I think it is
6 doable, I just -- it also could be a very creative space
7 because you have a balcony overlooking -- there's a lot of
8 different ways you could work with it, but I don't think --
9 it does destroy a lot of utility of the ultimate space as
10 opposed to having the deck.

11 I also believe that there is something we don't
12 take in consideration is the world we live in today. We
13 talked about the regulations of 1958. We talked about 2016,
14 but since 2016, we've had COVID and the value of outdoor
15 space is tremendously important to most of us today. And we
16 cannot under estimate the value and utility of that, although
17 it's not part of our regulations or rules, it's meaningful
18 in today's world. So that, too, might be a factor that we can
19 think about with all the other things, Commissioner, you were
20 talking about for expediency with decks and things of that
21 nature. This is a world that appreciates outdoor space.

22 So with that said, I will support the variance and
23 special exception request.

24 BZA CHAIR HILL: Okay, great. And for the
25 applicant, I know the applicant from the previous similar

1 thing, he's not watching probably any more, but we, as time
2 has progressed, it has given us all more time to look at this
3 because I was holding out -- I seem to have unanimous on both
4 of these now, whereas before it seemed as though I wasn't
5 clear as to what we were going to get. And so it is with the
6 ability to have more time to look at these things and with
7 added input from additional members of the Board, I think
8 it's helped us all to get to where we are now.

9 So I will go ahead and make a motion to approve
10 Application No. 20928 as captioned and read by the Secretary
11 and ask for a second. Ms. John?

12 VICE CHAIR JOHN: Second.

13 BZA CHAIR HILL: Motion made and seconded. Mr.
14 Moy, if you would take a roll call, please?

15 MR. MOY: When I call your name, if you will
16 please respond to the motion made by Chairman Hill to approve
17 the relief of -- to case application -- for the requested
18 relief -- to Case Application No. 20928.

19 The motion to approve was seconded by Vice Chair
20 John.

21 Zoning Commission Chair Anthony Hood?

22 ZC CHAIR HOOD: Yes.

23 MR. MOY: Mr. Smith?

24 MEMBER SMITH: Yes.

25 MR. MOY: Mr. Blake?

1 MEMBER BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill.

5 BZA CHAIR HILL: Yes.

6 MR. MOY: Staff would record the vote as 5 to 0
7 to 0. And this is on the motion made by Chairman Hill to
8 approve the application for the relief requested. The motion
9 to approve was seconded by Vice Chair John, who also is in
10 favor for approving the application, as well as approval from
11 Zoning Commission Chair Anthony Hood, Mr. Smith, Mr. Blake,
12 Vice Chair John, and Chairman Hill. Motion carries, sir, 5
13 to 0 to 0.

14 BZA CHAIR HILL: Thank you. So this has gone not
15 in the same way that I had thought in terms of time. So we
16 have a really fully day. We still have quite a bit of time
17 ahead of us, so I suggest actually maybe let's at least try
18 to do one more, maybe even two before we take a break for
19 lunch if that's all right with everybody. If anyone has any
20 difference, let me know. And I assume we can kind of move
21 forward now. Does anybody need a quick break now or do you
22 want to keep chugging? Okay.

23 VICE CHAIR JOHN: Keep going.

24 BZA CHAIR HILL: Keep chugging. Okay, Mr. Moy,
25 you can call the next one.

1 MR. MOY: Thank you, sir. So this would be Case
2 Application No. 20913 of Dereje, or D-E-R-E-J-E, Mesfin, M-E-
3 S-F-I-N. This is a self-certified application, as amended,
4 pursuant to Subtitle X, Section 901.2 for special exception,
5 under Subtitle U, Section 421 to allow a new residential
6 development. The property is located in the RA1 Zone at 5814
7 9th Street, NW, Square 2986, Lot 31. Let's see, I think --
8 let me double check. No, that's all I have for you, sir.
9 Thank you.

10 BZA CHAIR HILL: Okay, if the applicant can hear
11 me, if you could please introduce themselves for the record?

12 MR. MESFIN: My name is Dereje Mesfin.

13 BZA CHAIR HILL: Okay. Mr. Mesfin, are you
14 choosing not to use your camera or can you turn it on so I
15 can see? Okay, Mr. Mesfin, great.

16 So Mr. Mesfin, if you would like to go ahead and
17 walk us through your application and why you believe you're
18 meeting the criteria for us to grant the relief requested.
19 I'm going to put 15 minutes on the clock, so I know where we
20 are and you can begin whenever you like.

21 MR. MESFIN: Can my architect explain the --

22 BZA CHAIR HILL: Of course. Could your architect
23 please introduce themselves? Is that Mr. Solomon?

24 MR. MESFIN: Yes.

25 BZA CHAIR HILL: Mr. Solomon, can you hear me?

1 Mr. Solomon, can you hear me?

2 MR. SOLOMON: Hello?

3 BZA CHAIR HILL: Yes, can you hear me?

4 MR. SOLOMON: Thank you.

5 BZA CHAIR HILL: Could you introduce yourself for
6 the record, please?

7 MR. SOLOMON: My name is Negussu Solomon. I'm
8 working on behalf of the owner of this property, Dereje
9 Mesfin, who I just heard earlier. The project is located at
10 5814 9th Street, NW. It's an existing four-unit building
11 located in an RA1 zone. We are requesting relief under U421
12 to have six units project. We're adding one more floor.
13 We're maintaining 40 percent lot occupancy and we have
14 provided an update. This is the second meeting we're having.
15 We had previously an occupied penthouse which the Board did
16 not support, so we revised the plans to remove the penthouse,
17 so it is a straight-forward application for just relief under
18 U421.

19 BZA CHAIR HILL: Okay, Mr. Solomon, the ANC, they
20 saw it -- it's okay. I'm just saying, they saw it with the
21 penthouse, correct?

22 MR. SOLOMON: No, we revised it and we submitted
23 it without the penthouse.

24 BZA CHAIR HILL: And the ANC submitted -- I don't
25 see anything from the ANC since that time. You're saying you

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1 resubmitted to the ANC without the penthouse?

2 MR. SOLOMON: Yes, I believe we got an email that
3 they couldn't attend, but they are in support.

4 BZA CHAIR HILL: Okay. I have the previous report
5 that has their approval with the penthouse, so that's okay.
6 I was just clarifying.

7 Let's see. Actually, Mr. Solomon, I'm going to
8 turn to the Office of Planning real quick. Can I have
9 someone from the Office of Planning?

10 MS. THOMAS: Good morning, Mr. Chairman and
11 members of the Board. Karen Thomas, with the Office of
12 Planning. We were happy that the applicant amended its
13 application, its original application to remove the
14 penthouse. That said, the application does meet all the
15 development parameters including the lot occupancy, the FAR,
16 et cetera, and the yard requirements. And they also satisfy
17 the criteria under Section 421 and with that, we were
18 satisfied that it does meet the -- it will have little impact
19 on the neighborhood.

20 We also, again, conditioning, as we do with these
21 421 reports, Section 421, we are also conditioning that the
22 site plan that -- the latest site plan, architectural
23 drawings, be accepted, particularly as they show the
24 landscaping that we require.

25 BZA CHAIR HILL: Thanks, Ms. Thomas. Is that

1 still Exhibit 27? It seems to be.

2 MS. THOMAS: Yes.

3 BZA CHAIR HILL: Is it 29?

4 MS. THOMAS: Is it 27 or 29?

5 BZA CHAIR HILL: 27.

6 MS. THOMAS: Yes.

7 BZA CHAIR HILL: Okay. Okay. All right. Okay.

8 Does the Board have any questions of the applicant or the
9 Office of Planning?

10 Can you guys hear me okay, by the way? Like is
11 there a lag? I can be heard? Okay. I'm having some weird
12 lag.

13 All right, Mr. Young, is there anyone here wishing
14 to speak? All right. I'm going to go ahead -- does the
15 Board have any questions of anyone? All right.

16 I'm going to close the hearing and the record.
17 Thank you, Mr. Mesfin and Mr. Solomon, have a nice day.

18 Okay, I did not have any concerns about this
19 application, now that they have removed the penthouse as the
20 Office of Planning had also indicated because of some of
21 their concerns with the penthouse. I believe that the ANC,
22 although I would imagine -- I don't know if this could be
23 considered in support or not, I will let that be determined
24 by the Office of Zoning later, that they were in support of
25 the plans with a larger project than just remove the

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1 penthouse. So I would think that they would still be in
2 support and I would also note that the applicant for the
3 record had stated that they had received an email saying so,
4 but I would also be in agreement with the comments that the
5 applicant has put forward with the application, as well as
6 the plans that are in Exhibit 27, and also I'm comfortable
7 and fine with the Office of Planning's recommendation
8 concerning their conditions.

9 Mr. Smith, is there anything you'd like to add?

10 MEMBER SMITH: I agree with your assessment of
11 this case. I didn't have any major issues with this project,
12 given that they have removed the penthouse that the Office
13 of Planning was concerned about. So I believe they met the
14 burden of proof for us to grant this special exception with
15 the condition as specified by Office of Planning out of an
16 abundance of concern, so the conditions, the words shall
17 state that the final proposed site and landscape plans and
18 architectural plans of Exhibit 27 are requirements. With
19 that condition, I'm prepared to support.

20 BZA CHAIR HILL: Thank you. Chairman Hood?

21 ZC CHAIR HOOD: I agree with everything you all
22 have said previously pertaining to this case and I have
23 nothing to add and will be voting to support this application
24 as presented.

25 BZA CHAIR HILL: Thank you. Mr. Blake?

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1 MEMBER BLAKE: yes, I'll be voting in support of
2 the requested relief as well and with the conditions
3 stipulated by the Office of Planning. I believe the
4 applicant has met the conditions of U421, as well as the
5 general standards. And I credit the Office of Planning's
6 analysis. I also give great weight to the Office of
7 Planning's recommendation for approval and note the ANC's
8 positive comments. I'll be voting in favor.

9 BZA CHAIR HILL: Thank you. Vice Chair John?

10 VICE CHAIR JOHN: I have nothing to add. I'm in
11 support of the application.

12 BZA CHAIR HILL: Okay, great. I'll go ahead and
13 make a motion then to approve Application No. 20913 as
14 captioned and read by the Secretary and ask for a second, Ms.
15 John?

16 VICE CHAIR JOHN: Second.

17 BZA CHAIR HILL: The motion has been made and has
18 been seconded.

19 Mr. Moy, would you take a roll call, please?

20 MR. MOY: I have one question --

21 BZA CHAIR HILL: Thank you, thank you. Let me
22 make the motion again. I'm going to make the motion to
23 approve Application No. 20913, as captioned and read by the
24 Secretary, including the condition that the plans, in
25 particular, the landscaping plans will be built in accordance

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1 with Exhibit 27 and ask for a second, Ms. John?

2 VICE CHAIR JOHN: Second.

3 BZA CHAIR HILL: Thank you, Mr. Moy. Thank you.
4 If you could try again, Mr. Moy.

5 MR. MOY: Thank you, Mr. Chairman. So when I call
6 your name, if you'll please respond to the motion made by
7 Chairman Hill to approve the application for the relief
8 requested, as well as the condition regarding plans that are
9 shown -- especially the landscaping plans as shown under
10 Exhibit 27. The motion to approve was seconded by Vice Chair
11 John.

12 Zoning Commission Chair Anthony Hood?

13 ZC CHAIR HOOD: Yes.

14 MR. MOY: Mr. Smith?

15 MEMBER SMITH: Yes.

16 MR. MOY: Mr. Blake?

17 MEMBER BLAKE: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Chairman Hill?

21 BZA CHAIR HILL: Yes.

22 MR. MOY: Staff would record the vote as 5 to 0
23 to 0 and this is on the motion made by Chairman Hill to
24 approve with the stated condition. The motion was seconded
25 by Vice Chair John who is voting to approve, as well as

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1 approval of the application from Zoning Commission Chair
2 Anthony Hood, Mr. Smith, Mr. Blake, Vice Chair John, and
3 Chairman Hill. The motion carries on a vote of 5 to 0 to 0.

4 BZA CHAIR HILL: Thank you, Mr. Moy. Mr. Moy, you
5 can call our next when you get a chance.

6 MR. MOY: The next case before the Board is
7 Application No. 21011 of Laurie Mankin and George Oliver.
8 This is a self-certified application pursuant to Subtitle X
9 Section 901.2 for following special exceptions under Subtitle
10 E Section 5201. Rear Yard requirements of Subtitle E Section
11 207.1, and the lot occupancy requirements, Subtitle E,
12 Section 210.1. The property is located in the RF-1 zone at
13 648 Acker Place, NE, Square 861, Lot 175. That's all I have
14 for you. Thank you.

15 BZA CHAIR HILL: Thank you. If the applicant can
16 hear me, if they can please introduce themselves for the
17 record?

18 MS. FOWLER: Good afternoon, everyone. I'm
19 Jennifer Fowler with Fowler Architects. I'm the architect
20 representing the homeowners.

21 BZA CHAIR HILL: Great. Thanks, Ms. Fowler. Ms.
22 Fowler, if you want to go ahead and 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 and I'm going
25 to put 15 minutes on the clock so I know where we are. And

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1 you begin whenever you like.

2 MS. FOWLER: Thank you. Okay. This is a very
3 small project. We are asking for permission to add a second
4 floor to an existing on-story addition. It's basically
5 stacked over the existing one story, but we're going to
6 extend out an additional foot. So we're requesting a seven
7 foot, 8 inch deep addition. And really the goal of this
8 project is to take a tiny space that's not even a legal
9 bedroom at the back of the house and actually convert it into
10 a legal bedroom. And so this extra foot beyond the existing
11 footprint really helps to make that a workable space. So
12 we're currently at 68.6 percent at the first-floor level and
13 so with this expansion, we'll be at 69.8 percent at the
14 second floor level. And currently, we are encroaching into
15 the rear yard at 12 feet 4 inches now and that will be
16 reduced to 11 feet 4 inches-- 11.4 feet sorry -- at the
17 second floor only. So again, we're already kind of
18 approaching the occupancy and it's just a very minor change
19 to that as well as the rear yard.

20 So the last thing is we saw it appropriate for the
21 scale of the house and the impact to the neighbors is very
22 minimal given that the addition is on the north side of the
23 house, but the neighbors, both sides, have sent letters of
24 support. They're in the record. We also have Office of
25 Planning and ANC and CHRS support for the project. So I will

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1 leave it at that and leave it open to questions. Thank you.

2 BZA CHAIR HILL: Thank you. Before I turn to my
3 board members, can I heard from the Office of Planning,
4 please?

5 MS. STEINGASSER: I'm Jennifer Steingasser with
6 the Office of Planning and we have with us two new
7 development review specialists that are doing their first BZA
8 case before you this afternoon. And in this case, Michael
9 Jurkovic is our newest development review team member and I
10 wanted to introduce him so that it's not a strange face.
11 He's from Euclid, Ohio, which is an inner suburb of
12 Cleveland. He's an AICP, Certified Planner, with a degree
13 in City and Regional Planning from the Ohio State University
14 in Columbus and he comes to us after five years with Charles
15 County, Maryland. So he's with this case.

16 Following this case, the next case, Ron Barron,
17 will be presenting the OP presentation and he's been with OP
18 for about 18 months, previously with our Neighborhood
19 Planning Division and before that, he was with the Office of
20 Zoning doing work primarily with the Zoning Commission. He
21 also has his degree in Planning from Clark University and
22 prior to working in D.C. he had a lot of work in central
23 Massachusetts and Rhode Island. And so he'll be representing
24 the next case and we couldn't be happier. We're now up to
25 a full development review staff and we look forward to

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1 continue working with BZA. Thank you.

2 BZA CHAIR HILL: Sure, go ahead, Mr. Smith.

3 MEMBER SMITH: Thanks for the introduction, Ms.
4 Steingasser. Welcome to the Planning Board. Is there one
5 additional employee that we've seen, Mr. Beeman (phonetic)?
6 Is he also in?

7 MS. STEINGASSER: Yes, he's also with -- he's one
8 of the three new planners that we have. He's already
9 presented to the Board.

10 MEMBER SMITH: Okay. I don't think he had (audio
11 interference).

12 MS. STEINGASSER: Yes, we couldn't be happier
13 having a full component and be able to move cases along.

14 MEMBER SMITH: Ms. Steingasser, are they just
15 working with the Board only?

16 MS. STEINGASSER: No, sir. They'll be working
17 fully across all our zoning cases.

18 MEMBER SMITH: Okay. Good. Thank you.

19 BZA CHAIR HILL: Okay. Well, Ms. Steingasser,
20 thank you so much for taking the time to introduce Mr.
21 Jurkovic. And it's not often, Ms. Steingasser, that we get
22 to see -- I know that it's always nice to see you and Ms.
23 Steingasser was the first person who I want to say
24 interviewed me or helped me understand what the Board of
25 Zoning entailed. And I would have never thought that I'd

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1 still be here saying hello.

2 MS. STEINGASSER: We're happy you took to it.

3 BZA CHAIR HILL: Thanks, I appreciate it. I'm
4 also happy that I was able to do it. But, Mr. Jurkovic,
5 without the help of the Office of Planning, it would not be
6 something that I'd be able to do. And so definitely on your
7 joining a group that's extremely vital and important to the
8 city and most oftentimes people don't even understand how
9 vital you all are and the influence that you have. And so
10 we appreciate you being here. If Ms. Steingasser is giving
11 you her vote of approval, then you must have passed enough
12 tests to get to this point. And so I hope you continue to
13 do well because we've always enjoyed the Office of Planning's
14 people and I'm sure Chairman Hood would be able to say the
15 same as such when you're at a Commission hearing.

16 That being the case, Mr. Jurkovic, would you like
17 to give us your report?

18 MR. JURKOVIC: Yes, and thank you to all members
19 of the Board. The Office of Planning is in support of the
20 case and stand on the record of the staff report as shown in
21 Exhibit 25. I am available for any questions. Thank you.

22 BZA CHAIR HILL: All right, thank you. Does the
23 Board have any questions for Office of Planning? Does the
24 applicant have any questions of the Office of Planning?

25 All right, Mr. Young, is there anyone here wishing

1 to speak?

2 MR. YOUNG: We do not.

3 BZA CHAIR HILL: Okay. All right. I'm going to
4 go ahead and close the hearing and the record. Thank you,
5 Ms. Fowler, Mr. Jurkovic.

6 Would someone else like to talk first? Is there
7 another way of asking that? Would someone else like to talk?

8 MEMBER BLAKE: I'll start. This is a modest
9 increase. This is a modest increase in a lot occupancy.
10 There is really no material adverse impact on the adjacent
11 properties or on the owner's air, light, privacy and both the
12 abutting neighbors have given letters of support. It's a
13 modest, second-story addition atop an existing one. There's
14 really not a lot here that would call into question anything
15 with light, air and the like.

16 The Office of Planning is in approval and
17 recommends approval and also gives great weight to the ANC
18 6C's report which stated no issues or concerns and I also
19 note that there were three persons in support of the
20 application including the abutting neighbors.

21 BZA CHAIR HILL: Thank you, Mr. Blake. Chairman
22 Hood?

23 ZC CHAIR HOOD: I don't have anything to add. I
24 would ditto everything that Board Member Blake said to keep
25 us moving. Thank you, Mr. Chairman.

1 BZA CHAIR HILL: Thank you. Mr. Smith?

2 MEMBER SMITH: Anything in addition to add I agree
3 with comments provided by my board members and will also
4 support the application.

5 BZA CHAIR HILL: Thank you. Vice Chair John?

6 VICE CHAIR JOHN: I have nothing to add and I will
7 support the application.

8 BZA CHAIR HILL: Thank you. I don't have anything
9 to add. I appreciate my colleagues' analysis and help. I'm
10 going to make a motion to approve Application No. 21011 as
11 captioned, read by the secretary and ask for a second. Ms.
12 John?

13 VICE CHAIR JOHN: Second.

14 BZA CHAIR HILL: Motion is made and seconded. Mr.
15 Moy, take a roll call?

16 MR. MOY: When I call your name, if you will
17 please respond to the motion made by Chairman Hill to approve
18 the application for the relief requested. This motion to
19 approve was seconded by Vice Chair John.

20 Zoning Commission Chair Anthony Hood?

21 ZC CHAIR HOOD: Yes.

22 MR. MOY: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 MEMBER BLAKE: Yes.

1 MR. MOY: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: And Chairman Hill?

4 BZA CHAIR HILL: Yes.

5 MR. MOY: Staff would record the vote as 5 to 0
6 to 0 and this is on the motion made by Chairman Hill to
7 approve. The motion to approve was seconded by Vice Chair
8 John who also voted to approve the application, as well as
9 approval from Zoning Commission Chair Anthony Hood, Mr.
10 Smith, Mr. Blake, Vice Chair John, and Chairman Hill. Motion
11 carries on the vote of 5 to 0 to 0.

12 BZA CHAIR HILL: Thank you, Mr. Moy. I didn't
13 realize -- and so, there's two more before there's a case
14 that I think is going to take a lot of time, so if you can
15 try to get through those two before lunch and then take
16 lunch, that would be helpful, I think, if I have the calendar
17 correct.

18 And Mr. Moy, if you want to go ahead and hit --
19 sorry -- call our next case.

20 MR. MOY: The next case would be Application
21 Number 21012, Jean Destefano. This is a self-certified
22 application pursuant to Subtitle X, Section 901.2, special
23 exception under Subtitle E, Section 5201, from the lot's
24 occupancy requirements of Subtitle E, Section 210.1, property
25 located in the RF1 Zone at 107 6th Street NE, Square 867, Lot

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1 813. And let's check one other thing, and I may -- no.
2 That's all I have for you, Mr. Chairman.

3 BZA CHAIR HILL: Thank you. If the applicant can
4 hear me, if they could please introduce themselves for the
5 record?

6 MS.FOWLER: Hi, everybody. Jennifer Fowler here
7 again with Fowler Architects representing the homeowners.

8 BZA CHAIR HILL: Okay. Ms. Fowler, if you could,
9 please go ahead and walk us through your application and why
10 you believe your client is meeting the criteria for us to
11 grant the relief requested. I'm going to put 15 minutes on
12 the clock so I know where we are, and you can begin whenever
13 you like.

14 MS.FOWLER: Okay, thank you. This is a pretty
15 straightforward request for lot occupancy relief.

16 We're going from 42.8 percent to 69.2 percent.
17 We presented kind of the entire project. There's a rear
18 addition and a side kind of porch rebuild and a carport, but
19 just so you -- just to be clear, the only relief we're asking
20 for is for the carport. The addition kind of falls within
21 matter of right, so the carport's the portion that takes us
22 over the, you know, 60 percent occupancy.

23 So really, it's just a carport with a roof deck
24 on top of it. Really looking for -- she's really looking for
25 secure parking. Currently, it's not secure at the back, so

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1 she says she wants to be able to have a walk-in roll up gate
2 and a pedestrian gate and a place for growing vegetables and
3 plants.

4 And it's just a partial garage, a carport. It's
5 10 and a half feet wide. So -- and it's kind of nestled up
6 against an existing one-story garage at 109 6th Street NE,
7 and then there's a 7-foot space between the carport and the
8 garage to the south, which is actually a two-story garage.

9 So, as far as impact is concerned to the adjacent
10 neighbors, there's really no impact to the sun and air to
11 those garages, and the only impact would be some privacy
12 because of the new deck on that second floor.

13 However, both neighbors, 109 and 105 6th Street,
14 have signed letters of support, so they are comfortable with
15 the proposal and with the change in privacy. And we also
16 have support from Office of Planning, ANC, and CHRS, so I
17 will end my presentation there and leave it open for
18 questions. Thank you.

19 BZA CHAIR HILL: Okay, great. Thank you. I'm
20 actually going to turn first to the Office of Planning. I
21 don't know if Ms. Steingasser was going to speak.

22 MS. STEINGASSER: I'm going to introduce our newest
23 member in development review, which is Ron Barron. Ron used
24 to be with the Office of Zoning and in Neighborhood Planning
25 here at OP for about 18 months and has recently transferred

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1 to development here. So, he's experienced on zoning regs
2 from various angles, and this is his first case with the BZA.

3 BZA CHAIR HILL: Thank you. Mr. Barron, thank you
4 so much for your work and input on the cases that come before
5 us. Would you like to give us your -- introduce yourself
6 and give us your input, please, Mr. Barron?

7 MR. BARRON: Absolutely. Good morning and thank
8 you for your time. My name is Ron Barron, Development Review
9 Specialist to DC Office of Planning.

10 The Office of Planning recommends approval of the
11 special exception relief as requested in the application.
12 OP is content to rest on the record, and I'm available to
13 answer any questions you may have.

14 BZA CHAIR HILL: Thank you. I know someone's not
15 muted if you want to mute. Does anybody -- do the Board
16 Members have any questions of the Office of Planning?

17 Okay. Ms. Fowler, do you have any questions of
18 the Office of Planning?

19 MS. FOWLER: No. Thank you so much.

20 BZA CHAIR HILL: Mr. Young, is there anyone here
21 wishing to speak? All right.

22 Thank you all. I'm going to close the hearing on
23 the record. Thank you for taking your time to be with us
24 today.

25 All right. I would agree with the thorough

1 analysis, I believe, of the Office of Planning's report as
2 to why they're meeting the criteria for us to grant this
3 particular relief. I also appreciate the applicant pointing
4 out that it is the garage that's triggering this lot
5 occupancy, and so I appreciate that, and I also do not have
6 any issues or concerns with this application.

7 I would also note that we have gotten a
8 recommendation from the ANC in support and as I mentioned
9 before, this is Commissioner Eckenwiler who is with us, and
10 they often have -- they look at these very carefully, so.

11 However, I would agree, as I mentioned, with the
12 applicant and their argument as to why they're meeting the
13 criteria and vote in favor of this application.

14 M. Smith, do you have anything you'd like to add?

15 MEMBER SMITH: Nothing to add. I agree with your
16 assessment of this particular case. I believe that they've
17 met the burden of proof for us to grant the special
18 exception, so I will give OP staff great weight and would
19 support the application, noting that the adjacent property
20 owners are in support and the Capitol Hill Restoration
21 Society has also wrote a letter in support of this
22 application.

23 BZA CHAIR HILL: Thank you, Mr. Smith. Chairman
24 Hood?

25 ZC CHAIR HOOD: I don't have anything, Mr.

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1 Chairman. I agree with the assessment. I think the merits
2 of this case would recommend it. I vote the approval of this
3 application. Thank you.

4 BZA CHAIR HILL: Thank you. Mr. Blake?

5 MEMBER BLAKE: Yes. I'll be voting in favor of
6 the application. I have no additional comment.

7 BZA CHAIR HILL: Thank you. Vice Chair John?

8 VICE CHAIR JOHN: -- application and I have no
9 additional comments.

10 BZA CHAIR HILL: Thank you. I'm going to go ahead
11 and make a motion to approve Application Number 21012 as
12 captioned and read by the Secretary and ask for a second.
13 Mr. -- okay. I'm making a motion to approve Application
14 Number 21012 as captioned and read by the Secretary and ask
15 for a second. Ms. John?

16 VICE CHAIR JOHN: Second.

17 BZA CHAIR HILL: A motion has been made and
18 seconded. Mr. Moy, if you would take a roll call?

19 MR. MOY: When I call your name, if you will
20 please respond to the motion made by Chairman Hill to approve
21 the application for the relief requested. The motion to
22 approve was second by Vice Chair John. Zoning Commission
23 Chair Anthony Hood?

24 ZC CHAIR HOOD: Yes.

25 MR. MOY: Mr. Smith?

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1 MEMBER SMITH: Yes.

2 MR. MOY: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Chairman Hill?

7 BZA CHAIR HILL: Yes.

8 MR. MOY: Staff would record the vote as 5 to 0
9 to 0, and this is on the motion made by Chairman Hill to
10 approve. The motion to approve was second by Vice Chair
11 John, who also voted to approve the application; approving
12 the application also voted by Zoning Commission Chair Anthony
13 Hood, Mr. Smith, Mr. Blake, Vice Chair John, and Chairman
14 Hill. Motion carries on the vote of 5 to 0 to 0.

15 BZA CHAIR HILL: Thank you. Would you like to
16 call our next case, Mr. Moy?

17 (Pause.)

18 MR. MOY: The next case before the Board is
19 Application Number 21013 of Southern Veterinary Partners.
20 This is a self-certified application pursuant to Subtitle X
21 Section 901.2, special exception under Subtitle K, Section
22 950.2(a), which would allow an animal sale care and boarding
23 use. The property is located in the WR-2 Zone. Address,
24 7150 12th Street NW, Square 2950, Lot 7032.

25 The preliminary matter here, Mr. Chairman, is that

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1 the applicant's proffered expert witness for a Lloyd Lewis
2 under Exhibit 35 and 36, Sam Smith under Exhibit 37 and 38,
3 and Tania Germann under Exhibit 39 and 40. And that's all
4 I have for you, sir.

5 BZA CHAIR HILL: Okay. Thanks, Mr. Moy. And this
6 is -- right -- and experts in architecture, business
7 development, and veterinary medicine. And I do think, Mr.
8 Moy, if we could have some training or clarification as to
9 what exactly we are taking expert witness status in.

10 I know architecture is one of them that is not --
11 that is normal to us. And I see that Mr. Lloyd is an
12 architect, and he is testifying in architecture.

13 Mr. Lloyd, are you with us? Could you introduce
14 yourself for the record, please?

15 MR. LEWIS: Yes. I'm Lloyd Lewis with Animal Arts
16 Studios.

17 BZA CHAIR HILL: Okay. And you are an architect,
18 correct, Mr. Lewis?

19 MR. LEWIS: Not a licensed architect, but I
20 represent the architect studio. Vicki Pollard with Animal
21 Arts is the licensed architect. She is on the call as well.

22 BZA CHAIR HILL: Okay. I'll tell you what. These
23 preliminary matters -- I mean, like, Mr. Smith, an expert
24 in business development, and then an expert in veterinary
25 medicine, I think -- I don't know about my fellow Board

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1 Members, like, in this particular case for this particular
2 application.

3 I'm happy to hear from all the witnesses. I don't
4 know if we need quote, unquote, "expert" status in any of
5 these. I don't really know -- and then -- so, what I would
6 propose for this case: why don't we hear the case, and if we
7 think we need expert status from -- I think I have to make
8 a motion.

9 So, Mr. Lewis, who -- if the applicant could
10 introduce themselves again for the record? Who is the
11 applicant again, or who's going to be presenting to us?

12 MS. JAMES: I am the applicant. My name is Khara
13 James. I'm with Interagency. I'm the regulatory consultant
14 on this case.

15 BZA CHAIR HILL: Great.

16 MS. JAMES: You listed out some of the witnesses
17 that were listed for this case, but there are others that
18 were uploaded to the portal. I believe there's really only
19 one we likely need to hear from, which is Neal NeSmith. Can
20 you confirm that they've been registered as a witness?

21 BZA CHAIR HILL: Oh.

22 MS. JAMES: He is present, so I assume yes.

23 BZA CHAIR HILL: Okay. You however, though -- Ms.
24 James, are you the person that asked for expert witness
25 status for Mr. Lewis, Mr. Smith, and Ms. Germann?

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1 MS. JAMES: I uploaded them as witnesses to the
2 case, yes.

3 BZA CHAIR HILL: You did not necessarily list them
4 as experts in whatever it is they are testifying in, correct?

5 You do not need to. I'm just asking you.

6 MS. JAMES: They don't need to be listed as
7 experts, no.

8 BZA CHAIR HILL: Okay.

9 MS. JAMES: They are just registered to testify
10 in this case in case you ask questions that they need to
11 address.

12 BZA CHAIR HILL: Okay. So, as a preliminary
13 matter, it appears as though the applicant is not asking for
14 expert witness status with anyone. However, there might be
15 testimony from the witnesses.

16 So I, as a Board -- I would just ask that the
17 Board go ahead and move through this, and if we need to, for
18 some reason, quantify whether or not someone is an expert or
19 not, we can do it as we hear testimony. Unless OZLD has
20 something that I'm supposed to be doing, I'm going to go
21 ahead and move forward.

22 Ms. James, if you want to go ahead and walk us
23 through your client's application and why you believe they're
24 meeting the criteria for us to grant the relief that you're
25 requesting? I'm going to put 15 minutes on the clock so I

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

2 MS. JAMES: So, I am the agent for the owner, but
3 I am wondering if Neal NeSmith can provide this presentation.
4 He's been registered as one of the testifying parties in this
5 case.

6 BZA CHAIR HILL: Sure, of course. Go ahead, Mr.
7 NeSmith.

8 MR. NeSMITH: Good morning, and likely good
9 afternoon for you all. We're here in Alabama, so good
10 afternoon to you there on the East Coast. Neal NeSmith with
11 Southern Veterinary Partners.

12 We are seeking a special exception permit for our
13 veterinary hospital at the Parks at Walter Reed. Under the
14 current zoning, veterinary hospitals are allowed with a
15 special exception permit, so we have been going through the
16 process with the ANC to get their supports for the project.

17 If you're not familiar with the Parks at Walter
18 Reed, it's a adaptive reuse project of the historic parks at
19 Walter Reed, and we are leasing -- proposing to lease space
20 in the project to bring a veterinary hospital.

21 Happy to provide any other information you all
22 would like as it relates to Southern Veterinary Partners and
23 what we're looking to offer here, but just want to make sure
24 I'm providing the correct and relevant information you all
25 are looking to hear.

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1 BZA CHAIR HILL: Yes, sure. Go ahead, Mr.
2 NeSmith.

3 MR. NeSMITH: Okay. So, Southern Veterinary
4 Partners, we are a veterinary consolidator. We own roughly
5 400 hospitals across 25 different states. We've got a pretty
6 significant presence in the DC, Maryland, Virginia area, and
7 so we partner with veterinary hospitals to provide
8 exceptional support from a corporate standpoint to be able
9 to allow our hospitals to provide the highest quality of care
10 medicine possible. We're currently located in roughly 25
11 states across the country, primarily around the Southeast,
12 but we've started to move West and up the East Coast, and
13 really, really have a strong presence there in the DMV area.

14 So, SVP primarily focuses on creating sustainable
15 growth and doing what's right for our teams and our
16 communities in which they reside. We promote programs to
17 encourage our teammates, the ability to seek additional
18 training, as well as provide guaranteed minimum wage
19 regardless of experience or location, and then also provide
20 specialty programs for ongoing learning and development for
21 our teammates.

22 SVP, their mission statement is really an acronym,
23 WAG -- Work Together, Amaze, Grow -- and our teammates embody
24 that across the -- across our portfolio and really channel
25 that through the highest quality of care to our patients and

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1 clients.

2 The Parks at Walter Reed, as we talked about, is
3 a mixed use adaptive redevelopment of the historic parks at
4 Walter Reed. We are proposing to construct a 4,050-square
5 foot animal hospital that will serve the greater Washington,
6 D.C. area. The hospital will be considered a general
7 practice, and if you're not familiar with veterinary
8 medicine, it is very akin to human health in that you're --
9 you know, your primary care doctor would be considered
10 general practice. There are groups that provide specialty
11 so oncology, cardiology, and there's urgent care that kind
12 of sits in the middle between general practice and emergency.

13 We are proposing to bring a general practice
14 facility to this project, and we'll have services that
15 include wellness exams, urgent care, surgery and dental
16 procedures, radiology, lab, and testing. One key distinction
17 is that there is no boarding or grooming services that are
18 provided at this facility, so the only overnight patients
19 would just be those that are critical care and require
20 constant monitoring.

21 Within our space, we expect to have five exam
22 rooms; a treatment area where the bulk of our patients will
23 receive treatment; radiology, which is a light scale x-ray
24 machine to be able to provide radiographs for our patients;
25 a lab and pharmacy; support areas for our staff, including

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1 breakrooms and offices; and then wards and isolation areas,
2 as well as surgery suites and dental suites for our pets
3 there.

4 Our finishes -- our Livewell Animal Hospital brand
5 is a brand that we have established just in the last year.
6 We have opened five of these locations throughout Texas,
7 Kentucky, North Carolina, Florida, and have roughly eight to
8 ten additional sites that we're planning for next year, which
9 include this location here in D.C. as well as locations
10 throughout Denver and other parts of the Northeast.

11 So, with our Livewell Animal Hospital brand, we're
12 bringing a very upscale and modern veterinary hospital to
13 this project and this neighborhood, so very durable, high-end
14 finishes with luxury vinyl tile, luxury vinyl plank, solid
15 surfaces, and different things that our patients and clients
16 expect to see in modern healthcare today.

17 BZA CHAIR HILL: Mr. NeSmith?

18 MR. NeSMITH: Yes, sir.

19 BZA CHAIR HILL: Like, there was -- I'm just
20 trying to -- there was a PowerPoint that I'm kind of flipping
21 through that's in your application. Is that what your
22 eventually going to refer to, or is that what you're
23 referring us to now as you kind of, like, walk through this?

24 MR. NeSMITH: Yes. I've been walking through
25 that, and if I need to share my screen -- I was thinking that

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1 maybe that was shared on your end, but I'm happy to share to
2 --

3 BZA CHAIR HILL: That's all right. You can't
4 share the screen. Mr. Young, if you could pull up their
5 PowerPoint, which is in Exhibit -- got it.

6 MR. NeSMITH: Okay. My apologies there.

7 BZA CHAIR HILL: So, where -- that's all right.
8 Where on this are you? Because I've been flipping through
9 this.

10 MR. NeSMITH: Well, we can just kind of walk
11 through it together. The next slide discusses a little bit
12 about who Southern Veterinary Partners is, walk through a bit
13 of that information together.

14 On the next slide, you'll see the states in which
15 we have hospitals throughout the country. On the next slide,
16 we discuss a little bit about what SVP does as a corporate
17 entity and how we invest in our teams and how we invest in
18 our hospitals. Our next slide is our mission statement that
19 I discussed, the WAG values that embody who we are as a
20 company and seek to instill throughout our portfolio.

21 The next slide discusses the project, the Parks
22 at Walter Reed.

23 BZA CHAIR HILL: I appreciate -- Mr. NeSmith, I'm
24 just going to interrupt you just because we kind of have
25 still a busy day before us, and I'm just going to pull this

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1 down. If that's all right, Mr. Young, you can drop this
2 slide deck.

3 And I am looking through the regulations, but Mr.
4 NeSmith, can you just give us all a moment? Ms. Myers, if
5 the Office of Planning could go ahead and give us their
6 report and recommendation?

7 MS. MYERS: For the record, Crystal Myers with the
8 Office of Planning.

9 The Office of Planning has reviewed this case and
10 is recommending approval, and we are -- we just stand on the
11 record the staff report. Of course, here for questions.
12 Thank you.

13 BZA CHAIR HILL: Thanks, Ms. Myers. They're here
14 -- the only real question, they're here requesting the
15 correct relief, correct?

16 MS. STEINGASSER: I'm sorry, I guess that question
17 is for me.

18 BZA CHAIR HILL: That's all right.

19 MS. MYERS: Yes.

20 MS. STEINGASSER: Yes. The special exception,
21 according to Subtitle K 915.2(a), the animal sales and board
22 special exception. I believe they updated their self-
23 certification to correctly show that now.

24 BZA CHAIR HILL: Okay. All right. Does the Board
25 have any questions of the Office of Planning?

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1 All right. Mr. Young, is anyone here wishing to
2 speak? Okay. All right.

3 Mr. NeSmith, I don't think we -- the Board has any
4 further questions for you. Does the Board have any further
5 questions for anyone? All right.

6 I'm going to go ahead and close this hearing then
7 on the record. Thank you all for coming today. It's been
8 a little bit of a disjointed day, but we appreciate your
9 efforts, and if this does pass, wish you a tremendous amount
10 of luck. We're all very familiar with that area and that
11 project and wish you the best of luck there.

12 MR. NeSMITH: Thank you for your time.

13 BZA CHAIR HILL: Okay. I was originally just a
14 little unclear as to whether or not they were here with the
15 correct relief being requested. I can see that they are.

16 I would agree with the analysis that the Office
17 of Planning has provided in their report. I will also note
18 that the ANC has also asked us to grant the relief requested
19 and be in support of this application, and so I don't have
20 any issues or concerns with this application. I can see that
21 they're obviously a organization that has gone and done
22 through this -- has done this quite some time, and I hope and
23 wish them the best in that new project area.

24 Chairman Hood, do you have anything you'd like to
25 add. Before I decide, I'll take Chairman Hood. Mr. Smith,

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1 do you have anything you'd like to add?

2 MEMBER SMITH: I don't have anything to add. They
3 have updated their -- so they are here for the correct
4 relief. I do believe that applicant has met the burden of
5 proof for us to grant the special exception. I will support
6 the application, giving OP's report great weight.

7 BZA CHAIR HILL: Thank you. Chairman Hood?

8 ZC CHAIR HOOD: I had to get my package before
9 somebody else grabbed it.

10 I don't have anything to add to this. I will vote
11 in favor of this. Thank you and thank the applicant for the
12 work they've done. Thank you.

13 BZA CHAIR HILL: Thank you. We all know about
14 that one. Mr. Blake, do you have anything you'd like to add?

15 MEMBER BLAKE: I don't. I agree with the Office
16 of Planning's analysis for the criteria of K 915.2(a). I
17 give great weight to the Office of Planning's recommendation
18 for approval, and also give great weight to the report from
19 the ANC 4A which issued no -- stated no issues or concerns.
20 I'll be voting in favor of the application.

21 BZA CHAIR HILL: Thank you. Vice Chair John?

22 VICE CHAIR JOHN: Nothing to add to the
23 discussion, and I am in support of the application.

24 BZA CHAIR HILL: Thank you. All right. I'm going
25 to go ahead and make a motion to approve Application Number

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1 21013 as captioned and read by the Secretary and ask for a
2 second. Ms. John?

3 VICE CHAIR JOHN: Second.

4 BZA CHAIR HILL: The motion has been made and
5 seconded. If you can, would take a roll call, Mr. Moy?

6 MR. MOY: Thank you, sir. When I call your name,
7 if you will please respond to the motion made by Chairman
8 Hill to approve the application for the relief requested.
9 The motion to approve was second by Vice Chair John. Zoning
10 Commission Chair Anthony Hood?

11 ZC CHAIR HOOD: Yes.

12 MR. MOY: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MR. MOY: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes.

18 MR. MOY: Chairman Hill?

19 BZA CHAIR HILL: Yes.

20 MR. MOY: Staff would record the vote as 5 to 0
21 to 0, and this is on the motion made by Chairman Hill to
22 approve. The motion to approve seconded by Vice Chair John,
23 who also voted to approve the application. Others voting to
24 approve the application: Zoning Commission Chair Anthony
25 Hood, Mr. Smith, Mr. Blake, Vice Chair John, and Chairman

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1 Hill. Motion carries on the vote of 5 to 0 to 0.

2 BZA CHAIR HILL: Thank you. We have one more
3 case, but let's -- that one's going to take a little bit of
4 time, so why don't we go ahead and take a lunch? It is 1:00.
5 You want to say 1:30? Okay. See you guys at 1:30. Thank
6 you.

7 (Whereupon, the above-entitled matter went off the
8 record at 12:58 p.m. and resumed at 1:47 p.m.)

9 MR. MOY: So, after a quick lunch recess, the
10 Board has returned to its public hearing session, and the
11 time is now at or about 1:47 p.m.

12 The last case for the day is Application Number
13 21015 of Elisabeth Kidder and Daniel Spurlock. This is a
14 self-certified application pursuant to Subtitle X, Section
15 901.2 and Subtitle E, Section 403, for the following special
16 exceptions. Under Subtitle E, Section 5201, lot occupancy
17 requirement, Subtitle E Section 210.1, and under Subtitle E,
18 Section 207.5, to allow a rear wall of the row building to
19 extend further than 10 feet. Property is located in the RF-
20 1/CAP Zone at 425 4th Street NE, Square 812, Lot 51.

21 As a reminder, Mr. Chairman, there is party status
22 in opposition that was granted by the Board earlier, and the
23 applicant filed a PowerPoint slide this morning, so if you
24 allow that record, I can have staff load that into the case
25 record.

1 I think people have signed up to testify are in
2 the panel. I don't know. We're missing one or two, but
3 staff is trying to reach them. But we'll see where we're at
4 when you call them, and I think the Board is good to go.

5 Also, I would want to mention we have ANC
6 Commissioners in the panel as well, sir.

7 BZA CHAIR HILL: Okay. Great. Thank you. All
8 right. Welcome, everyone. If the applicant can hear me, if
9 they could please introduce themselves for the record?

10 MS. FOWLER: Hi, everybody. Jennifer with Fowler
11 Architects, and I also have Marty Sullivan. Here he is.

12 BZA CHAIR HILL: Okay. Great. Thanks, Ms.
13 Fowler. Thanks, Mr. Sullivan. Mr. Sullivan, you want to
14 introduce yourself for the record?

15 MR. SULLIVAN: -- to the Board. Marty Sullivan
16 with Sullivan and Barros, also on behalf of the applicant.
17 Ms. Fowler was going to do the presentation in chief, and I
18 was going to be available for some rebuttal and closing and
19 other comments.

20 I would like to say that we are so close to an
21 agreement and -- with the opponents, and we've been working
22 on it since yesterday. There's one small sticking point.
23 We might be able to figure it out in about five minutes or
24 so.

25 BZA CHAIR HILL: Okay. All right. Okay. Let me

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1 do this then. Ms. Themak, can you hear me?

2 MS. THEMAK: I can.

3 BZA CHAIR HILL: Okay. Could you introduce
4 yourself for the record?

5 MS. THEMAK: Yes. Tracey Themak. I am counsel
6 for the party in opposition.

7 BZA CHAIR HILL: Okay. Ms. Themak, do you want
8 a little bit more time to talk with the applicant?

9 MS. THEMAK: Yes. We would appreciate that.

10 BZA CHAIR HILL: Okay. So, why don't I do this:
11 it's 1:50 right now. Why don't we come back at, like, 2:10?

12 MS. THEMAK: That sounds great.

13 BZA CHAIR HILL: Okay.

14 MR. SULLIVAN: That's wonderful, and thank you,
15 Mr. Chairman. If we do come to an agreement, then we would
16 be asking for a postponement as well because it would require
17 a plan revision. And so, hopefully, we're shortening your
18 day --

19 BZA CHAIR HILL: That's fine.

20 MR. SULLIVAN: -- in the long run.

21 BZA CHAIR HILL: Okay. Great. All right. We'll
22 see you at 2:10.

23 MS. THEMAK: Great. Thank you.

24 BZA CHAIR HILL: Thank you. Bye-bye.

25 (Whereupon, the above-entitled matter went off the

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1 record at 1:51 p.m. and resumed at 2:14 p.m.)

2 MR. MOY: The staff has returned to its public
3 hearing session after another quick recess, and the time is
4 now at or about 2:15 p.m.

5 BZA CHAIR HILL: Okay. Let me see if the
6 applicant and the party in opposition is here. Mr. Sullivan,
7 can you hear me?

8 (No audible response.)

9 BZA CHAIR HILL: Ms. Fowler, can you hear me?

10 MS. FOWLER: Hi. I'm here.

11 BZA CHAIR HILL: Ms. Themak, can you hear me?

12 (No audible response.)

13 MR. SULLIVAN: Thank you, Mr. Chairman. Marty
14 Sullivan.

15 BZA CHAIR HILL: Yes. I lost Ms. Themak. Oh, can
16 you hear me? Okay.

17 MS. THEMAK: I can hear you.

18 BZA CHAIR HILL: So -- well, let me see. I mean
19 we've kind of postponed this a little bit longer than I had
20 anticipated, also. Where, Mr. Sullivan, are you guys?

21 MR. SULLIVAN: Thank you, Mr. Chair. I am --
22 okay, so, we're at the point where we think we have an
23 agreement in principle. It's not signed, but we think, in
24 good faith, it will be signed. And so, we're going to ask
25 for a postpone --

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1 BZA CHAIR HILL: Okay.

2 MR. SULLIVAN: -- based on that. And we expect
3 to come back with a revised plan with no opposition.

4 BZA CHAIR HILL: That's -- okay, revised plan.

5 And again, I just want to be clear, Mr. Sullivan.
6 I know you know all of this. Whether or not this thing comes
7 clean to us or not does not really -- is not what the Board
8 is trying to actually do. And so --

9 MR. SULLIVAN: No, I understand, but it may have
10 some impact on the timing --

11 BZA CHAIR HILL: So the --

12 MR. SULLIVAN: -- time.

13 BZA CHAIR HILL: -- does -- will the design change
14 enough that we will need to hear back from the Office of
15 Planning?

16 MS. FOWLER: I can speak to that, possibly. The
17 Office of Planning has supported the project as drawn, so
18 what we're looking at is reducing the mass at the first,
19 second floor, and third floor. So --

20 BZA CHAIR HILL: Okay. Before I agree to
21 postponement, do my fellow Board Members have any questions
22 or any thoughts they want to add before we maybe postpone
23 this?

24 VICE CHAIR JOHN: I think it seems reasonable to
25 postpone this case since they're so close to an agreement

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1 with the opposition.

2 BZA CHAIR HILL: Okay. Where, Mr. Sullivan and
3 Ms. Fowler, would you hope to come back before us?

4 MR. SULLIVAN: Well, we think we would be ready
5 within a matter of weeks, so I know -- I don't know if
6 there's a hearing. I mean, we might be done with hearings
7 until January, so -- and I know -- we know it will take at
8 least that long.

9 So, we'll be ready within a matter of weeks, so
10 the earliest possible date in January would be great.

11 BZA CHAIR HILL: Mr. Moy, I don't think we have
12 anything -- so we're back here again for the first time on
13 the 17th of January, correct? And I think that's very full.
14 And then we have an appeal with a lot of cases on the 24th,
15 I believe, correct?

16 MR. MOY: Yes, you're correct.

17 BZA CHAIR HILL: What does the 31st look like?

18 MR. MOY: In my situation, that's the best case,
19 the earliest, because on the 31st, you have nine cases and
20 two expedited review cases.

21 BZA CHAIR HILL: Okay. All right. Let's try to
22 come back here on the 31st, okay?

23 And I know, Mr. Sullivan, you know this. In order
24 for this to also work out for you guys in terms of -- I would
25 assume you're going to -- hopeful that you get opposition

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1 withdrawn in order for this to benefit your client.

2 Now, I will see you guys on the 31st.

3 MR. SULLIVAN: Thank you, Mr. Chairman --

4 BZA CHAIR HILL: Okay.

5 MR. SULLIVAN: -- Board Members.

6 BZA CHAIR HILL: We're going to close this portion
7 of the hearing, which -- basically, we haven't heard anything
8 yet, and postpone until the 31st.

9 MR. MOY: Mr. Chairman?

10 BZA CHAIR HILL: Yes.

11 MR. MOY: Do you want to set a deadline on any
12 submissions, or you want to leave that open?

13 BZA CHAIR HILL: Whatever you would normally set,
14 Mr. Moy.

15 MR. MOY: Well, I would think that at the latest,
16 so it gives the staff time to review what's been filed to the
17 record, at least a week ahead of time --

18 BZA CHAIR HILL: Okay.

19 MR. MOY: -- at the minimum. So that would put
20 us at Wednesday, January 24th.

21 BZA CHAIR HILL: Okay. That'll be great.

22 MR. MOY: And this will be a continued hearing,
23 right?

24 BZA CHAIR HILL: Well, we haven't heard anything
25 yet, but I guess so, technically. And we did allow the

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1 PowerPoint into the presentation -- I'm sorry, the record.

2 MR. MOY: Yes, sir.

3 BZA CHAIR HILL: Okay. I'm also letting my fellow
4 Board Members know that we did allow that into the record.

5 Okay. All right. So then you'll let the parties
6 know, Mr. Moy, about the deadline?

7 MR. MOY: Yes. We'll do that, and we'll also file
8 the OZ memorandum into the case record to that effect.

9 BZA CHAIR HILL: Okay. Great. All right. Then
10 I'll close that hearing. I hope all of you have a wonderful
11 holiday. We'll see you guys in the new year. If anybody
12 wants to go around the table and say happy holidays, please
13 do so. We'll start with you, Chairman Hood, if that's all
14 right, and end with Mr. Moy.

15 ZC CHAIR HOOD: Have a happy holiday and enjoy
16 your family and be safe. And again, take a rest from zoning.
17 Don't even open the zoning book.

18 So anyway, hope you all have a great time.

19 BZA CHAIR HILL: Thank you. Mr. Smith?

20 MEMBER SMITH: Happy holidays to everyone. I
21 agree with Chairman Hill. You know, kick back, relax
22 wherever you're going to be, whether you're in the District
23 or somewhere else in the country or out of the country. So
24 again, happy holidays.

25 Mr. Blake, happy to have you back. Perfect timing

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1 on your part.

2 BZA CHAIR HILL: And with that, we'll turn to Mr.
3 Blake. Do you have anything you'd like add, Mr. Blake?

4 MEMBER BLAKE: Yes. It's good to be back. Thanks
5 very much, Member Smith, for that, and it is happy -- merry
6 Christmas, happy holidays to everyone, and I look forward to
7 a exciting new year.

8 BZA CHAIR HILL: Vice Chair John?

9 VICE CHAIR JOHN: Just want to say happy holidays
10 to everybody and look forward to seeing you in 2024.

11 BZA CHAIR HILL: Thank you. Mr. Moy?

12 MR. MOY: Well, on behalf of the BZA staff and the
13 Office of Zoning staff as a whole, we wish you all a very
14 happy holiday season as well as a very healthy and prosperous
15 new year. You all worked really hard this year.

16 BZA CHAIR HILL: Thank you. All right. We'll see
17 you all in 2024.

18 VICE CHAIR JOHN: Bye, everybody.

19 BZA CHAIR HILL: Thank you. Bye-bye.

20 (Whereupon, the above-entitled matter went off the
21 record at 2:23 p.m.)

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Regular Public Hearing

Before: DC BZA

Date: 12-20-23

Place: teleconference

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