

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 6, 2024

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video/Teleconference, 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
CHRISHAUN S. SMITH, NCPC Designee
CARL H. BLAKE, Member

ZONING COMMISSION MEMBERS PRESENT:

JOE IMAMURA, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK
MICHAEL JURKOVIC
CRYSTAL MYERS
KAREN THOMAS

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WASHINGTON, D.C. 20005-3701

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on March 6, 2024.

AGENDA

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

(9:37 a.m.)

CHAIRPERSON HILL: Good morning ladies and gentlemen to the Board of Zoning Adjustment. Today's 03-06-2024 public hearing will please come to order. My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Joining me today is Vice Chair Lorna John, Board member Carl Blake and Chrishaun Smith, and Zoning Commissioner, Dr. Imamura.

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

At the conclusion of this decision meeting session, I shall in consultation with the Office of Zoning determine whether a full or summary order may be issued. A

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

7 In today's hearing session, everyone who is
8 listening on Webex or by telephone will be muted during the
9 hearing. And only persons who have signed up to participate
10 or testify will be unmuted at the appropriate time. Please
11 state your name and home address before providing oral
12 testimony or oral presentation. Oral presentation should be
13 limited to the summary of your most important points. When
14 you're finished speaking, please mute your audio so that your
15 microphone is no longer picking up sound or background noise.
16 All persons planning to testify either in favor or in
17 opposition should have signed up in advance. They'll be
18 called by name to testify. If this is an appeal, only
19 parties are allowed to testify. By signing up to testify,
20 all participants completing oath or affirmation as required
21 by Subtitle Y408.7.

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

1 to Y103.13 provided that the person making the request to
2 enter an exhibit explain (A), how the proposed exhibit is
3 relevant, (B), the good cause that justifies allowing the
4 exhibit into the record, including explanation of why the
5 requestor did not file the exhibit prior to the hearing
6 pursuant to Subtitle Y206. And ©, how the post-exhibit would
7 not unreasonably prejudice any parties. The order of
8 procedures for special exceptions and variances are pursuant
9 to Y409.

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

25 Finally, the District of Columbia Administrative

1 Procedures Act requires a public hearing on each case be held
2 in the open before the public. However, pursuant to Section
3 405B4 and 406 of that Act, the Board may consistent with its
4 rules, procedures, and the Act enter into a closed meeting
5 on a case for purposes of seeking legal counsel on a case
6 pursuant to D.C. Official Code, Section 2-575B4 and/or
7 deliberate on a case pursuant to D.C. Official Code, Section
8 2-575B13, but only after providing a notice in the case of
9 an emergency closed meeting and after taking a roll call
10 vote. Mr. Secretary, do we have any
11 preliminary matters?

12 MR. MOY: Good morning, Mr. Chairman and members
13 of the Board. I do have a few quick announcements related
14 to today's hearing docket. First, we have three case
15 applications that have been granted postponements of today's
16 docket. The first is Application No. 21061, Brunor
17 Properties, LLC rescheduled to March 20th, 2024. Application
18 No. 21031 of CP 4th Street SE, LLC, postponed to and
19 rescheduled to April 10th, 2024. And Application No. 21067
20 of o2001 RIA Owner, LLC, rescheduled to May 8th, 2024.

21 Finally -- Yes. Finally, the Chairman has
22 reviewed and granted a way in which to allow three late
23 filings into the applicable case records pursuant to Subtitle
24 Y, Section 206.7 and Section 103.13. Any other late filings
25 during the course of today's live hearing should be presented

1 before the Board by the Applicant or other parties or
2 witnesses after I call the case. Other than that, that's all
3 I have, Mr. Chairman.

4 CHAIRPERSON HILL: Okay. So Mr. Moy, you want to
5 call our next case?

6 MR. MOY: Yes, sir. So the next case on the
7 Board's public hearing session is Application No. 21017 of
8 Phillip H. Bishop. This is an amended application for the
9 following: Area variance from the alley lot height
10 requirements of Subtitle D, Section 5100.1(a), use variance
11 from Subtitle U, Section 600.1(f)(1), and pursuant to
12 Subtitle X, Section 901.2 for a special exception under
13 Subtitle D, Section 5201.3(a) from the side yard requirements
14 of Subtitle D, Section 5100.1(d).

15 As you'll recall, Mr. Chairman, back on December
16 20th, 2023, the Board granted a request for party status in
17 opposition and it was to 11 persons. I can read those names
18 if you wish, but I believe they are in the hearing session.
19 Other than that, that's all I have, Mr. Chairman.

20 CHAIRPERSON HILL: Can you read the application
21 number for me again?

22 MR. MOY: Yes. 21017 of Phillip H. Bishop.

23 CHAIRPERSON HILL: Okay, I have -- Give me one
24 more minute.

25 MR. MOY: That's fine. Take your time, Mr.

1 Chairman. The staff is lining up all the -- all the party
2 status individuals, so that's ongoing now. There's 11 of
3 them.

4 MS. WILSON: This is not my case. I just wanted
5 to let you know.

6 CHAIRPERSON HILL: Okay.

7 MS. WILSON: I don't know why I've been brought
8 in, so I just wanted to mention that to staff.

9 MR. YOUNG: Okay, that's being rearranged. Sorry
10 about that.

11 CHAIRPERSON HILL: Yeah, I got a little -- I got
12 a little confused also. So we're on 21011, okay, Mr. Young?

13 MR. YOUNG: 21017?

14 CHAIRPERSON HILL: Sorry, 21017. Okay. All
15 right. Okay, that was confusing me. All right. I've got
16 21017 and then I guess, Mr. Young, if you could bring in the
17 parties. Mr. Moy, can you hear me?

18 MR. MOY: Yeah, I'm still here.

19 CHAIRPERSON HILL: I got a little confused. Did
20 we already grant party status?

21 MR. MOY: Yes, back on December 20th.

22 CHAIRPERSON HILL: December 20th, okay.

23 MR. MOY: And it's a lot of names -- a lot of
24 individual people.

25 CHAIRPERSON HILL: No, no. I see. I see. I'm

1 just trying to remember December 20th. Okay. All right,
2 let's first hear from -- if the Applicant can hear me, if
3 they can introduce themselves for the record.

4 MR. BISHOP: Can you hear me?

5 CHAIRPERSON HILL: Yes. Is it Mr. Bishop?

6 MR. BISHOP: That's correct. Phillip Bishop, good
7 morning.

8 CHAIRPERSON HILL: Good morning. And you're the
9 Applicant, sir. Correct?

10 MR. BISHOP: That's correct.

11 CHAIRPERSON HILL: Are you representing yourself?

12 MR. BISHOP: That's correct.

13 CHAIRPERSON HILL: Okay. All right. Mr. Bishop,
14 are you going to use your camera or can you use your camera?
15 Okay, great. Thank you. Nice to see you.

16 MR. BISHOP: Good morning.

17 CHAIRPERSON HILL: Good morning. Okay.

18 MR. BISHOP: This is the first time I've used your
19 application here, so I'm not as familiar with it, so excuse
20 my ignorance.

21 CHAIRPERSON HILL: Sure, no problem. It takes a
22 while for all of us. Let's see. Is Michelle Romo and Taras
23 Matla in the room?

24 MS. ROMO: I'm in the room. Taras is actually
25 putting the baby down for a nap --

1 CHAIRPERSON HILL: No problem.

2 MS. ROMO: -- but I'll speak primarily. Yeah.

3 Sorry --

4 CHAIRPERSON HILL: That's fine.

5 MS. ROMO: -- we don't have care.

6 CHAIRPERSON HILL: Okay. Let's see. And then

7 Stacy Raina and Lalit Raina?

8 MR. RAINA: Yeah. Lalit, I'm here. Stacy,

9 unfortunately could not make it today.

10 CHAIRPERSON HILL: Okay. All right, Mr. Raina,
11 nice to see you.

12 MR. RAINA: Thank you, sir.

13 CHAIRPERSON HILL: Okay. Is Mildred Colette Bell
14 here with us? Ms. Bell, can you hear me?

15 MS. BELL: Good morning.

16 CHAIRPERSON HILL: Good morning. One moment
17 please. Okay. All right. Now you guys are abutting the
18 subject property. Correct?

19 MS. BELL: That's correct.

20 CHAIRPERSON HILL: Okay. And then --

21 MR. BISHOP: I don't know that they're abutting
22 the property. They may be in the -- They may be in the area,
23 but I don't know if they're abutting the property.

24 CHAIRPERSON HILL: I'm going to --

25 (Simultaneous speaking.)

1 CHAIRPERSON HILL: that's okay, Mr. Bishop. Mr.
2 Bishop -- I'll figure it out, Mr. Bishop. So Ms. Romo,
3 you're abutting the property. Is that correct?

4 MS. ROMO: Yes, I'm abutting the property. I'm
5 at 2215 Bunker Hill Road NE and other party members, Ms. Bell
6 and the Raina's about the property and Ms. Anna Hartfield who
7 I don't think could be online today, but she's another party
8 member.

9 CHAIRPERSON HILL: Okay.

10 MS. ROMO: And then the others are in the alley.

11 CHAIRPERSON HILL: Okay, got it. Ms. Romo, I'm
12 trying to remember what we did the last time we were together
13 and so if you'll bear with me.

14 MS. ROMO: No problem.

15 CHAIRPERSON HILL: I think I remember now talking
16 with you. And so were you all able to get together --

17 (Simultaneous speaking.)

18 MS. ROMO: Yes.

19 CHAIRPERSON HILL: -- people?

20 MS. ROMO: Yes.

21 CHAIRPERSON HILL: Okay.

22 MS. ROMO: So if it's okay with the Board, when
23 it comes to our time, I have about 13 minutes to present and
24 then the other five members who were able to sign on today
25 have about two minutes to talk about specific points that

1 directly affect them based on where they live.

2 CHAIRPERSON HILL: Okay, great. So let's see.
3 Is Sarah Romero and Astudillo del Pozo with us?

4 MR. JAVIER: Francisco -- Yes, Francisco is here.
5 Sarah is at work --

6 CHAIRPERSON HILL: Okay.

7 MR. JAVIER: -- so I'll be representing the two
8 of us.

9 CHAIRPERSON HILL: Okay, great. Thank you. And
10 then Brian and Janella Ferguson? Are the Ferguson's here?

11 MR. FERGUSON: I'm sorry. Good morning. This is
12 Brian Ferguson. My wife is not able to be here, but I'll be
13 testifying for us.

14 CHAIRPERSON HILL: Okay, great. Mr. Ferguson, are
15 you on the phone? Oh, no. I see you now. Okay, great. And
16 then Bonita Beati? Is Ms. Beati here?

17 MS. ROMO: She wasn't able to be here today.

18 CHAIRPERSON HILL: Okay. No problem. And then
19 Anna Hartfield -- Are you here, Ms. Hartfield? I don't see
20 you. MS. ROMO: She wasn't able to be here
21 today either.

22 CHAIRPERSON HILL: That's fine.

23 MS. ROMO: We organized on who would be speaking.

24 CHAIRPERSON HILL: No, that's great, Ms. Romo.
25 I appreciate it. And I just want to make sure I'm not

1 anybody. So am I missing any of the party status people?
2 Okay. All right, there we go. All right. So that's that
3 part. Okay. All right, great.

4 So just so everybody knows how this is going to
5 work, the Applicant will have an opportunity to give their
6 presentation as to why they believe they're meeting the
7 criteria for us to grant the relief that's being requested.
8 And they'll be talking about the project, the regulations.
9 And again, depending upon the way the Applicant has organized
10 their presentation, will speak again to the regulations and
11 the criteria.

12 Then we will hear from the -- those parties in
13 opposition. And then we're going to hear from the Office of
14 Planning. And then everyone will get an opportunity to
15 basically ask questions of each other. And at that time --
16 At any point in time, the Board will chime in if they have
17 any questions. That's at least kind of how I think I'm going
18 to run it. And we'll see as we go along -- The only change
19 may be when we start to ask questions.

20 So Mr. Bishop, that being the case, you may go
21 ahead and begin your presentation. I'm going to put 15
22 minutes on the clock, Mr. Bishop, so I know where we are and
23 you can begin whenever you like.

24 MR. BISHOP: Well good morning to everyone.
25 First, I wanted to take the opportunity to thank a few people

1 for their efforts. First of all, I thank BZA Boardmembers
2 and Chairman Hill for creating the platform to address this
3 issue during this request as I'm trying to right a wrong,
4 right and you will understand what I'm saying when I finish
5 this presentation. I would like to also thank the ANC
6 Commissioner Borrego, who took time to meet with me to
7 discuss this matter before now. And the Office of Planning,
8 Matthew Jesick and Joel Lawson who also met with me and had
9 great extension since the conversation about this matter.
10 I'd like to thank my advisor, Don Isaac -- Reverend Donald
11 Isaac for his time and effort and Mr. Lorenzo Brown, my
12 project manager. I'd like to thank my attorney, Jeff Styles
13 and I'd like to thank Robert Lee, a representative of BZA for
14 giving the time and effort to direct us in completing this
15 process.

16 It's been a tedious process. We have taken -- We
17 had to resubmit several times to get the correct information
18 in terms of the type of filing that had to be done. It's
19 been rather rigorous and a lot more than I requested or
20 engaged in from the beginning.

21 Let me just give you a little bit of information
22 about who I am. My name is Phil Bishop. I was raised in
23 Charlottesville, Virginia, the youngest of ten. I started
24 in the real estate business here in the District of Columbia
25 at the age of 22 where I became a realtor. Since then, I've

1 been an investor, a landlord in the commercial and
2 residential industry. My government career expanded in
3 compliance audit technology over the last 30 years. The past
4 15 years, I put in with the D.C. Police and Metropolitan
5 Police Department and the FBI as a compliance officer in the
6 Wales/NCIC FBI program. I retired with D.C. Police in 2016.
7 I am founder and CEO of the Good Works Organization, Inc.
8 which is a 501(c)(3) organization designed to help people in
9 their needs of mental health, physical, spiritual, and
10 financial needs.

11 I'll read to you the introduction to the filing.
12 This is in third party -- yeah, third party written. The
13 property is currently a vacant lot and the intended use is
14 to build a single family dwelling. It is currently being
15 used as a general public illegal -- general public without
16 permission as a catch-all dumping area because it appears to
17 be an abandoned property. Mr. Bishop, owner, intends to
18 construct and occupy the residence. The owner is a retired
19 civil servant of the District of Columbia serving
20 approximately 30 years, the last 15 years with the
21 Metropolitan Police Department. As owner, occupant, and tax
22 payer on this property in excess of 16 years proves
23 commitment to said property and community.

24 The owner purchased the property in 2008. After
25 several years, a decision was made to build a residence on

1 the property. This would serve as a concerted effort to
2 utilize the property in disparte used as a dumping area and
3 appearance of an abandoned lot. In an effort to follow the
4 protocol, owner contacted DCRA Office of Zoning, Department
5 of Building, then referred to DOB to check (audio
6 interference) authorization to build. Upon receiving the
7 authorization notification from a technician on or about
8 September 20th, 2020 on DOB, that the property was buildable
9 by right. The owner proceeded to take the corrective steps
10 by securing a licensed architect and engineer of services at
11 considerable expense to develop plans and drawings to build
12 the residence on the approved alley lot.

13 The owner extended considerable funds over 16
14 months in efforts working with architects and engineers,
15 submitting applications to offices of the various utilities
16 requested, requesting -- representing various disciplines
17 required by DOB, only to be told at the 11th hour after more
18 than four zoning reviews that approval would not be granted
19 to build in the Board of Zoning (audio interference) would
20 have to intervene as a decision maker. The reasoning
21 conveyed by the technician or resident of authority was
22 presented to the architect as a technical error mistake. An
23 error that the District of Columbia should be considered
24 sharing financial responsibility.

25 We understand that there are three components in

1 the regulations that allows for a variance. The exception
2 that's been requested for height and width -- the 2 feet
3 height on the plans and the 1 foot width on the rear setback
4 can be offset and will be corrected by the plans. We will
5 be changing the plans to meet that requirement of the height
6 and the rear corner setback. So the only variance we're
7 looking at is the variance for consideration to build a
8 single family house.

9 The three areas of consideration for a variance
10 is one, the property is affected by exceptional shape, size,
11 topography, and other extraordinary exceptional situations
12 or conditions. Two, the owner would encounter an undue
13 hardship if the zoning regulations were strictly applied.
14 And three, the variance and exception would not cause
15 substantial detriment to the public good and would not
16 substantially impair the intent, purpose, integrity of the
17 zone plan and body in the zoning regulation or map. Those
18 are the three areas that we were -- we're addressing in the
19 application.

20 The property affected by the exceptional situation
21 and condition, which is the third one I mentioned. The
22 phrase exceptional situation or condition in the variance
23 test applies not only applies to the land, but also to the
24 existence and configuration of the building of the land.
25 Moreover, the unique exceptional situation or poor condition

1 may rise from confluence of factors, which affect a single
2 property. In this case, the property is larger than most in
3 the area and bounded by an alley. The property is being
4 utilized by neighbors as a parking lot and dumping ground and
5 whatever they find applicable to their satisfaction.
6 Therefore without authorized supervision or oversight, the
7 possibilities are endless in regard to secure and a safer
8 use.

9 We are a well-lit structure -- where a lit
10 structure would be a tremendous advantage to the overall
11 security of the community. Vast of the property require
12 maintenance and regular oversight to determine undesirable
13 traffic that may create hazardous conditions. It is not a
14 District property or park service land to maintain and
15 without regular usage, creates an undue hardship to the
16 owner. It is an expense to undertake by the owner to make
17 safe for the community. The District is in need of
18 additional housing and therefore to build on this property
19 would be extremely beneficial from a security and useful
20 endeavor.

21 Exceeding the height limit and the side yard
22 requirement can be addressed by modifying the plans to adhere
23 to regulations required by Chapter 51, alley lot and
24 regulations, R Zones general provisions 5102 and 5104. The
25 owner is in agreement to make the modifications to the

1 drawings pursuant to DOB. Not substantial detriment to the
2 -- No essential detriment to the public good, nor substantial
3 impairment in the community.

4 Intent: Purpose and integrity of the zone plan.
5 The current zoning is residential and the owner -- Applicant
6 proposes to build a single family residential unit,
7 consistent with existing neighborhood. The owner/applicant
8 is not proposing to building a multi-family commercial unit
9 contrary to existing community. The requested relief can be
10 granted without harm to the public good and without a threat
11 to the integrity of the zone plan. Therefore the
12 construction of property will increase security by dwelling
13 habitants. The property build-out will adhere to the zoning
14 regulations. There will be no -- there will not be any
15 obstructions leading to the dissipation and peaceful
16 tranquility to existing properties. The property will not
17 abate air or lighting to other dwellings or of the community.
18 There will not be any detrimental affect to existing parking
19 due to the construction will include indoor off-street
20 parking.

21 The proposed lot will access emergency and fire
22 vehicles, as well as utility and trash removal services
23 vehicles and will be able to maneuver through the alley as
24 required and as needed. The proposed dwelling would not
25 substantially add to the amount of traffic, noise, or light.

1 The house will only -- will only be occupied by a single
2 family. Additionally, the proposed plan calls for two indoor
3 parking spaces. The property shall not take away existing
4 parking. The proposed dwelling will cover 70 percent of the
5 lot and will be proportional in scale with other houses in
6 the area. Seventy percent of the lot will also maintain
7 existing open space around the lot, thus having little impact
8 on the light and air surrounding the houses.

9 Hardship: The owner emphatically contends that
10 the need for a variance request was instigated by erroneous
11 and costly information provided by DCRA pursuant to an email
12 dated September 25th, 2020 by Ms. China-Barber, support team.
13 See attached document. The email informed the owner that a
14 dwelling could be constructed by owner, built by right as
15 long as the development standards are met. The standards
16 were listed in the email as well. The email was the green
17 light to make the appropriate plans as follows: The labor
18 categories, architect, engineer, attorneys, otherwise plans
19 and drawings (audio interference) municipal ages for permits
20 and authorizations.

21 Upon completion of the necessary administrative
22 requirements to start forbidding for construction
23 proceedings, DCRA informed the owner that permits could not
24 be obtained to build by right. That it would be necessary
25 to enlist Board of Zoning adjustments pursuant to Chapter 51,

1 alley lots regulation R-Zones even though 51.03 lot occupancy
2 was removed at the time it was in place and it did not list
3 having to go to BZA for an approval. The erroneous
4 information created such an unnecessary enormous expense,
5 approximately \$35,000 in drawings to the tax payer, as well
6 as the embarrassment of the Agency and a fact that required
7 16 months to realize that the Department of Building Office
8 of Zoning Administration issued a referral memo to the Board
9 of Zoning Adjustments and hopes to expedite the process for
10 the owner.

11 Even the original referral memorandum was
12 erroneous and it instructed the owner to provide three
13 special exception items. The owner modified the Office of
14 Building that the -- notified the Office of Building that the
15 memorandum was incorrect and that the corrected document
16 would be necessary before submitting could be made to the
17 Board of Zoning adjustments. This took over -- took several
18 months to correct. The corrected documents were finally
19 realized on November 9th, 2023. So we're talking about over
20 three years of filing, processing, and then be given the
21 wrong information.

22 The original incorrect memorandum from the
23 Department of Building Office of Zoning Administration was
24 first sent to the owner notifying him of the items that need
25 to be addressed by the Office of Zoning on July 13th, 2023

1 under the authorization of Mr. LeGrant. Only after the Board
2 of Zoning and Appeal rejected the Applicant's submittal three
3 times, did the Office of Zoning Administration furnish the
4 correct referral memorandum identifying the types of relief
5 necessary to consider the application. The effort which
6 lasted in excess of 16 months, inclusive of planning, time,
7 cost (audio interference) attorney, coupled with the lack of
8 assistance by the District of Columbia government, a task
9 that should have been seamless became laborous, emotional,
10 financial, and mental hardships. I rest my case and point.

11 CHAIRPERSON HILL: Okay. Thank you, Mr. Bishop.
12 All right, Ms. Romo, can you hear me?

13 (No audible response.)

14 CHAIRPERSON HILL: Okay. You basically have kind
15 of the same amount of time as Mr. Bishop, but we'll get to
16 everybody. Okay? So go ahead and give your presentation.

17 MS. ROMO: Okay, thank you.

18 CHAIRPERSON HILL: And we'll get through all the
19 testimony.

20 MS. ROMO: Okay, thank you. And just to state,
21 I misspoke earlier that Ms. Hartfield and Ms. Beati are
22 actually on the call. I don't see them in the room, but they
23 texted me to correct and say that they are in fact here
24 today. So sorry about that. I was wrong.

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

1 guess if Mr. Young sees them in the room, Ms. Hartfield --
2 Okay, well Hartfield -- Anna Hartfield, Mr. Young, if you see
3 her and then you said, Foreti?

4 MS. ROMO: Beati.

5 CHAIRPERSON HILL: Beati -- Beati.

6 MS. ROMO: Beati, yes.

7 CHAIRPERSON HILL: And then Beati, if you see that
8 person in the room, Mr. Young. All right, Ms. Romo, go
9 ahead.

10 MS. ROMO: Thank you. Thank you very much. Board
11 Chairperson Hill and Board members, thank you for the
12 opportunity to address the Board in opposition to the relief
13 requested in Application 21017 of Phillip H. Bishop, which
14 is 2229 Rear Bunker Hill Road NE, Square 4239, Lot 64.

15 My name is Michelle Romo. I live at 2215 Bunker
16 Hill Road NE and I live at one of the adjacent properties
17 abutting the alley lot. I've lived in this house since 2019
18 and I'm one of many here today (audio interference) in order
19 to oppose this application. I'm a civil servant and I've
20 worked in the District for the federal government for over
21 ten years. All three children of mine were born here and two
22 of them go to DCPS. The other one is still too young.

23 I'm joined by members of the party who represent
24 families, retirees, public civil servants, educators, small
25 business owners, and more. As already noted, our party

1 members who are working for DCPS can't be here today because
2 they're serving students. We're a diverse neighborhood, both
3 culturally and generationally. We have six-month-old babies,
4 two oxgenarians and residents who have lived here for a few
5 years to residents who have lived here for well over 50
6 years. And we're united in opposing this development.

7 I'd like to draw your attention to Exhibit 34,
8 which is a letter of opposition that a total of 30 neighbors
9 in the immediate vicinity signed. Since the time is short,
10 I want to reference just a few main points of the arguments
11 that are found in that letter and also give other neighbors
12 a chance to speak. We'd also like to correct many statements
13 in the application that are false and of course, can answer
14 any questions that you may have.

15 The application does not meet any of the criteria
16 needed to grant zoning relief and there's three points we
17 want to elaborate on. One, the owner has not experienced
18 exceptional practical difficulties or exceptional undue
19 hardship. Two, granting relief would not be in harmony with
20 the general purpose and intent of the zoning regulations and
21 the zoning maps. And three, such a relief would adversely
22 affect the use of neighboring properties and cause
23 substantial detriment to the public good. The neighbors
24 would suffer severe negative impact if the Board were to
25 grant relief.

1 On the first point, the owner has not experienced
2 exceptional practical difficulties or exceptional undue
3 hardship. The architectural drawings that the owner
4 mentioned that he spent money on is a self-inflicted choice.
5 It's abundantly clear that building a residential unit is
6 prohibited. Alley dwellings are not allowed in low density
7 residential zones as R1B where this lot is wholly located.
8 You could do a simple online search, which notes that the use
9 code for this alley lot is 093, vacant zoning limits. And
10 that would also be on his yearly tax statement. Residential
11 use of the alley lot has been restricted since at least 1935
12 when it was subdivided. And in Appendix A of the letter, you
13 can see a historical subdivision document that says that you
14 cannot build a residential unit there.

15 If the owner received a confusing email from DCRA,
16 he needs to address that with DCRA or DOB directly. It's not
17 a valid argument to waive zoning regulations, especially at
18 the great expense of the neighbors. And we'd also like to
19 note that our former ANC commissioner told him several years
20 ago that you couldn't build a residential unit on that lot.

21 The owner has not demonstrated undue financial
22 hardship. While the application claims that owning and
23 paying taxes on the lot for 16 years demonstrates commitment
24 to the property and the community, in fact, it has gone up
25 for tax sale due to unpaid taxes multiple times. The letter

1 found includes publically available links to three tax sales
2 where this lot was listed in 2010, 2011, and 2015.

3 The owner states that it's difficult to maintain
4 the property and it appears abandoned. However, it's the
5 owner himself that neglects it. He doesn't fence it. There
6 is a fence, but it's broken. The gate's not locked. He
7 doesn't abate it or otherwise take care of it. There is a
8 very long history of neglect of this lot with excessive
9 vegetation, poison ivy, mosquitos, garbage debris.
10 Neighbors over the years have raised concerns and the ANC has
11 been involved when working with the city to abate the lot and
12 urging the owner to take responsibility.

13 In Appendix B of the letter, you can see just a
14 few pictures of overgrown vegetation and some fallen trees
15 that the city had cleared after a storm. DCRA has abated the
16 lot multiple times. DDOT has cleared dangerous trees, in
17 addition to the ones that you see in those pictures. And
18 this has all been at the tax payer expense. In fact,
19 currently there are over \$6,500 in unpaid DCRA fines due to
20 neglect of the property. And those are attached in Appendix
21 C of the letter. Further, the owner has made no effort to
22 develop the alley lot in any ways that are actually
23 permissible such as with agricultural use, artistrial use,
24 camping by the owner, solar facility, or parking lot.

25 A brief historical point about the lot, as

1 mentioned, it was subdivided in 1935. Then the owner who
2 lived at 4025 22nd Street bought the lot and owned that lot
3 for about 30 years. It changed hands a few times, likely due
4 to her errors. She passed away. And was later joined with
5 the owners of 2219 Bunker Hill Road bought that lot in the
6 70s and joined it together. And they sold the lot together,
7 the house and the lot together. Unfortunately in the 80s,
8 that owner was foreclosed upon and the bank only repossessed
9 the house, leaving to a lot of confusion about who owned the
10 lot. And the lot itself went idle until it eventually went
11 up to D.C. tax sale. And it was one of multiple lots
12 purchased by Mr. Phillip Bishop in 2004. And was deeded to
13 him in 2008 for a purchase price of \$2,000.

14 I mention this bit of history only to demonstrate
15 that it's not just some vacant alley lot in the District that
16 has been idle for years. It has been a lot that's been
17 actively used by families in the community for decades. You
18 can still see remnants of basketball hoops that are there.
19 It doesn't have to be developed with a house for it to be
20 used. It has in fact been used as a recreational green space
21 for most of its existence. It's only under Mr. Bishop's
22 ownership that it's become neglected. And it's unreasonable
23 to suggest that the only solution to his neglect of the
24 property in question is the construction of a house that's
25 way out of scope, proportion, and character to the

1 surrounding neighborhood.

2 To the second point, granting relief would not be
3 in harmony with the general purpose and intent of zoning
4 regulations and zoning maps. The purpose of R1B is to
5 protect quiet residential areas, now developed with detached
6 dwellings and to stabilize the residential areas and promote
7 suitable environment for family life. According to DC's
8 Office of Planning, this area is classified as RLD,
9 residential low density. And further, there were no changes
10 to this area in the 2020 Comprehensive Plan Amendment, which
11 is included -- a map of that is included in Appendix D of the
12 letter. Allowing for a residential alley dwelling would
13 increase the density of the neighborhood and substantially
14 impair the intent, purpose, and integrity of the zone plan.

15 The Applicant's statement makes many claims that
16 are incorrect, especially when referencing the claims
17 regarding public good and the character of the neighborhood.
18 The application states that the neighborhood has had many
19 alley dwellings and that there were alley dwellings in the
20 late 19th Century. In fact, there are no alley dwellings in
21 the entirety of our single member district and the
22 surrounding districts, which are suburban in nature. In the
23 late 19th Century, this area was completely undeveloped.

24 The application states that the property, which
25 is 2,850 square feet is the largest on the block. In fact,

1 it is the smallest on the block. For example, other nearby
2 lots range from about 4,500 square feet to 7,900 square feet.
3 The application claims that the proposed house size is
4 proportional in scale with the other houses in the area.
5 This is untrue. Other houses on the block are moderately
6 sized, most of them are three bedrooms, not five, and we have
7 ample set-backs. You can see in Appendix E, there is a map
8 pulled from the city, which shows buildings in relationship
9 to some green space.

10 The application proposes a house of 2,964 square
11 feet on, as I said, a 2,850 square feet lot. This leaves
12 almost no green space. It's incongruent with other
13 properties on the block. The letter provides a very long
14 list of lots and their square footage and house sizes. I'll
15 only share one example with you today as you can read the
16 others in the letter. But the address at 2223 Bunker Hill
17 Road NE has a 1,835 square foot house on a 7,121 square foot
18 piece of land. So as you can see, very different.

19 Further, all of our houses are subject to normal
20 rear and side requirements. Our rear requirements -- yard
21 requirements are 25 feet. Our side yard requirements are 8
22 feet. Our requirements for percentage of pervious surfaces
23 is 50 percent. With an alley dwelling unit, if it were
24 allowed to be built would not be subject to any of these
25 requirements and it would be completely incongruent with the

1 neighborhood and set a dangerous precedent.

2 The application also cites examples that do not
3 provide any precedence for alley structures and are therefore
4 noncomparable. They are simply not in the R1B zone. The
5 example in the application listed 1331 Gufflers Court SE in
6 Capitol Hill. And that's an RF1 zone. The other example
7 listed is 21 Evarts Street NE, that's in the R3 zone. And
8 actually it is currently still a vacant lot. There is no
9 house on there and it's a shed. And that piece of land has
10 been on the market for a while for almost \$1 million.

11 I'll also note that there are lots significantly
12 larger than the lot in this application that are in zones
13 that do allow for alley dwellings and they've still be deemed
14 unsuitable for residential units. They have otherwise been
15 turned into community gardens, which would be a permissible
16 use and actually most welcome to the community to mitigate
17 against flooding.

18 The third and final point is that granting relief
19 would cause substantial detriment to the public good and will
20 adversely affect the use of neighboring properties. The
21 letter again outlines numerous reasons why building an
22 oversized residential dwelling with practically no set-backs
23 is detrimental. I'm only going to speak about a few of them
24 so that other neighbors can have a chance to speak.

25 On the issue of flooding, building a house would

1 increase flooding in the area. The alley lot is a permeable
2 space. It serves an important function to absorb rainfall
3 and reduce flooding in the neighborhood, which is a high
4 water table. And this area is home to several historic
5 streams. In Exhibit 36, I uploaded a map that the city
6 provided. And you can see historic streams of the
7 neighborhood.

8 CHAIRPERSON HILL: Ms. Romo, do you know how much
9 more you have? I'm not -- I'm just trying to time
10 everything.

11 MS. ROMO: I think just two minutes.

12 CHAIRPERSON HILL: Okay.

13 MS. ROMO: Yeah. The District repaved the T-
14 shaped alley in July of 2023 to mitigate against flooding.
15 You can see in Exhibit 36, Pictures 1 and 2 show -- pictures
16 well after a storm and you can still see water moving. That
17 lot absorbed approximately 1,800 gallons of rain water per
18 inch of rain, which according to the rain fall that we've had
19 in previous years can be anywhere between 75,000 to 118,000
20 gallons of rainwater a year. That is a lot of water that can
21 be displaced if a structure were to be built. Even now, we
22 still get flooding in our back yards. My garage, which abuts
23 the property line leaks and so does the retaining wall. You
24 can see that from those pictures that water is still
25 draining. Imagine if that whole lot was concrete. Where

1 would that water go? It would be a severe detriment to the
2 neighborhood to convert it to mostly impervious surfaces.

3 On the issue of light, an alley dwelling would in
4 fact reduce light and cast shadows in the neighborhood.
5 Several residents including myself have solar panels. A
6 shadow study was not included in this application. You can
7 see in that Exhibit 36, Picture No. 6 shows a picture of my
8 backyard that I snapped two days ago. We're currently
9 working with the solar company to put solar panels on our
10 roof, to also put them on the garage. We first had to offset
11 the cost and wait for the city to cut down one of its tree's.
12 But solar panels aside, you can see that the garage is one
13 story. And a two-story house, plus roof deck, plus being
14 already 3 feet higher would cast significant shadows into our
15 backyard. My shadow according to an online simulator tool
16 that the District provides would be in the shadow all day as
17 a result of that. We've invested a lot in our house and our
18 community. My children play in the backyard and I want them
19 to have some sunlight.

20 One more point regarding DPWS report on
21 construction that I would like to raise for the Board that's
22 not included in the letter. The report noted that if
23 construction were to be allowed, residents in the area must
24 place their waste receptacles and recycling containers at the
25 front of their properties if this construction does indeed

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1 occur in the alley. We would like to note that this is
2 impossible. You can see from the photo No. 5 that was
3 submitted, the east side of 22nd Street is a single lane with
4 no parking or stopping permitted. Residents could not put
5 trash cans in the street. Even if they were allowed to put
6 trash cans on the sidewalk, all of the houses on 22nd Street
7 and most of the houses on Randolph Street are not street level
8 at the front. It would be impossible, especially for elderly
9 residents, some of whom use wheelchairs, to haul heavy trash
10 cans up and down the stairs even if they were allowed to put
11 them on the sidewalk.

12 CHAIRPERSON HILL: Ms. Romo, can I ask you to kind
13 of wrap up?

14 MS. ROMO: I'm done.

15 CHAIRPERSON HILL: Okay.

16 MS. ROMO: So there are more issues to raise, but
17 I want to leave that to the other neighbors to raise other
18 issues such as privacy, parking, pollution. Thank you very
19 much.

20 CHAIRPERSON HILL: Okay. Thank you, Ms. Romo.
21 Okay. You guys, we have a lot of people to walk through
22 today and Ms. Romo mentioned that each one going to try to
23 take two minutes. So we're going to try to keep it to that.
24 I see, is it Ms. Raina?

25 MR. RAINA: Ms. Raina could not be here today.

1 CHAIRPERSON HILL: No problem. Mr. Raina, can you
2 do me a favor and introduce yourself for the record with your
3 address and then you'll have two minutes.

4 MR. RAINA: Okay. My name is Lalit Raina. Our
5 address is 2223 Bunker Hill. Can you hear me all right?

6 CHAIRPERSON HILL: Yes. Yes, I'm just listening.

7 MR. RAINA: Okay. I've lived in D.C. for about
8 22 years and in this property for the last -- since 2014.
9 Stacy Raina, my wife, could not be here. She's a speech
10 therapist at BCPS. Our property is adjacent to this -- to
11 this lot and has the longest border. I essentially would like
12 to address two main issues; privacy and parking.

13 The application proposes residential principle
14 dwelling unit that has significantly reduced set-backs versus
15 any of the property on this square. The proposed structure
16 with roof deck would give occupants visibility into at least
17 16 neighbors backyards affording literally no privacy to the
18 residents impeding the full and complete enjoyment of their
19 properties.

20 The application also proposes two parking spots
21 for a five-bedroom house with roof deck. And it's unclear
22 whether there is adequate turning radius to park those two
23 vehicles into the property. Visitors to this house
24 essentially -- in case of roof deck get-togethers, et cetera
25 would occupy all the parking on the Randolph Street and Bunker

1 Hill Road that residents rely on. Parking is already tight
2 and a nightmare, especially during frequent road
3 constructions and DDOT work. We have no parking permit, so
4 adding a vacant lot construction would make this situation
5 untenable, especially with construction vehicles, delivery
6 trucks in and out all the time. It would be even worse for
7 elderly neighbors who would have to park further away. It's
8 just going to be a nightmare.

9 We've invested our life savings into this house
10 and this community. We're raising a daughter who's about to
11 enter high school. A principle dwelling unit in this area
12 would be -- would severely have an effect to our family.
13 Thank you.

14 CHAIRPERSON HILL: Thank you, sir. I have Ms.
15 Bell.

16 MS. BELL: Yes.

17 CHAIRPERSON HILL: Go ahead, Ms. Bell. If you
18 could introduce yourself for the record with your address and
19 you'll have two minutes.

20 MS. BELL: I am Mildred Colette Bell and I live
21 at 2219 Bunker Hill Road NE. I am 81 years old. I have
22 lived in the District for 60 years and lived at that address
23 since 1994. When I originally purchased this house, we
24 thought that the alley was a part of our property. We
25 thought that the property was a part of our property and I

1 maintained it. Since 2008 when we became aware that it had
2 been sold, I still have done major work in trying to keep the
3 property clear. I was the one who cut down the trees with
4 that storm. I had moved out of the property for about five
5 or six years and during that time, the storm and the property
6 was totally unkept after Mr. Bishop purchased the property.
7 I have never seen him, which means that he has never taken
8 care of the property.

9 I also use the property as passageway to get to
10 the alley to empty or to put my trash out. And it would be
11 very difficult for me, an 81-year-old woman to not be able
12 to use that alleyway. The property also has been, according
13 to the neighbors who were dumping trash, they have not dumped
14 since I came back, but who were dumping trash there, they
15 said they were given permission to do so. Because he was not
16 involved and has been totally negligent of the property, it
17 was misused.

18 I have submitted a document about my testimony,
19 about my opposition for this and I would like for that
20 document to be put into the records -- the written document.

21 CHAIRPERSON HILL: Okay. Ms. Bell, is it not in
22 there?

23 MS. BELL: I'm not sure because it was late
24 yesterday afternoon after the -- after the 24-hour --

25 CHAIRPERSON HILL: Have you already submitted it?

1 MS. BELL: Yes.

2 CHAIRPERSON HILL: Okay. Mr. Moy, do you know
3 where that is?

4 VICE CHAIRPERSON JOHN: Exhibit 37.

5 CHAIRPERSON HILL: Okay, great. It's already in
6 there, Ms. Bell. Thank you, Vice Chair John.

7 MS. BELL: And just one last point is that I so
8 enjoy the foliage -- the trees from my balcony. And in my
9 elder age, would love to continue to have that, instead of
10 looking out at a house and not having control of the kind of
11 noise and disruptions that would come from that house into
12 my -- into my very backyard. It's like waking up and there's
13 a house built in your backyard. Thank you.

14 CHAIRPERSON HILL: Okay, Ms. Bell. Thank you.
15 Let's see. Mr. Ferguson, can you hear me?

16 MR. FERGUSON: Yes, sir.

17 CHAIRPERSON HILL: Could you go ahead and
18 introduce yourself for the record and then give your two
19 minute testimony?

20 MR. FERGUSON: Yes, sir. Good morning. My name
21 is Brian Ferguson. I'm also representing my wife, Janella.
22 We live at 4021 22nd Street NE, that's directly across the
23 alley from the proposed building. I'm going to keep this
24 really brief because much of this has been covered by other
25 parties in the ANC letter.

1 First, about the zoning regulations, realizing
2 this is just to re-stipulate some of the things that have
3 been said. Doing a quick look, I am not by any means an
4 expert on the -- what do you call it -- zoning standards.
5 The lot occupancy is for R1B is about 40 percent use of the
6 lot. This lot occupancy for the proposed building is stated
7 to be 70 percent of the lot. And again, this is not in
8 keeping with R1B redevelopment standards. It's really -- You
9 can tell it's clearly not less than 50 percent of the lot
10 size. In fact, I have a feeling that if we did an assessment
11 on it, it would be over 70 percent of the lot use size.

12 My family also has concerns about the set-backs.
13 That's already been addressed by Ms. Romo. This is
14 essentially a building that would be right on top of the
15 alley that runs behind my house, a 30 foot structure that
16 would be there. And the set-backs, I believe from the
17 diagrams are about 5 feet, so it's not in keeping with the
18 rest of the area.

19 Just real briefly my other -- I have three other
20 concerns. One which is to reiterate what was said by Mr.
21 Raina, privacy. This is an issue because currently we enjoy
22 quite a lot of privacy in our backyard. And I guess my
23 question to everyone for consideration is how would anyone
24 feel about a 30 foot well-lit building being built
25 essentially in everyone's backyard? This raises a lot of

1 concerns and I think it would detriment all of the
2 neighborhood because it is in the center of the block, which
3 affects the entire neighborhood. Also, increased noise and
4 activity because of its location. You know, there's noise
5 for the duration of construction, as well as moving forward,
6 noise, light, and activity in the center of everybody's back
7 yard.

8 My last thing that I'll say is we have strong
9 concerns again addressed by Ms. Romo earlier about water.
10 We get a lot of water down through here. We've also spent
11 some money already in our property to divert water around
12 because we get water in our basement. And we have a lot of
13 concerns that opening up this and making it nonpenetratable,
14 again as Ms. Romo stated, is going to let a lot of water pass
15 down into our property, which is downhill along the flood
16 lines. The re-work of the alley has done great work to
17 divert this water, but there is a concern with the volume of
18 water that would be displaced and possibly some of the
19 alleyway may have other issues because of the reduction of
20 this space. If it's allowed to be built on. It may re-
21 aggravate the water issues.

22 That's all I have. I appreciate your time.

23 CHAIRPERSON HILL: Thank you, Mr. Ferguson. Ms.
24 Hartfield, can you hear me or Mr. Hartfield? Mr. Young, were
25 you able to find them?

1 MR. YOUNG: I was not.

2 CHAIRPERSON HILL: Okay. Or Ms. Beati -- Beati?

3 MR. YOUNG: No, I did not see that name on.

4 CHAIRPERSON HILL: Okay. We'll just how we
5 continue to move here. Is it Francisco? Was there a
6 Francisco?

7 MR. JAVIER: Yes.

8 CHAIRPERSON HILL: Great. Could you please
9 introduce yourself for the record and give us your testimony?

10 MR. JAVIER: Yes. My name is Francisco Javier
11 Astudillo del Pozo. I'm representing here, me and my wife.
12 We live at 4017 22nd Street NE. I am right next to the
13 previous testimony person. And I'll be pretty much the
14 permanent ocean view from whoever lives in this -- in this
15 house that is proposed.

16 So I'm not going to say a lot of new things.
17 They've all been said already. What I want to make a point
18 about the fact that we live in a hill and 22nd Street for us
19 is not level. And that we don't have parking. The parking
20 is on the -- on the other side of the street. So for us, the
21 back -- the alleys in truth is our entrance. That's what we
22 use to come home. We bring the car, we park, and then we
23 enter because it's our level entrance. Right? Bringing
24 groceries, I have two kids; eight and 13 years old. If I
25 have to park on the other side of the street for the time

1 that the construction will take place and I have to bring
2 groceries across the street, be careful with my kids, it is
3 a nightmare scenario. 22nd is actually a busy street. It's
4 not -- It's a very busy street. There is cars and buses all
5 the time. So having access from the alley is truly, truly
6 a really good thing for us given the situation of the houses,
7 particularly on 22nd Street. And those are the main points.

8 Another big worry of mine is the trash. I don't
9 know if this is going to be a temporary issue or a permanent
10 issue cause I don't know why I heard that if that house is
11 allowed to build, we're not going to be able to leave our
12 trash in the back anymore. We'll have to bring into the
13 front, which I think has been explained that is almost
14 impossible because there is -- there is no room for it. It
15 will have to be on the sidewalk. And I'm 49 years, I can do
16 it, but imagine anybody that is older than me, I mean
17 bringing those big trash cans. It just doesn't make any
18 sense.

19 So you know, I listen to the testimony from Mr.
20 Bishop and you know, I ended up with idea that he's trying
21 to do this for own good and it's just not the case. What
22 he's trying to do is not going to help us in any way or form.
23 And with that, thank you very much and that's it for me.

24 CHAIRPERSON HILL: Thank you. Did I miss anybody
25 from the opposition that's here, Ms. Romo?

1 MS. ROMO: Yes, one last --

2 CHAIRPERSON HILL: Oh, Mr. Malta.

3 MR. MATLA: Yeah, Mr. Matla. Can you hear me
4 okay?

5 CHAIRPERSON HILL: Yes. Could you introduce
6 yourself for the record and give us your two minutes of
7 testimony please?

8 MR. MATLA: Of course. Good morning to all the
9 BZA members. My name is Taras Matla. I currently reside at
10 3215 Bunker Hill Road NE (audio interference) correct the
11 spelling of my name for the record. My last name is spelled
12 M-A-T-L-A. The record had it as M-A-L-T-A (audio
13 interference) confusion with the island in the Mediterranean
14 Sea. (Audio interference) testimony.

15 In addition to what other members have noted, I'd
16 like to raise environmental and light (audio interference).
17 With respect to the environment, our property abuts (audio
18 interference) Hill Park. Our family often observes deer and
19 many type of birds such as (audio interference), Cardinals
20 (audio interference), Hawks. And (audio interference) with
21 this would -- like the one that's proposed would
22 significantly disrupt the surrounding wildlife habitat and
23 threaten the existing biodiversity of the area. A new
24 housing development of this hill would also increase
25 pollution in the area with construction that would generate

1 significant dust and emissions, which are especially
2 detrimental to the health of children who play in our
3 backyards. The influx of additional vehicles and emissions,
4 as well as expansion of impervious surfaces would also cause
5 further pollution. A new structure would also impede air
6 flow and reduce ventilation in the area.

7 With respect to light pollution, I'm also
8 concerned about increased light pollution at night. The
9 construction of an alley dwelling in a residential
10 neighborhood will almost certainly require the insulation of
11 indoor and outdoor lighting systems, which can emit
12 significant amounts of light directly onto adjacent
13 properties contributing to light pollution. The alley lot
14 in question is situated in close proximity to existing
15 structures, mainly our home, further intensifying concerns
16 about light intrusion as any new construction may directly
17 impinge upon neighboring properties. With that, I thank you
18 for the time to speak and I yield back the balance of my
19 time.

20 CHAIRPERSON HILL: Okay, thank you. Let's see,
21 did I miss anyone? Okay. Now I guess that's what I have.
22 Mr. Del Poso, how do you say your name? Go ahead, unmute
23 yourself.

24 MR. JAVIER: Sorry, I already spoke.

25 CHAIRPERSON HILL: No, I know. How do you say

1 your name?

2 MR. JAVIER: Francisco Javier Astudillo del Pozo.

3 CHAIRPERSON HILL: Astudillo --

4 MR. JAVIER: Del Pozo.

5 CHAIRPERSON HILL: Astudillo del Pozo.

6 MR. JAVIER: Yes.

7 CHAIRPERSON HILL: Mr. Astudillo del Pozo, when
8 you think that 49 is old, you should probably check your
9 audience.

10 MR. JAVIER: No, that's not what I said. I said
11 that I'm young and I have no issue with the trash.

12 CHAIRPERSON HILL: Oh, I'm sorry.

13 MR. JAVIER: I'm worrying about the people that
14 are older than me.

15 CHAIRPERSON HILL: Older than 49.

16 MR. JAVIER: No. I know there is older people in
17 the neighborhood.

18 CHAIRPERSON HILL: That's all right. It's okay.
19 It's all right.

20 MR. JAVIER: That's what I meant.

21 CHAIRPERSON HILL: I'm just letting you know, you
22 might want to check that statement.

23 MR. JAVIER: No, no, no, no. That's not what I
24 meant.

25 CHAIRPERSON HILL: Okay, great. Can I hear from

1 the Office of Planning please?

2 MR. JESICK: Thank you, Mr. Chairman and members
3 of the Board. My name is Matt Jesick presenting OPs
4 testimony in this case. While I won't rest on the record
5 exactly, I think our written report pretty succinctly sums
6 our review of the variance criteria.

7 We came to the conclusion that the application did
8 not result -- excuse me -- the exceptional situations on the
9 property did not result in undue hardship to the owner. The
10 owner has not demonstrated that the other permissible uses
11 in the R1 zone would not be viable or feasible. We also had
12 concerns about impacts to the neighbors specifically
13 regarding privacy. And should a building be built on this
14 site, we had some suggestions for how privacy could be
15 increased.

16 We also on the last part of the test, had concerns
17 about the impacts to the intent of the regulations granting
18 a variance without a finding of an undue hardship would go
19 against the intent of the regulations. And the regulations
20 also while would normally seek to allow residential on a
21 vacant lot in the R1 zone specifically, residential on an
22 alley lot is prohibited. And it would be expected that there
23 would be a high level of privacy in the rear yards of the
24 adjacent homes. And again, we were concerned about the
25 privacy and therefore we thought that the application might

1 impair that intent of the regulations.

2 That concludes my verbal testimony, but I'm happy
3 to take any questions. Thank you.

4 CHAIRPERSON HILL: Thank you, Mr. Jesick. One
5 moment before I get to questions. Mr. Young, is there anyone
6 here wishing to testify for the public?

7 MR. YOUNG: (Audio interference) -- signed up.

8 CHAIRPERSON HILL: Okay. Could you please
9 introduce that witness?

10 MR. YOUNG: That is Stephanie Rones.

11 CHAIRPERSON HILL: Okay. Ms. Rones, can you hear
12 me? Ms. Rones?

13 MR. MOY: Mr. Chairman, while you're waiting for
14 her, I just want to remind you that about 10 o'clock, Ms.
15 Rones attempted to file her written testimony into the
16 record. Okay?

17 CHAIRPERSON HILL: Okay. Ms. Rones, can you hear
18 me? Mr. Moy, if you could put her testimony into the record
19 please.

20 MR. MOY: Yes, sir.

21 CHAIRPERSON HILL: Great. Ms. Rones, can you hear
22 me?

23 (No audible response.)

24 CHAIRPERSON HILL: Yeah, I can hear you now. Can
25 you hear me?

1 MS. RONES: Okay. Yes, I can hear you. Good
2 morning.

3 CHAIRPERSON HILL: Good morning. Ms. Rones, if
4 you could introduce yourself and then give your three minutes
5 of testimony and give us your address also.

6 MS. RONES: Okay. My name is Stephanie Rones and
7 I live at 2218 Randolph Street. My backyard abuts the alley
8 across from the proposed house. I submitted my testimony and
9 I want to focus on one aspect within my two minutes. So let
10 me get to that point.

11 (Audio interference) -- Okay. I want to focus on
12 racial equity. Now that the homes in this area are selling
13 for over \$1 million, Mr. Bishop is asking us to grant him
14 permission to build what reports to be a two-family home on
15 an alley lot. This would be -- the BZA would be amiss to
16 grant this exception to the zoning laws. (Audio
17 interference) I have lived in this neighborhood for most of
18 my life. My parents bought their first house two streets
19 down from where I live presently. My grandparents lived on
20 22nd Street. They bought their house when there were racial
21 covenants against selling to Negroes. We have a long history
22 of civic participation in this neighborhood. I grew up --
23 I went to the public schools, John Burroughs in particular.
24 And my siblings went to McKinley High School.

25 I don't want to be -- wait a minute, let me see --

1 nostalgic. I don't want to be nostalgic, but this
2 neighborhood was made up of single family homes with middle
3 class Black residents. What we're seeing now is a
4 cannibalization -- I apologize -- of the smaller homes, the
5 cottages. The millionaires are coming and buying these small
6 houses and turning them into what I call McDonalds mac size
7 houses. This proposed house would also be an oversized house
8 in a back alley lot. It would destroy the character of our
9 neighborhood.

10 I'm going to skip all of this other stuff, which
11 talks about kids playing in the alley, running up and down
12 the street. And I would like to just close with two
13 paragraphs from Chapter 24 of the DC Racial Equity Plan.
14 "Upper northeast neighborhoods are home to many lifelong
15 Washingtonians and have a history of strong civic
16 participation. The area of Woodridge was majority Black
17 neighborhood and now we're down to 40 percent. There has to
18 be some intent to prevent economic gentrification in the city
19 of Washington. Therefore, the DC Racial Equity Plan speaks
20 to using such tools as zoning regulations to slow down the
21 progression of our neighborhoods being turned into enclaves
22 for the very rich." Thank you very much.

23 CHAIRPERSON HILL: Thank you, Ms. Rones. All
24 right. Mr. Young, if you could excuse the witness from the
25 hearing room. All right. Let's see. I'm going to start

1 with my board members. Do my board members have any
2 questions for anyone? And if so, raise your hand. Let's go
3 ahead and start with Commissioner Imamura as he raised his
4 hand first.

5 COMMISSIONER IMAMURA: Chairman, this is a
6 question for Ms. Romo and for anyone else that would like to
7 respond. It seems as if this property has suffered from some
8 neglect as it's been described by many (audio interference).
9 Generally, peoples behaviors don't change. You also heard
10 Mr. Bishop's plight here to construct this single family
11 home. My question is because it's fallen into sort of
12 disrepair or unkempt, what would you like to see on this
13 piece of property, knowing that these are not protected,
14 right, as a legal right. But that it's, you know, now in
15 disrepair or just unkempt with trash, with fallen debris or
16 whatever was described. What is it that you hope or would
17 like to see? Otherwise, it will remain this way for, you
18 know, quite some time.

19 MS. ROMO: For the question, I mean it would be
20 wonderful to see it as a community garden or you know, some
21 sort of other use that would keep previous structure --
22 pervious means the rain can go in. Right? That's what I
23 mean, yeah. Yeah, impervious -- not impervious. Sorry.
24 That would be a great -- a great benefit to the community
25 personally. We haven't all discussed this together, so I

1 don't want to speak for other people in the party. A few of
2 us have talked about that. But certainly not a big building
3 in the back.

4 I think, you know, as I said that other people
5 have used it in the past to play basketball. I can imagine,
6 you know, a space where kids could play. You know, maybe not
7 a playground, but you know, some sort of other recreational
8 -- recreational space. But a garden comes to mind. Many of
9 us have participated in the River Smart Programs from D.C.
10 and we have Casey trees in our backyard and we have rain
11 gardens and all of that. I can see them doing that with that
12 lot and it being really, really wonderful. But I don't want
13 to speak, you know, for anyone else if others have something
14 to say.

15 COMMISSIONER IMAMURA: Thank you, Ms. Romo. I
16 guess what I should have -- I should have expanded the
17 question to suggest that, you know, that would also bring
18 value to the property owner as well. So I can see where a
19 community garden would bring value to the community, but how
20 could the property owner also benefit from it as well? But
21 I appreciate your response and your perspective. I also want
22 to thank all those that provided testimony for your
23 participation in the public process. That's very important.
24 I appreciate the perspective and the lens that you view this
25 issue through. So with that, Mr. Chairman, I don't have any

1 further questions unless there's anybody else that would like
2 to add --

3 CHAIRPERSON HILL: Mr. Smith -- Mr. Smith, you had
4 a question?

5 MEMBER SMITH: My question was more so to the
6 Applicant.

7 CHAIRPERSON HILL: Okay. Go ahead, Mr. Smith.

8 MEMBER SMITH: Hold on one second. Mr. Bishop --
9 and this is more to --

10 CHAIRPERSON HILL: Oh, there you are. Okay. I'm
11 sorry, Mr. Smith, go ahead.

12 MEMBER SMITH: Okay. And this is more to the
13 statements that you made about your -- the reasons why you
14 feel that you have an exceptional -- exceptional situation
15 here with this property. And you had noted that within --
16 you noted within the staff report this -- the question about
17 the matter of right or the special exception uses. Can you
18 explain to me and expound a little bit more in this hearing
19 on the reasons why you think the matter of right use that are
20 allowed within the R1B zone are not viable uses (audio
21 interference) beyond economic. I get that a single family
22 house is, you know, a more economic practical use of the lot,
23 but that's not the primary reason for granting a variance.
24 So can you expand on the reasons why any of the matter of
25 right uses or special exception uses are not viable uses?

1 MR. BISHOP: I'm not quite certain I understand
2 your question --

3 MEMBER SMITH: My question is you're requesting
4 a variance for use that is not allowed within this zone.
5 There are uses that are allowed within this zone as a matter
6 of right where you can go pull a building permit or by
7 special exception and you have to come here before this Board
8 and it's a lower hurdle. So why do none of those uses work?

9 MR. BISHOP: Yes. Thank you so much. I
10 appreciate that. Let's go back a little bit. Let's be
11 clear. I'm in this place -- in this space right now because
12 I was told by DCRA that I could build by right a single
13 family house. That's why I began the process of pursuing it
14 to build a single family house. That's why I spent 16 months
15 and four reviews to Office of Zoning to consider this matter
16 and to give me an approval to build by right a single family
17 house. This is -- I'm in this position not because of my
18 own, I'm in this position because I was told that I could
19 build by right. That was the first thing I did was to
20 approach this and understanding what was necessary, what
21 could I build? And what could I not build? And I was told
22 that I could build and that's why I pursued it in this matter
23 to address it in this form.

24 So coming to BZA for an approval or to the public
25 for an approval was never a part of the original plan.

1 That's why I expressed the emphasis of the hardship. The
2 hardship is being misled, misinformed, and then to have spent
3 thousands of dollars over and over again to do plans,
4 reviews, and submissions over 16 months to be told all the
5 sudden, no, you can't build -- After all the other
6 disciplines are approved, the address has been approved, the
7 electric -- everybody has done their part. At the fifth
8 house, 16 months later, I'm told I've got to go to BZA to get
9 an approval.

10 MEMBER SMITH: Mr. Bishop, let me -- Mr. Bishop,
11 thank you and a lot of what you stated is within the letter
12 that you -- letter of intent.

13 MR. BISHOP: But let's be further clear. In
14 relation to the property and stuff, it is a residential
15 property consistent with a residential community. It is
16 built based on the regulations that requires what can be
17 built in an alley lot. In 5103, it gives you specific
18 revelations with the set-backs, what they are and so on and
19 so forth. The height, what it is and so on and so forth.
20 This is what we were obtaining -- attempting to accomplish.
21 Okay?

22 So I'm not -- I'm not actually trying to put a
23 round peg in a square hole for the sake that I don't have
24 anything else to do. I have a background -- background in
25 compliance. So I wasn't approaching it in this fashion.

1 That was never the intent.

2 MEMBER SMITH: Mr. Bishop, thank you.

3 MR. BISHOP: I'm coming to -- I'm coming to the
4 same city, the same municipality to ask for relief that put
5 me in the position I'm in currently right now.

6 MEMBER SMITH: Correct. So you're here -- Mr.
7 Bishop, you're here before this Board requesting relief for
8 this particular use. I don't -- the question of whether you
9 need a variance is not necessarily up for debate. You're
10 here for a variance, so I'm, you know, asking the question
11 because we have to -- we have to understand the reason why
12 you're her for an exception -- explaining your exceptional
13 situation. So there are a list of uses and you know, I just
14 simply asked that particular question.

15 Now getting back to your initial statement of the
16 reasons why you're here is because an erroneous determination
17 by a zoning official -- an official with the city -- with the
18 District of Columbia. And you referenced Ms. China-Barber
19 was -- Is Ms. China-Barber with the Office of Zoning?

20 (Simultaneous speaking.)

21 MEMBER SMITH: -- and provided you with the zoning
22 compliance letter?

23 MR. BISHOP: That's correct. We submitted to --
24 We submitted to Zoning again four reviews to Zoning over 16
25 months. This was not -- This was not one error. This wasn't

1 one mess-up. This was a time and time and time again
2 submission to make this approval be granted. We obtained --

3 MEMBER SMITH: Mr. Bishop, I don't think that you
4 heard my question. My question was did Ms. China-Barber sign
5 the right or signed a zoning compliance letter that was
6 requested by you as a zoning determination of whether this
7 can be built?

8 MR. BISHOP: Yes. She sent me a notification
9 indicating not to build by right and gave me the
10 specifications that I could build by.

11 MEMBER SMITH: An email?

12 MR. BISHOP: I gave you a copy of that in an
13 email.

14 MEMBER SMITH: This short blip of an email. Did
15 you get a letter on the Office of Zoning's -- I mean Office
16 of Zoning Administrator's letterhead spelling out whether you
17 can build a residential use in an alley lot in the R1B zone?

18 MR. BISHOP: I sent correspondence to them. They
19 responded back and gave me information in a short email.

20 MEMBER SMITH: Okay. So that was in 2020. So
21 you've gotten three different determination letters from --
22 two from the previous zoning administrator and the third from
23 this current zoning administrator. All three of those
24 letters -- one was a variance -- the last one was a variance.
25 The first two were special exceptions. So you had to come

1 before this Board for some matter of relief. And you -- In
2 that first -- In that first letter, you received that letter
3 in 2022 -- 2023. Am I correct?

4 MR. BISHOP: The memorandum referencing and
5 referring --

6 MEMBER SMITH: Mr. Matt LeGrant.

7 MR. BISHOP: -- requesting for the variance,
8 correct.

9 MEMBER SMITH: Well, special exceptions at the
10 time -- there were three special exceptions.

11 MR. BISHOP: Right. That's correct.

12 MEMBER SMITH: And you did receive those -- those
13 two letters?

14 MR. BISHOP: Yes. And then --

15 MEMBER SMITH: So you were aware that you got --
16 (Simultaneous speaking.)

17 MEMBER SMITH: -- letters from a previous zoning
18 administrator stating that you needed relief, that this
19 wasn't a matter of right. Okay.

20 MR. BISHOP: That's after the 16 months and the
21 four submissions for approval. This was not prior, that's
22 after that.

23 MEMBER SMITH: Okay. Okay. Do you have the
24 letter from Ms. China-Barber or it's just -- or it's just an
25 email from her?

1 MR. BISHOP: Sir, I just told you that it was an
2 email and it was a correspondence --

3 MEMBER SMITH: It was just an email.

4 MR. BISHOP: -- request from them -- from them and
5 from her, yes.

6 MEMBER SMITH: I just want clarification on that
7 because in your email -- the email strand, it looks like
8 there was a letter. It's saying here, "You should now be in
9 receipt of the zoning compliance letter as of September 24th,
10 2020." So I just wanted to make sure that there wasn't a
11 letter.

12 MR. BISHOP: No, it was email communications.

13 MEMBER SMITH: Okay.

14 MR. BISHOP: All of it was email communications.
15 Every time I got a letter, it's been -- they decided 16
16 months later that I needed to go to BZA to get it approved,
17 that they couldn't do it themselves. This is after we've
18 submitting to Zoning four times for approval and obtained all
19 the other discipline approvals, anticipating walking out the
20 door of the building (audio interference).

21 MEMBER SMITH: Okay. All right. I think that's
22 all the questions that I have for now, Chairman Hill. Thank
23 you, Mr. Bishop.

24 CHAIRPERSON HILL: Thank you, Mr. Smith. I saw
25 Vice Chair John's hand up at one point. Okay, there it is.

1 Vice Chair John, you're on mute.

2 VICE CHAIRPERSON JOHN: I have one quick question
3 for the Office of Planning. And Mr. Jesick, can you clarify
4 why you did not discuss racial equity in analyzing the three
5 criteria for the variance? Is there something in the
6 criteria that requires discussion of racial equity?

7 MR. JESICK: The Board of Zoning Adjustment is
8 tasked with evaluating the criteria contained in the zoning
9 regulations and specifically for variances. That is whether
10 there is -- there are exceptional conditions, which give rise
11 to an undue hardship and whether granting the variance would
12 result in detriment to the public good and impairing the
13 intent of the zoning regulations. So the Board typically
14 does not get into policy matters in the same way that the --
15 say the Zoning Commission would.

16 VICE CHAIRPERSON JOHN: Okay, thank you for that.
17 And Mr. Barber -- Mr. Bishop -- I'm so sorry. You purchased
18 this lot at a tax sale. So did you do any research on the
19 lot? You're an experienced developer and what research did
20 you do on that lot to decide for yourself whether it was
21 buildable and a good investment?

22 MR. BISHOP: Well, at that time -- you're talking
23 about almost, what, 18 years ago. I was not an experienced
24 developer. I was just in the business -- I had not been in
25 the business that long. I purchased a property as a lot in

1 light of it seemed to be a good location. It was a good size
2 lot and felt I could do something with it at some point in
3 time. Shortly after I purchased it, I had the sense that it
4 was limited issues that I could, you know, use it for. So
5 I went to the community and I said, you know, are you guys
6 interested in this property? Maybe it's a benefit to you
7 guys in some way. I printed out flyers. I posted it on
8 doors. I offered it to the community. Noone responded. I
9 think one person responded with some level of interest, but
10 didn't move forward. Noone responded other than that. I put
11 it in -- A realtor listed it for sale. Noone responded. No
12 takers. Okay?

13 Later on, several years later, I decided maybe I
14 could do something with this lot because I saw some other
15 development on alley lots. As a matter of fact, the property
16 I quoted on my appeal identifies a lot that's on 13th Street
17 in the Capitol Hill area that was built on an alley lot. And
18 it's the same basic kind of structure as -- as a matter of
19 fact, it was one of the lots that I owned -- that I bought.
20 And they built a home on that lot. So I said well, maybe
21 that's a possibility. I put it to my understanding of what
22 it could be built on. I go to the city and I request the
23 Zoning Office to give me their opinion as to whether I can
24 build or not build a residential property on it. And I
25 wanted to take it on my own understanding and knowledge. I

1 said let me go to the source and that's what I did. And then
2 they told me yes, I could build. I moved forward to get it
3 -- you know, to do so. Not anticipating I'd have to go to
4 BZA for an approval.

5 VICE CHAIRPERSON JOHN: So all of that was in
6 2020.

7 MR. BISHOP: That's correct.

8 VICE CHAIRPERSON JOHN: So you owned the lot
9 essentially from the time of the tax sale to 2020. And did
10 you consider any other options besides sale and a residential
11 unit?

12 MR. BISHOP: No, I didn't consider anything at the
13 time. I was preoccupied with a number of other issues.

14 VICE CHAIRPERSON JOHN: Okay, all right. Thanks
15 a lot.

16 MR. BISHOP: Thank you.

17 CHAIRPERSON HILL: Okay. Let's see. Mr. Bishop,
18 I just have one question. Oh, sorry. Mr. Blake, go ahead.

19 MEMBER BLAKE: I have a couple questions for Mr.
20 Bishop. I just want to make sure based on what you said that
21 your decision to go forward -- you heard back and forth that
22 you may or may not be able to build on this lot incidentally
23 from ANC people and so forth. But your single issue, which
24 drove you to actually begin this process was the email from
25 the technician at the DCRA at the time. It sounds to me that

1 was the thing that caused you to go forward, once you heard
2 that. Everything else was kind of no, no. You may need
3 relief. But that particular instance was the thing that
4 triggered your development activities.

5 MR. BISHOP: Let me correct you. No, I did not
6 talk to the ANC about building or having a right to build on
7 the lot. That was never a conversation with them about that.
8 Okay?

9 MEMBER BLAKE: Okay.

10 MR. BISHOP: Making the decision was simply going
11 to the source. Again, I have a background in compliance.
12 I went to the source. If I wanted to know some information
13 or approval by someone, I'm going to go directly to the
14 source. And I went directly to the Office of Zoning and said
15 whether I can or I cannot do with this particular lot? And
16 they told me that I could in fact build. They gave me
17 specifications to build and I moved forward with such.

18 MEMBER BLAKE: Yeah, I was asking you which letter
19 did you get that caused you to make the decision in the
20 investment? Was it the email from the technician or was it
21 the determination letter from the ZA? When did you start
22 spending all this --

23 (Simultaneous speaking.)

24 MR. BISHOP: The email from the technician is what
25 led me to move forward to begin hiring an architect and an

1 engineer and then determining and moving forward with all the
2 plans and all the submissions. But we submitted again, not
3 only just the technician an email, but we submitted to the
4 Office of Zoning four different reviews over 16 months before
5 they came back to say oh, now we can't approve this. You've
6 got to go to BZA. We were leaving out of the office with a
7 building permit in hand when they came to me and said oh,
8 we've got a problem. The technician made an error.

9 MEMBER BLAKE: And have you -- Are you familiar
10 with -- I assume with the other properties you've developed
11 over the years, you're familiar with the Zoning administrator
12 determination letter -- the process to get that and so forth?

13 MR. BISHOP: No, I'm not --

14 (Simultaneous speaking.)

15 MR. BISHOP: I have not developed a lot of
16 property in D.C.

17 MEMBER BLAKE: Okay.

18 MR. BISHOP: No. I had an architect who was
19 working on this and submitting these revisions and these
20 plans and this approval. I was not doing it myself. I'm not
21 -- I wasn't the project manager. The architect was the
22 project manager.

23 MEMBER BLAKE: Okay. And your architect was not
24 aware of the -- of the requirements of Zoning. He was (audio
25 interference) with the emails?

1 MR. BISHOP: Exactly. And he saw the email and
2 accepted the email and said this is fine. We can use this
3 to work with and he moved forth. And again, we didn't -- we
4 did submit once or twice to Office of Zoning, the plans for
5 approval. We submitted four times of revisions over 16
6 months.

7 MEMBER BLAKE: Okay.

8 MR. BISHOP: Yeah, so they could have told me on
9 the first review, oh, this does not work. It was never --
10 That was never the case. I mean, you know, so I was very
11 much, you know, misled.

12 MEMBER BLAKE: But you were told though on two
13 occasions that there would be a degree of -- the email aside,
14 you were told in the -- each of those determination letters
15 from the ZA that you would need to come before the Board for
16 relief.

17 MR. BISHOP: No, they didn't get me that letter
18 of that notice until 16 months later. That didn't come until
19 Office of Zoning, Mr. LeGrant, the Director at the time said
20 no, we can't grant this approval. That was 16 months later
21 and four reviews later --

22 MEMBER BLAKE: Okay.

23 MR. BISHOP: -- in addition to the letter of
24 memorandum or the letter from the -- from the email -- a
25 letter from the technician saying you can build by right.

1 MEMBER BLAKE: Okay. The other question I have
2 for you is slightly different. You have also a request for
3 an area variance and also a side yard request. You indicated
4 that you were going to change the dimensions of your property
5 to fit that requirement.

6 MR. BISHOP: That's correct.

7 MEMBER BLAKE: Is that reflected in the existing
8 plans?

9 MR. BISHOP: No. No. And we addressed it in our
10 revision substitute document that said that we will make the
11 revisions.

12 MEMBER BLAKE: Okay. But the actual revisions
13 that fit that are not in that document.

14 MR. BISHOP: That's correct.

15 MEMBER BLAKE: You are still in this -- We have
16 to respond -- and I'm sure that you understand that we're
17 going to discuss this -- we do need to speak to each of your
18 requests and your current requests are for these elements as
19 well. So then we may need to -- just be aware of that.

20 MR. BISHOP: Yes. I'm just giving you -- Again,
21 I'm giving you a heads up that those -- those items will be
22 removed because I'm going to make the modifications.

23 MEMBER BLAKE: Thank you very much.

24 MR. BISHOP: Thank you.

25 MR. MOY: Mr. Chairman, if I may -- if I may make

1 a notation for the -- for the case transcript that Mr. Bishop
2 has used the words "Office of Zoning" where I think -- I
3 believe he's referencing the Office of the Zoning
4 Administrator or the staff at DOB because there was no person
5 by the name of China-Barber at the Office of Zoning.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.
7 Thanks for that clarification. Give me one second, Mr.
8 Raina. So this is now important. We are here to speak to
9 the regulations that require us to look at the relief that's
10 been requested of an area variance or use variance or special
11 exception from the side yard. I say that because now I'm
12 going to ask Ms. Romo if she has any questions. Okay? And
13 we've now gone -- Wow, we've almost gone two hours. Okay?
14 So I have a full day yet still to happen and it's up to the
15 Board to ask their questions. Now Ms. Romo, do you have any
16 zoning-related questions to Mr. Bishop within the
17 regulations?

18 MS. ROMO: In the application like the other parts
19 of the side yard and height or do you just mean --

20 CHAIRPERSON HILL: Do you have a question for Mr.
21 Bishop, Ms. Romo?

22 MS. ROMO: Okay, sorry. I mean it's more of a
23 question/comment, but to his statement that he was at the
24 beginning an inexperienced developer, having started --

25 CHAIRPERSON HILL: That's okay. That's okay.

1 This isn't further testimony. Do you have any questions?

2 MS. ROMO: I mean I have a question of if he's an
3 experienced developer, what did he do with other vacant lots
4 that he bought in the Summer when he bought this lot?

5 CHAIRPERSON HILL: Ms. Romo, that is not
6 pertaining to the -- That does not pertain to the current
7 application in front of us.

8 MS. ROMO: Okay.

9 CHAIRPERSON HILL: Let me ask a different
10 question.

11 MS. ROMO: Okay.

12 CHAIRPERSON HILL: Do you have any questions for
13 the Office of Planning?

14 MS. ROMO: I have no questions for the Office of
15 Planning.

16 CHAIRPERSON HILL: Okay. I'll go back again. Do
17 you have any questions for Mr. Bishop?

18 MS. ROMO: I don't have any further questions for
19 Mr. Bishop.

20 CHAIRPERSON HILL: Okay. Mr. Bishop, do you have
21 any zoning-related questions for Ms. Romo?

22 MR. BISHOP: No.

23 CHAIRPERSON HILL: Okay, all right.

24 MR. BISHOP: I can make comment?

25 CHAIRPERSON HILL: In one moment, Mr. Bishop.

1 MR. BISHOP: Okay.

2 CHAIRPERSON HILL: You'll have an opportunity --
3 Hold on, Mr. Bishop. You'll have an opportunity for
4 rebuttal. Okay? And then Ms. Romo -- you don't get
5 rebuttal, Ms. Romo. You're in party status. You will get
6 an opportunity to give a little bit of a conclusion for us.
7 Okay? Now that's not within the regulations, but I allow it
8 because I like to hear from everybody at the end. And then
9 Mr. Bishop will have the final word as it is his application.
10 Okay?

11 So now, Mr. Bishop, you will have an opportunity
12 for rebuttal, meaning you can have other statements on the
13 testimony that was given. However, I would like to advise
14 you to clarify it or keep it within the context of the
15 regulations that are before us because then what's going to
16 happen is Ms. Romo will ask any questions that she might have
17 concerning your rebuttal. Okay? So go ahead, Mr. Bishop,
18 do you have any rebuttal?

19 MR. BISHOP: Well one, they made reference to the
20 fact that the property was unkempt and not being maintained.
21 The property is a fenced vacant lot. It's a fenced vacant
22 lot that has a -- had a lock on it to prevent people from
23 getting into it and dumping and things of that nature.
24 Apparently somebody broke into it at some point. I've come
25 back and I replaced it. Then, you know, I'm not going to sit

1 there and watch a vacant lot. You know, that's just not --

2 CHAIRPERSON HILL: Okay. So Mr. Bishop, I
3 understand. Go ahead.

4 MR. BISHOP: Yeah. Again, I offered to -- I did
5 offer the property to sell to the community and there was no
6 takers. The Office of Planning made a comment relative to
7 privacy. The privacy -- These properties sit -- existing
8 properties sit within 12 feet of one another. There is no
9 privacy between one property adjacent to another property
10 currently. One neighbor can look into another neighbor's
11 yard currently.

12 CHAIRPERSON HILL: Okay.

13 MR. BISHOP: So there's limited privacy within the
14 entire area in itself.

15 CHAIRPERSON HILL: Okay.

16 MR. BISHOP: This is an inner city development --
17 inner city property.

18 CHAIRPERSON HILL: Mr. Bishop -- Mr. Bishop, we
19 do 15 cases of this a day, right, every week. So we know
20 what the properties are like and how they sit next to each
21 other. So go ahead, privacy was something else that you just
22 mentioned.

23 MR. BISHOP: Okay. Let me see. Let me just try
24 to minimize some of this. It's been a long day.

25 CHAIRPERSON HILL: We haven't even started our

1 day, Mr. Bishop.

2 MR. BISHOP: Construction -- It's anticipated that
3 the construction period will probably take about six months
4 -- six to seven months to complete. That would be an
5 interruption to the alley, okay, just to give you some
6 information. This will not affect the service of trash --
7 the trash service. So I don't see why there are making
8 reference to that.

9 CHAIRPERSON HILL: Okay.

10 MR. BISHOP: The set-backs that are there in place
11 are limited to the rules of the alley lot construction, which
12 is not consistent with the front road access normal
13 construction set-back requirement. So I heard a comparison
14 to one set-back requirement --

15 CHAIRPERSON HILL: Okay. Okay. Okay.

16 MR. BISHOP: Okay. That's pretty much all I have
17 to say.

18 CHAIRPERSON HILL: Okay, great. Thanks, Mr.
19 Bishop. All right. Ms. Romo, I've got five items. Do you
20 have any questions about those five items in any of the
21 things that he just said? Do you have a question about any
22 of the things that he just said?

23 MS. ROMO: I have a question. You said that you
24 tried to go around the neighborhood and sell it multiple
25 years ago --

1 CHAIRPERSON HILL: No, that's not what he --
2 That's not what he just said. That was None of the -- That
3 was None of the rebuttal issues.

4 MS. ROMO: Oh, yeah. I thought he said that he
5 tried to go around and noone wanted it.

6 CHAIRPERSON HILL: Was that on the -- Was that the
7 rebuttal?

8 MEMBER SMITH: He did say that.

9 CHAIRPERSON HILL: What's your question, Ms. Romo?

10 MS. ROMO: Why did he not try, you know, many
11 neighbors don't know about that. Why didn't he try to do
12 that several years ago before he undertook this construction
13 idea?

14 CHAIRPERSON HILL: Mr. Bishop, I guess Ms. Romo's
15 asking why didn't you try -- Ms. Romo, I understand, why
16 didn't you try harder to reach out to people?

17 MS. ROMO: No, that was almost 20 years ago. Why
18 didn't he try in 2020 or 2019?

19 CHAIRPERSON HILL: Okay. Mr. Bishop, why didn't
20 you try again?

21 MR. BISHOP: At the time, I decided I wanted to
22 keep the lot and use it for my -- use it for my (audio
23 interference).

24 CHAIRPERSON HILL: Got it. Okay, thank you. Ms.
25 Romo? You guys, I think the record is really full by the

1 way. You guys like -- There's plenty of testimony. We've
2 heard everything -- we understand everything that's going on.
3 Mr. Raina, you've had your hand up for a while. Go ahead and
4 ask your question. Ms. Romo is being your spokesperson and
5 she's done a pretty darn good job. So what's your question,
6 Mr. Raina?

7 MR. RAINA: (Audio interference) I've been at the
8 property since 2014. I did not see any pamphlets or flyers
9 come through us about the sale of this lot --

10 CHAIRPERSON HILL: Okay, all right.

11 MR. RAINA: -- because it would be ideal for me
12 to buy because it's absolutely adjacent to my lot. I have
13 the longest border.

14 CHAIRPERSON HILL: Mr. Raina -- Mr. Raina, I got
15 you. Okay, thank you. All right. Okay. All right, Ms.
16 Romo, you can go ahead and give a brief conclusion. I'll
17 give you two minutes. Okay? And then Mr. Bishop, you'll
18 also have two minutes for a conclusion. Go ahead, Ms. Romo.

19 MS. ROMO: Thank you so much. I think we've
20 already addressed a lot of the points already raised. In
21 conclusion, we urge the Board to deny this requested relief.
22 Building an alley dwelling on the vacant lot in our zone is
23 totally incongruent with the neighborhood. It would have
24 severe detrimental impacts to our neighborhood. We've talked
25 a lot about water. We've talked a lot about light. We've

1 talked a lot about privacy. And the owner has had man
2 opportunity to use that lot in permissible ways or sell it
3 if he wanted to, to other neighbors. So I don't have very
4 much further.

5 CHAIRPERSON HILL: Okay.

6 MS. ROMO: I think we've all said what needs to
7 be said. But I really thank you for the time today and thank
8 you to the BZA for -- the BZA staff even not even present
9 today, but for explaining the process because this was all
10 new to us and we did not understand the process until we had
11 multiple conversations with the Board of Zoning staff to help
12 us understand the procedures and how this all worked. So
13 deep appreciation for that and thank you so much.

14 CHAIRPERSON HILL: Thank you. All right. Mr.
15 Bishop, would you like to go ahead and give a conclusion?

16 MR. BISHOP: Yes. I just want to say that I
17 didn't propose this or initiate this process to be a burden
18 to anyone. And certainly I began the process and trying to
19 do it correctly. That's why I went to Zoning to get the
20 preliminary approval of what I could and could not do with
21 it. I understand there's some inconvenience for construction
22 of any -- in any aspect of the word. It's an inconvenience
23 to the neighbors. It's an inconvenience -- you know, it
24 happens. This is what it is. When your home was being
25 built, it was an inconvenience to your neighbors. That's

1 what happens.

2 But in light of the property being -- it's a large
3 lot. It sits there and it has no value at this point. I'm
4 trying to create value to it. District of Columbia needs
5 more housing units, okay, and I can just say this, it's a
6 nice design. It's going to compliment the area and it's
7 going to be an asset to the community. It's not going to be
8 a detriment to the community. And for me to have a lot of
9 that size to say okay, using it for community purposes, I
10 mean I'm not public -- I'm not Planning Commission. I'm not,
11 you know, Public Works. I am an individual person who's paid
12 taxes on this lot for 17+ years. I should have a right to
13 maybe do something with it of value.

14 So I understand your concerns. I can only just
15 say that, you know, I will do what I can to minimize any
16 inconvenience during the construction and try to accommodate
17 you -- the community in any way. But I didn't ask to be in
18 this predicament. I asked the BZA to grant my relief as the
19 city issued me the preliminary to move forward to begin with.
20 Thank you.

21 CHAIRPERSON HILL: Okay, thank you. Mr. Bishop,
22 I actually have a final question for you. What happened at
23 your ANC meetings?

24 MR. BISHOP: I met with the ANC Commissioner.

25 CHAIRPERSON HILL: You met with the ANC

1 Commissioner. Did you present to the full ANC?

2 MR. BISHOP: Yes. Well no, to -- no, to the one
3 gentleman --

4 CHAIRPERSON HILL: Why didn't you present to the
5 full ANC?

6 MR. BISHOP: It was never -- It was never -- It
7 was never presented or -- I sensed when I presented to him,
8 it was being presented to whoever needed to see it. I didn't
9 -- He didn't make a comment that it needed to go anywhere
10 else.

11 CHAIRPERSON HILL: You didn't --

12 MR. BISHOP: I presented to him and the community
13 -- the neighbors that were invited through him.

14 CHAIRPERSON HILL: And he didn't say that you had
15 to present in front of the full ANC?

16 MR. BISHOP: No.

17 CHAIRPERSON HILL: Okay, fine. Okay. All right.
18 Do any of my board members have anything else before I
19 conclude this hearing? All right. I'm going to close the
20 hearing on the record. Thank you all very much for the time.
21 As you know or before you guys disappear, you know, we do
22 this more or less as a volunteer thing for the city. And
23 we're here every week and we try to hear everyone as best we
24 can and rule on the regulations in the way that we're
25 supposed to. So I hope you all have a nice day and I'll

1 close the hearing on the record. Thank you.

2 MR. BISHOP: Thank you.

3 CHAIRPERSON HILL: If I might suggest to my board
4 members, we come and deliberate on this after we take a
5 break. Okay? So let's take a quick break. It's 11:30, we'll
6 come back (audio interference).

7 (Whereupon, the above-entitled matter went off the
8 record at 11:31 a.m. and resumed at 11:50 a.m.)

9 MR. MOY: The Board has returned to its public
10 hearing session after a quick recess. And the time is at or
11 about 11:50 a.m.

12 CHAIRPERSON HILL: Okay, thanks. All right. I
13 wanted to discuss this because I'd rather have this -- Well,
14 whatever. I'm ready to discuss it. It's disappointing that
15 I think the Applicant had followed recommendations that might
16 have led him astray as to what could be done as a matter of
17 right on that property. I'm a little confused by the record
18 as to when the Applicant knew that there was at least a
19 special exception, if not a variance, necessary to do the
20 work that he was planning on doing on the -- on the property.
21 You know, what the Board is tasked with doing is again seeing
22 whether the criteria is met for the relief that's being
23 requested. In this case, there's an area variance, there is
24 a use variance, and there's a special exception. That is
25 what's before us.

1 In terms of if the Applicant relied on some other
2 recommendations from a different agency is not necessarily
3 before us. Although I know that in the past, I think we've
4 talked about it, but I'm not really sure whether or not we
5 were able to give it any kind of criteria within the
6 regulations in terms of whether it's an exceptional situation
7 or exceptional condition.

8 In this particular case, I don't think that the
9 Applicant is meeting the criteria for the lot. I think the
10 lot has, you know, matter of right uses that could be used
11 with that lot. And I don't think that -- I mean as we all
12 know, a use variance is the highest bar for us to reach. And
13 an area variance also -- any kind of variance -- I don't
14 think there's an exceptional situation. I guess I could see
15 -- I'm even seeing it as practical difficulty. I mean the
16 owner is not able to do what he wants to do, which would have
17 the greatest economic impact. But there still are other
18 things that he can do with the property and I do think that
19 this would conflict with the -- with the zone regulations.

20 I would agree with the analysis that the Office
21 of Planning has put forward. Also, we didn't see anything
22 from the full ANC. We got a letter from, I believe the
23 single member district and it was, you know, in opposition.
24 And it pretty much outlined where there was -- they didn't
25 really necessarily get me the criteria. So I don't see how

1 I could be in favor of this application. And so I'm going
2 to ask who would like to go next? Mr. Smith, thank you.

3 MEMBER SMITH: So like you, I'm a little -- I
4 truly understand the concerns raised by Mr. Bishop regarding
5 detrimental reliance with an employee, I think named China-
6 Barber, I believe. But based on the email within the record
7 submitted by the Applicant, it does not demonstrate to me
8 that the information provided by Ms. Barber meant that a
9 single family house is a matter of right. She did not use
10 that term in the email that she sent Mr. Barber. She stated,
11 and I quote, "that a single family is okay for building as
12 long as all of the development standards are met".

13 So a use permission can be seen as a type of
14 development standard. So there was a caveat sentence that
15 she did add. And you know, commonly that would lead to a
16 followup discussion probably with a zoning determination
17 letter. And I see within the email strand that there was
18 some type of zoning determination letter, but that was not
19 provided by the Applicant. And the Applicant is saying that
20 he relied on that email from Ms. Barber. And again, in that
21 email, it does not explicitly state that a single family home
22 is allowed as a matter of right.

23 So one of the hardships that was stated by Mr.
24 Barber was detrimental reliance. And I don't think that's
25 standard has been met in this particular instance, especially

1 given that there were two additional -- well, three zoning
2 determination letters that were written over the past --
3 between 2020 and 2024, four years almost that stated -- well,
4 3-1/2 years, I guess that some type of relief before the
5 Board of Zoning Adjustment was required at that time.

6 So again, to what Chairman Hill stated, what's in
7 front of us is a request for a variance -- a use variance.
8 And based on what's within the record and what was stated by
9 the Applicant as part of his testimony, I don't think there's
10 anything within the record or part of the testimony that was
11 provided that showed that the Applicant couldn't pursue a
12 viable use that was a matter of right or a special exception.
13 We did not receive any information to support the Applicant's
14 request before us to construct a single family house. So I
15 do not believe based on that testimony that the first prong
16 of the variance test has been met.

17 And I agree with Chairman Hill that constructing
18 an alley -- an alley lot into a single family house could be,
19 as presented today, detrimental to the public good because
20 of our privacy concerns that weren't addressed even in the
21 record by the Applicant with their submitted design and site
22 plan and other concerns that were raised by the Office of
23 Planning. And I do believe that it would -- it is contrary
24 to the intent -- purpose and integrity of the zoning
25 regulations as within the R1 and R2 zones, family residential

1 uses, single family homes are banned in essence. They're not
2 allowed for the zoning regulations. And they're contrary to
3 the R1 and R2 zoning regulations because those are the two
4 lowest density single family zones within the zoning
5 regulations.

6 The intent is these properties to be single family
7 homes be on larger lots, affording a level of privacy and a
8 maximum amount of light and air to those particular
9 properties. So I do believe that this again would be
10 contrary to the intent of the zoning regulations. So with
11 that, I do not believe they've met the standards for the
12 three prong test with a variance and I will not support the
13 application.

14 CHAIRPERSON HILL: Thank you. Mr. Blake?

15 MEMBER BLAKE: Yes, Mr. Chair. I would agree with
16 the analysis provided by Board Member Smith and you as well.
17 I don't believe that the prongs have met for the use
18 variance. The Applicant certainly did not demonstrate that
19 the other matter of right in special exception uses are
20 possible. And I agree that the -- It seemed that the
21 discussion suggested that, that one particular email from Ms.
22 China-Barber was the catalyst. But I would think that a
23 licensed -- D.C. licensed architect would know that a
24 determination letter would be a more appropriate step to make
25 this type of allocation of resources.

1 So I think that while the Applicant explained that
2 they didn't understand that, I think the architect should
3 have recognized that, that was probably not sufficient. I
4 also think that the Applicant has not completed the
5 application because they really haven't even gone through the
6 process of the -- visiting with the ANC or meeting with the
7 ANC, which again the explanation was because I didn't think
8 I needed to. But that's not a sufficient reason. Ignorance
9 is not the right reason. And certainly if you just had
10 representation, then perhaps you would, you know, have the
11 right answer.

12 I think that that again, we vote against the area
13 variance -- I mean the use variance. And I would argue that
14 we would dismiss the area variance and the special exception
15 request.

16 CHAIRPERSON HILL: Okay. Dr. Imamura.

17 COMMISSIONER IMAMURA: I agree with the analysis
18 provided by the Office of Planning, as well as my colleagues
19 here. I think Boardmember Smith brought up some very good
20 points as did Boardmember Blake. I don't feel that the
21 Applicant provided substantial evidence that would warrant
22 consideration of the use variance demonstrating, you know,
23 viable -- other viable uses. I didn't see why that -- I
24 didn't see that in signed testimony and why that wouldn't
25 work.

1 I think Vice Chair John also asked some very
2 insightful questions that lent themselves to a little - a
3 clearer picture about the timeline -- timeframe. I feel in
4 this case, there are many points -- checkpoints, I think
5 where the Applicant probably could have sought clarity about
6 this. I'm a little surprised that somebody that's an
7 experienced developer didn't go before the ANC or provide
8 better outreach to the neighbors. I think that would have
9 been another moment there to kind of scratch your head and
10 say okay, there's a lot of opposition here. You know, what
11 can I do?

12 I think it was a narrow focus -- somebody who had
13 a lot of energy behind their idea, but you know, developing
14 in D.C. is tough, but it requires, you know, a lot of
15 outreach, not only to agencies, but to neighborhoods -- to
16 neighbors, ANC. So I feel like there's a lot of missing
17 parts to this. I'm in agreement, I'm not prepared to vote
18 in support of these variances and agree that we can dismiss
19 the area variance and special exception use. That's all I
20 have, Mr. Chair.

21 CHAIRPERSON HILL: Vice Chair John?

22 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.
23 I don't have a lot to add. I think everybody basically
24 covered what I would have said. I'm not in support of the
25 application and you know, this is really a self-created

1 hardship as well. And as an experienced investor, I think
2 between 2000 -- well, before this property at a tax sale, we
3 should have known that there were inherent risks in doing
4 that. And he took no action between 2000 and 2008 to find
5 out or explain to the Board how the property could have been
6 used either as a matter of right or a special exception. So
7 as I said, I'm not in support.

8 CHAIRPERSON HILL: Okay. All right. So what I
9 would also point out to the community that I'm sure is
10 continuing to watch, something can be done with that lot.
11 Like there are matter of right options that are available to
12 the developer. What that person might pursue, I'm not clear
13 on, but there are. There's also special exception options
14 that are available to the developer, meaning there are things
15 that they might be able to do that would have a lower bar
16 with which to come before the Board of Zoning Adjustment.
17 Those special exceptions would be something that again, would
18 have to go through the same community process, same Office
19 of Planning process. They'd have to go before the ANC and
20 get a full vote before the ANC if they were to go with some
21 kind of special exception route.

22 That all being said, I've just been pointing out
23 to the community that something can be done with that lot.
24 And so you know, don't be surprised if something gets done
25 with that lot. All right. I'm going to go ahead and follow

1 the suggestion of Boardmember Blake and I'm going to make a
2 motion to deny the use variance in Application 21017 and
3 therefore dismiss the area variance and the special exception
4 request (audio interference).

5 MR. NICHOLAS: If the Board is choosing to vote
6 on the merits of the area of variance in the special
7 exception, then we would advise the appropriate remedy to
8 dismiss or to deny the relief excuse me rather than
9 to dismiss it.

10 CHAIRPERSON HILL: Okay. All right. Then, that
11 being the case

12 (Simultaneous speaking.)

13 VICE CHAIRPERSON JOHN: May I also add something,
14 Mr. Chairman? It's that the applicant in written testimony,
15 and I believe in oral testimony, indicated that they request
16 for special exception for the side yard and the height would
17 be withdrawn, a new plan submitted, and was no longer seeking
18 that relief. So I leave it to OZLD to advise again. I
19 suppose we could deny this as OZLD recommended. Please chime
20 in if I'm correct.

21 Mr. Nicholas, do you want to add to what I said?

22 MR. NICHOLAS: The application is based off of the
23 memo that's been filed in the record from the ZA's office.
24 So because there has not been a new memo filed or a
25 self-certification, we would advise the Board to vote on the

1 relief. And since it would be on the merits, a denial would
2 be a more appropriate option.

3 VICE CHAIRPERSON JOHN: Okay. Thank you.

4 CHAIRPERSON HILL: Okay. I'm going to make a
5 motion. Application number 1 21017, as caption read by
6 the secretary, and ask for a second. Ms. John?

7 VICE CHAIRPERSON JOHN: Second.

8 CHAIRPERSON HILL: The motion remains seconded.

9 Mr. Moy, take a roll call.

10 MR. MOY: Thank you, sir.

11 When I call your name, if you'll please respond
12 to the motion made by Chairman Hill to deny the application
13 for the relief requested? The motion to deny was second by
14 Vice Chair John.

15 Zoning Commissioner Dr. Imamura?

16 COMMISSIONER IMAMURA: Yes.

17 MR. MOY: Mr. Smith?

18 MEMBER SMITH: Yes.

19 MR. MOY: Mr. Blake?

20 MEMBER BLAKE: Yes to deny.

21 MR. MOY: Vice Chair John?

22 VICE CHAIRPERSON JOHN: Yes.

23 MR. MOY: Chairman Hill?

24 CHAIRPERSON HILL: Yes to deny.

25 MR. MOY: Staff who would record the vote, it's

1 five to zero to zero on the motion made by Chairman Hill to
2 deny. The motion to deny was second by Vice Chair John.
3 Vice Chair John also voted to deny the application, as well
4 as denials from Zoning Commissioner Dr. Imamura, Mr. Smith,
5 Mr. Blake, Vice Chair John, Chairman Hill.

6 The motion carries, sir, five to zero to zero.

7 CHAIRPERSON HILL: All right. Thanks, Mr. Moy.
8 Okay. You can call our next one, Mr. Moy.

9 MR. MOY: The next case before the Board is
10 application number 20996 of 106 13TH Street, LLC. This is
11 a self-certified self-certified application pursuant to
12 Subtitle X Section 1002 for use variance from the Subtitle
13 U Section 301 to allow restaurant use on the second floor of
14 an existing building.

15 CHAIRPERSON HILL: Okay. Dr. Imamura, can you
16 hear me?

17 COMMISSIONER IMAMURA: Yes, I can, Mr. Chairman.

18 CHAIRPERSON HILL: I know that you're not on this
19 case. And probably I'm looking at my Board members
20 this actually might take a little bit longer or not longer.
21 I don't know. Are we going to probably do lunch after this
22 case?

23 VICE CHAIRPERSON JOHN: Yes.

24 CHAIRPERSON HILL: Okay. Then, Dr. Imamura, I'm
25 just letting you know you'd have more time, okay? So I will

1 I have no idea when we end here, but you can monitor the
2 situation. And I hope you enjoy your break.

3 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.
4 You all take as much time as you'd like. I'll take an
5 extended lunch.

6 CHAIRPERSON HILL: Okay. Great. Well, you're
7 going to have to come back, so all right.

8 (Simultaneous speaking.)

9 MR. MOY: The only other thing I wanted to add for
10 the record, Mr. Chairman, is that you the Board last heard
11 this at its hearing on January 31st, 2024, in the you had
12 asked for supplemental information, and this is a continued
13 hearing.

14 CHAIRPERSON HILL: Excellent. Thank you, Mr. Moy.
15 I appreciate it.

16 All right. Could the applicant please introduce
17 themselves for the record?

18 MS. WILSON: From Sullivan & Barros, on behalf of
19 the applicant in this case.

20 CHAIRPERSON HILL: Okay. Great. So, for the
21 record, Commissioner Stidham was on this application, and
22 she, unfortunately, is on travel today. So we will see where
23 we get, in terms of if we need Commissioner Stidham's vote.

24 So, Ms. Wilson, if you were to tell us what has
25 happened since the last time you were with us.

1 MS. WILSON: Sure. And I have a very brief
2 presentation, and it's limited to responses to a few points
3 from OP's report.

4 (Simultaneous speaking.)

5 CHAIRPERSON HILL: Is it in the

6 MS. WILSON: We filed late because yeah.

7 CHAIRPERSON HILL: I think I see it. I got it.

8 MS. WILSON: OP's report was filed Monday, and so
9 I wanted wanted to talk to OP a little bit too.

10 CHAIRPERSON HILL: Sure. Go ahead then.

11 MS. WILSON: Great. Thank you. And I think we
12 do have some witnesses signed up, just if you have questions
13 about the additional info we submitted. We're not planning
14 to submit any additional testimony. So we have Spiro
15 Gioldasis, who is the owner, Ziad Demian, the architect,
16 Chander Jayaraman, the SMD, and then, Guy Reinbold available
17 if there are questions about the additional submission.

18 Next slide, please. So this is a list of exhibits
19 we submitted. If you recall, on January 31st, we had a
20 substantial hearing with a lot of community support and
21 testimony. The Board requested additional information
22 related to the cost of bringing the building up to code for
23 residential use, as well as the cost to convert this space
24 to residential and mixed-use, operating costs, the
25 matter-of-right and special exception uses, and photos of the

1 upstairs. And so, we submitted all of those, along with some
2 other exhibits that we resubmitted, so everything would be
3 together in one place.

4 Next slide, please. So, in terms of Agency
5 responses, the ANC continues to support the restaurant
6 expansion. And I believe the Chair of the ANC is on today.
7 And then, for the OP report, we really appreciate them taking
8 another look. There has been an acknowledgment of financial
9 hardship, and that the third prong could be met if the Board
10 finds that we do meet the variance test.

11 Next slide, please. And in terms of the first
12 prong, that seemed to be OP's issue in the report. It's
13 similar to the first report on this point, basically noting
14 that mixed-use buildings are not unique. We are not arguing
15 that it is unique solely because it is mixed-use. The
16 argument is more nuanced in that the building is too small
17 and has been too neglected to sustain the available by-right
18 or special exception mix of uses permitted in this zone.

19 The nature of this being mixed-use with
20 purpose-built commercial space on the lower level is one of
21 the factors in the confluence of factors that makes this
22 property unique. Other factors include the size of the
23 building. It's relatively small and two stories. The fact
24 that the upstairs and overall building was neglected and not
25 brought up to code. The history of other failing business

1 in this specific property is also unique, as well as evidence
2 of commercial use on all three levels at one point.

3 The report goes on to discuss the mixed-use
4 building at the corner of the block. If you could go to the
5 next slide, please. So I planned to discuss this at the
6 original hearing, but I think I skipped over it. So I
7 appreciate the opportunity to talk about this in more detail.
8 It's a great property to compare to the subject property to
9 highlight how unique the subject property is.

10 For some context, that property on the corner
11 there had the address of 1307 East Capitol Street. It is a
12 purpose-built mixed-use building as well, with two levels of
13 residential use above, and a total of three stories. It
14 currently has six condo units on the upper floors, a dry
15 cleaner on the first floor, and potentially, a small office
16 use, based on tax records which show ownership of two
17 separate commercial units.

18 There was, at one point, a barber shop on that
19 first floor. But under the 1958 regulations, changes from
20 one non-conforming use to another were permitted via special
21 exception. So that property was approved to change the
22 non-conforming barber shop use to a dry cleaner and office
23 in the 90s. And under the current regs, that would require
24 a variance.

25 And of course, an apartment building is not a

1 conforming use in this zone, and the applicant in this case
2 could never fit six units in the upstairs space, either
3 physically or without variance relief.

4 The subject property is clearly distinguishable
5 from this large, three-story mixed-use building on the corner
6 with six condo units, a dry cleaner, and an office. It's
7 such a helpful comparison to show how the mixed-use model has
8 failed in the subject property but can be successful in other
9 larger properties. And this has been mentioned in our
10 filings that the size of the property is one of the
11 confluence of factors that makes our property unique.

12 And this further supports the argument that the
13 subject property is unique, and this leads directly to the
14 hardship, for if the applicant could sustain two commercial
15 uses and six condo units in the subject building, we would
16 not be in front of you today. It's a completely different
17 set of circumstances, a unique set of circumstances that has
18 brought us in front of the Board for this case.

19 Next slide, please. And then I do want to clarify
20 some suggestions or assumptions from the OP report, related
21 to that second floor. It's not quite accurate to say that
22 the applicant removed multiple units because there was never
23 any evidence of legal rental for two units. They would've
24 required a C of O for two units. There's never a there's
25 never been a C of O for two units, and there is a history of

1 this space being used as storage for the restaurant uses
2 below. So, at most, there was some incidental residential
3 use. The applicants did not remove legal residential units.

4 And again, not only was this space not up to code
5 for residential use, the building was simply not safe due to
6 structural issues. I think OP's report is effectively
7 suggesting the applicant could have done something to save
8 on cost by saving some infrastructure. The neglect was
9 severe. And if OP and the Board would like more info on that
10 in addition to the testimony and all of the evidence in the
11 record, we do have a structural engineer report from 2018 and
12 some photos we could submit for rebuttal evidence.

13 And I'd also like to note we submitted two
14 separate estimates for two separate costs, evidencing the
15 total cost of bringing the building into compliance for
16 residential use above. One is the cost to convert the
17 upstairs to residential, and this is where the report
18 suggests we could have saved on some costs. But the other
19 cost is to bring the building up to compliance for mixed-use.
20 And that cost, to make the building code-compliant for both
21 uses, is in the \$220,000 range. And so, that exists
22 independent of whether anything was taken out or put back
23 upstairs.

24 And then, to take a further step back, this
25 analysis of costs is tied into the fact that, at most, you

1 would only be able to have two units in this space, and they
2 would be quite small units, unlike the property two doors
3 down with six residential units above and commercial units.
4 And the likelihood of renting the two newly created units
5 above a restaurant is so unlikely that this type of
6 renovation is completely infeasible. It would be a better
7 financial decision to not do anything because who would fund
8 such a project?

9 And all of this is part of the point that I
10 apologize. We have some I don't know if you can hear
11 that. We have some yard work being done.

12 CHAIRPERSON HILL: I can't hear anything.

13 MS. WILSON: Can you hear me?

14 CHAIRPERSON HILL: Yeah. I hear you. We can't
15 hear the yard work.

16 MS. WILSON: Okay. Just me. So all of this is
17 part of a larger point that this space is too small to
18 sustain both residential use and restaurant use. Converting
19 the upstairs to residential use is cost-prohibitive, which
20 is true regardless of whether some infrastructure was
21 salvageable. And if the relief were not granted, the option
22 would be to leave this space as is and eventually close the
23 restaurant rather than take seats away from and add debt to
24 an already struggling restaurant.

25 The other by-right or special exception uses are

1 infeasible, similar to the residential use, for the similar
2 reasons to the residential use, or because this space is not
3 conducive to that type of use, for example: solar panels.

4 And the unique hardship fits within the use
5 variance standard from the Court of Appeals in Palmer. For
6 the Board to grant use variance relief, it must be shown that
7 the regulations preclude the use of the property in question
8 for any purpose for which it is reasonably adapted, i.e., can
9 the premises be put to any conforming use with a fair and
10 reasonable return arising out of the ownership thereof?

11 The issues here run with this building and are
12 unique to this building, not only this owner. This is a
13 long-time restaurant use on the first level. There is an
14 extremely popular restaurant here that can't sustain the use
15 due to the size of the building. And this would be the case
16 for any future owner as well, and this is evidenced by the
17 history of turnover.

18 The OP report does again mention that if the Board
19 finds there is a unique hardship, then the third prong can
20 be met. And that's because the use variance regulations
21 permit that under certain unique circumstances, a variance
22 is permissible.

23 This concludes my presentation, but again, we are
24 happy to answer any questions about the presentation or
25 additional information we've submitted to the record. Thank

1 you.

2 CHAIRPERSON HILL: Thank you. Okay. Go ahead and
3 drop that, Mr. Young. Okay. Let me go through a variety of
4 this.

5 Commissioner, can you hear me?

6 MR. D'ANDREA: Yes, I can.

7 CHAIRPERSON HILL: Okay. Commissioner, could you
8 introduce yourself for the record and please give us your
9 testimony?

10 MR. D'ANDREA: Yes. Thank you, Mr. Chair. Hello.
11 My name is Frank D'Andrea. I am the commissioner for ANC SMD
12 6B04 and also the chair of ANC 6B's Planning and Zoning
13 Committee. My testimony is brief.

14 On February 27th, 2024, the regularly scheduled,
15 properly noticed meeting, with quorum present, ANC 6B's
16 Executive Committee voted 6-0-0 to authorize me to provide
17 this supplemental testimony regarding BZA case 20996. ANC
18 6B continues to support the applicant's request for a use
19 variance for the reasons given in our initial letter and ANC
20 report. We believe that supplemental filings for the
21 applicant lend further weight to their their and our
22 arguments.

23 I'll note that the supplemental testimony from the
24 Office of Planning was posted late, and therefore, ANC 6B was
25 not afforded adequate time to prepare a response to their

1 assertions and to also make our filing deadline.

2 I want to thank you for your time. And I'd be
3 happy to answer any questions that the Board might have.

4 CHAIRPERSON HILL: Thank you. Mr. Young, is there
5 anyone here wishing to speak from the community?

6 MR. YOUNG: They just signed up.

7 CHAIRPERSON HILL: Okay. You want to give me
8 their names, please?

9 MR. YOUNG: It is Ziad Demian and Guy Reinbold.

10 CHAIRPERSON HILL: Okay. Mr. Demian, can you
11 sorry. Go ahead, Ms. Wilson.

12 MS. WILSON: I apologize. Those were two of our
13 witnesses in case there were questions about the application.
14 I they're not yeah. I don't think they're planning to
15 testify in the community portion.

16 CHAIRPERSON HILL: Who were they what were they
17 going to speak towards?

18 MS. WILSON: So Mr. Reinbold is an expert in
19 restaurant and hospitality use. And Mr. Demian is an
20 architect and neighbor, and he worked with the owner to
21 produce the estimates for the residential renovation and put
22 them in contact with a contractor and walk the space. So if
23 there are any questions about either the cost projections or
24 any questions about the restaurant use or the residential
25 use, they're available.

1 CHAIRPERSON HILL: Yeah. That's great. Okay, Ms.
2 Wilson. Let's see. So does anybody have any questions for
3 the applicant or any of the commissioners or the witnesses
4 here?

5 Sure. Go ahead, Ms. John.

6 VICE CHAIRPERSON JOHN: Thank you. So, Ms.
7 Wilson, please remind me when the property was purchased.
8 I it's in the record, but I don't remember.

9 MS. WILSON: Spiro Your Honor, I believe it was
10 2018 it was purchased.

11 VICE CHAIRPERSON JOHN: Okay. And when and at
12 that time, the building was configured for two units
13 upstairs; they may not have been legal, right? And they
14 would have been two small units. And there would've been
15 stairs to the downstairs, separate stairs, right? As I
16 recall, there are two doors in the front of the building.

17 MS. WILSON: Correct. There was a set of stairs
18 leading up, and we kept that set of stairs.

19 VICE CHAIRPERSON JOHN: Okay.

20 MS. WILSON: But we just removed the wall, I
21 believe, separating the stairs from the residential or the
22 restaurant space.

23 VICE CHAIRPERSON JOHN: Okay.

24 MS. WILSON: As part of yeah, larger okay.

25 VICE CHAIRPERSON JOHN: Sure. And this structural

1 evaluation was also done in 2018?

2 MS. WILSON: Correct.

3 VICE CHAIRPERSON JOHN: Was that before or after
4 the property was purchased?

5 MS. WILSON: I believe it was after. I would have
6 to have Mr. Gioldasis confirm.

7 VICE CHAIRPERSON JOHN: Okay.

8 MS. WILSON: He's he's on, but yes.

9 VICE CHAIRPERSON JOHN: And then, the upstairs
10 renovation was done after the structural evaluation, right?

11 MS. WILSON: Correct. Yes.

12 VICE CHAIRPERSON JOHN: All right. I don't have
13 anything else at the moment. Thank you.

14 CHAIRPERSON HILL: Okay. Anyone else
15 (Simultaneous speaking.)

16 MEMBER SMITH: wanted to follow up to the same
17 line of questioning Ms. John stated.

18 I was looking at the pictures of the upper floor
19 that were requested by us, and it looks like the space had
20 been renovated as part of the as part of when the
21 restaurant was renovated. Were there permits received for
22 that third floor? Because I seem to remember the scope of
23 work that was discussed with the previous variance was work
24 would be completed on the ground floor and the basement. So
25 there was a permit done, received to renovate the upper floor

1 as well?

2 MS. WILSON: Sure. First, I'd like to say a few
3 words. Not for any specific use because of the state of the
4 condition of the building, they had to like, they had to
5 make the second floor safe just so the restaurant space could
6 open.

7 MEMBER SMITH: It looks like it meets does it
8 meet the commercial mixed-use building code? It looks like
9 a very extensive renovation. As far as safe, you put in exit
10 signs, the sprinkler. It looks to be fairly complete for
11 occupancy.

12 MS. WILSON: I'll have to have Spiro confirm, but
13 I think it's just I don't think there's any specific use
14 because it would've had to been up to residential standards
15 for residential use, and we didn't apply for a residential
16 use. So it's not been inspected, and it's not up to code for
17 residential standards and mixed-use. It was just brought up
18 to basic safety compliance because the building was falling
19 down.

20 And that's when I mentioned the structural
21 engineer's report that I'm happy to submit, but DOB would
22 never have approved the residential use if the floor above
23 was in its condition when it was purchased, so it had to have
24 a base level of safety and compliance. But it is not
25 currently configured or up to code for residential use.

1 MEMBER SMITH: Okay. Thank you. Could you
2 (Simultaneous speaking.)

3 MEMBER SMITH: Could you confirm if there was a
4 building permit that was issued for that upper floor and what

5
6 MS. WILSON: There was a building permit issued
7 for the upper floor too.

8 MEMBER SMITH: Okay. This this top floor. And
9 okay. All right. I think it's that suffices. Thank
10 you.

11 CHAIRPERSON HILL: Okay. Anyone else? Sure. Go
12 ahead, Mr. Blake.

13 MEMBER BLAKE: Sure. Could you explain you
14 said there was a permit issued? Was it I mean, you can
15 issue permits for various things individually. What exactly
16 permits were issued for that? It wasn't for I'm just kind
17 of curious what it was because I think we had talked about
18 it in the previous order to kind of limit that third-floor
19 activity second-floor activity. Could you what types
20 of permits were issued to for that?

21 MS. WILSON: Spiro, you might be able to answer
22 this question better than I can. There's no C of O for a use
23 on that third floor though. So it's not it wouldn't be
24 we're not allowed to legally use it for anything at this
25 moment. So I imagine the permits were just related to

1 bringing it up to code for safety. But again, I'm not the
2 expert on that, so I'll have to defer to either Spiro or
3 perhaps Mr. Demian can speak to what types of building
4 permits can be issued without a C of O for that particular
5 use.

6 MR. DEMIAN: This, as an architect

7 CHAIRPERSON HILL: Could you introduce yourself
8 for the record, sir?

9 MR. DEMIAN: Yes. This is Ziad Elias Demian. I'm
10 an architect and a neighbor. Usually, if they're not allowed
11 to occupy it, the owner is required by law and by code to
12 rehab the building enough to be safe. So, basically, also,
13 they need to maintain minimum temperature requirement and
14 safety, minimum lighting. Even for what we call a cold, dark
15 shell that is not used at all, they need to bring it up to
16 level for you have to meet the Green Building Act
17 requirement anyway: insulation greening, no leakage air
18 leakage, all of this stuff.

19 So the way I saw it is they they built the
20 container. It's insulated. It's safe structurally safe,
21 insulated, but it's it does not have a C of O. That's my
22 understanding of it, but that's what would be required for
23 any developer to do with their building. They can't just
24 leave it unfinished.

25 MEMBER BLAKE: But the question I asked was what

1 permits were issued. I understand we were kind of figuring
2 out, speculating. What permits were issued? It's like a
3 straightforward

4 (Simultaneous speaking.)

5 MEMBER SMITH: Can I expand on what Mr. Blake said
6 and Mr. Demian Demian?

7 MR. DEMIAN: Demian is good, yeah.

8 MEMBER SMITH: Yes. And you said that you're a
9 neighbor; you're not associated exactly with the applicant?

10 MR. DEMIAN: Well, I'm up on the applicant team
11 right now. Initially, I was a neighbor supporting the
12 project, but they solicited my advice to, as an architect,
13 to be an expert witness and to answer architectural
14 questions.

15 MEMBER SMITH: Okay. Thank you. But I am
16 familiar with a little bit of the building code, and your
17 statement of a shell this is beyond a shell. The all
18 the fixtures has been have been installed, right down to
19 electrical fixtures on the floor. It's spaced about five or
20 six feet are outlets. So it seems to me, this is beyond the
21 shell, so just you know, just as a follow up for to Mr.
22 Blake's question. So could you expand on what type of
23 permits were issued on this floor?

24 MR. DEMIAN: I was not the original architect, so
25 I don't speak to that.

1 MS. WILSON: I'm

2 MR. DEMIAN: I think the owner can speak to that.

3 MS. WILSON: And I'm on the website for I'm on
4 DOB's website right now, looking up the permit details here.
5 And so, there was one building permit issued, and it was for
6 renovation and cellar addition to an existing two-story, plus
7 cellar, restaurant. And so, I imagine, and Spiro can
8 confirm, that the upstairs was part of this building permit
9 approval. We were just not permitted to get a C of O for
10 that space, and which is why that space is unoccupied.

11 Is that correct, Spiro?

12 (No audible response.)

13 MS. WILSON: I'm not sure if you're muted or not.
14 There's also a supplemental electrical permit
15 issued.

16 CHAIRPERSON HILL: Yes, it is. You're on mute,
17 sir.

18 MR. GIOLDASIS: Yes. I can hear you now. Can you
19 hear me?

20 CHAIRPERSON HILL: Yes. Could you introduce
21 yourself for the record, please?

22 MR. GIOLDASIS: Yes. Spiro Gioldasis, the owner
23 of 106 13.

24 CHAIRPERSON HILL: Could you repeat the question?
25 Or who had the question?

1 MS. WILSON: I was just confirming that as part
2 of the building permit issued for the restaurant, was this
3 upstairs space included, except we are, of course, not
4 allowed to occupy the upstairs space, so the C of O did not
5 include this upstairs space? Did that did that make
6 sense? Is that what happened?

7 MR. GIOLDASIS: Yes. That is that is correct.
8 We had to we had to reinforce the entire building to make
9 it safe. And as Demian said, it had to meet requirements,
10 heated space, safety, and everything so it would sell.

11 Now, you said there's light fixtures. There's no
12 light fixtures. It's all temporary, hanging from the
13 ceiling.

14 MEMBER SMITH: But it's outlets.

15 MR. GIOLDASIS: Oh, outlets.

16 MR. DEMIAN: I'm actually looking at the picture
17 of the second floor. I would like to share it somehow if I'm
18 allowed. There's only ductwork. There's brick wall
19 exposed brick wall. There's the front facade, and everything
20 else is just basic. A sprinkler system and no lights. So
21 I'm happy to share it with, maybe, Alexandra, and she can
22 share. I can email it to somebody. It doesn't look like
23 it's finished to be used.

24 MEMBER SMITH: This one is in the record.

25 MS. WILSON: In 117C, yeah. If that's helpful,

1 we can pull up the or I'd ask Mr. Young to please pull up
2 the photos.

3 CHAIRPERSON HILL: In 117C.

4 MR. DEMIAN: Or I can if I'm allowed to share,
5 I can just pull it up.

6 CHAIRPERSON HILL: Yeah, you can't share.

7 MS. WILSON: Yeah, it's just an open open
8 ceiling, ductwork, sprinklers, and exit signs that I imagine
9 are required for any space.

10 MR. YOUNG: What was the exhibit number?

11 CHAIRPERSON HILL: 117C as in Charlie. I think
12 it's the last one.

13 MR. DEMIAN: No. That's the basement.

14 MS. WILSON: Three and four.

15 MR. DEMIAN: Yeah, this is it.

16 MEMBER BLAKE: I have a question along these
17 lines. What else would have to be done to complete the
18 renovation for a restaurant on that that were used on that
19 floor?

20 MS. WILSON: Could Spiro or Ziad speak to that?
21 Would it be a simple matter of putting tables and chairs and
22 some restaurant staff space? Would you all be required to
23 close the ceiling? What's the extent of that?

24 MR. DEMIAN: It depends on the the owner
25 program. Me the restaurant owner could tend to spend a

1 lot of money or a little money. In this case, they would
2 just have to put tables and chairs and use it. If they would
3 like to add a bar, then there's a little more cost to it, or
4 not not sure what the intent of the owner would like to
5 use, but it's a it won't be anywhere near what you would
6 have to do to do in residential work.

7 VICE CHAIRPERSON JOHN: Did you recognize me, Mr.
8 Chairman?

9 CHAIRPERSON HILL: Yeah, sure. Go ahead, Ms.
10 John. I'm sorry.

11 VICE CHAIRPERSON JOHN: Thank you. Just a
12 question for the architect. So are these ceilings high
13 enough to be code-compliant for a residential unit?

14 MR. DEMIAN: The ceiling, if they high enough?

15 VICE CHAIRPERSON JOHN: Yeah. Is it over seven
16 feet or whatever the code requires?

17 MR. DEMIAN: It I think, from what I'm seeing,
18 it's high enough so that you can you can make it
19 residential.

20 (Simultaneous speaking.)

21 MR. DEMIAN: The way the infrastructure is right
22 now, it looked like now you have to dodge all the ductwork
23 and all this stuff. So it can actually be a little bit
24 complication to actually make it yeah.

25 VICE CHAIRPERSON JOHN: Yeah. But the original

1 configuration for the two units would've had duct work which
2 would have had maybe to be upgraded or something like that.
3 These are like commercial-grade insulations.

4 MR. DEMIAN: I'm not sure I follow the question.
5 If were you talking about the previous unit?

6 VICE CHAIRPERSON JOHN: Let me yeah. Let me
7 rephrase that. We don't have photographs of what the
8 upstairs looked at looked like at the time that the
9 property was purchased. All that's being offered is a
10 structural report, which we really haven't seen, which I
11 accept which show that there's some structural damage that
12 needs to be done. But I was wondering if these this is
13 commercial grade ductwork, or would a residential unit have
14 different ductwork than what I'm seeing here?

15 MR. DEMIAN: I mean, it could be used for either.
16 I think they were these were designed to serve either
17 residential or commercial.

18 VICE CHAIRPERSON JOHN: Okay.

19 MR. DEMIAN: But it yeah.

20 VICE CHAIRPERSON JOHN: Thank you.

21 MR. DEMIAN: Since they are open ceiling right
22 there, you'd probably have to just just do whatever you
23 can do to meet the minimum to be temperate environment in
24 there.

25 VICE CHAIRPERSON JOHN: Okay. Thank you.

1 CHAIRPERSON HILL: Okay. Anyone else while I have
2 this slide up?

3 MEMBER BLAKE: Wait. The controls for this unit,
4 is that is this an independent unit for this floor, or is
5 it controlled elsewhere part of the restaurant's structure?

6 MR. DEMIAN: That's a question for Spiro. I'm not
7 aware of the of how they're the system was configured.

8 MS. WILSON: About the the air conditioning,
9 correct?

10 MR. GIOLDASIS: It's separated. It's all
11 upstairs.

12 MEMBER BLAKE: It's all it's a single system
13 for upstairs, independent of that lower level?

14 MR. GIOLDASIS: Separate use for upstairs system.

15 MEMBER SMITH: The air conditioning, the sprinkler
16 system

17 MR. GIOLDASIS: No, not the sprinkler.

18 MEMBER SMITH: Is the is it is the
19 electrical separate?

20 MR. GIOLDASIS: No, the electrical is not.

21 MEMBER SMITH: Okay.

22 CHAIRPERSON HILL: I didn't hear you, Mr.
23 Gioldasis. The AC and heating is separate or is not
24 separate.

25 MR. GIOLDASIS: It is it is separate.

1 CHAIRPERSON HILL: Okay. Thank you.

2 MEMBER SMITH: It's not separately metered? The
3 water is not separate?

4 MR. GIOLDASIS: No.

5 MEMBER SMITH: The electricity is not separate?

6 MR. GIOLDASIS: No, no.

7 MEMBER SMITH: Okay.

8 CHAIRPERSON HILL: Okay. Anyone else?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. Going to do that. I
11 just wanted to recognize the Office of Planning. The Office
12 of Planning, Ms. Myers, could you introduce yourself for the
13 record?

14 MS. MYERS: I'm with the Office of Planning.

15 CHAIRPERSON HILL: Okay.

16 MS. MYERS: Do you want me to speak further, or
17 did you just want me to just introduce myself?

18 CHAIRPERSON HILL: I just wanted to acknowledge
19 you, Ms. Myers. And so if they had any questions there for
20 the Office of Planning. I mean, the Office of Planning
21 hasn't changed its position, correct, Ms. Myers?

22 MS. MYERS: Correct. We we have the same
23 position.

24 CHAIRPERSON HILL: Okay. All right. Does anybody
25 have - oh. Sure. Go ahead, Mr. Blake.

1 MEMBER BLAKE: The additional information you
2 learned in today's discussion and follow-up to the comments
3 made by the Office of Planning in an earlier it -- that
4 also -- did you factor that into the -- your thoughts as
5 well, as of these new revelations today?

6 MS. MYERS: Yeah. It's we were aware that the
7 upstairs use units were neglected and needed to be improved.
8 And I believe we said I know, in the most recent report,
9 that we understand the applicant would need to make
10 improvements to it in order to meet building code standards.
11 We did have some questions about did they have to completely
12 remove them, but we didn't we didn't really dispute that
13 either way because we we just didn't know.

14 But the the main point of our our argument
15 is that we did not feel there were sufficient exceptional
16 situations related to the building or the property that
17 result in a undue hardship to the owner. You could still do
18 units up there. It could still be a habitable space up
19 there. And so, it did not change our position on
20 recommending denial in this case.

21 MEMBER BLAKE: Thank you.

22 CHAIRPERSON HILL: Okay. Let's see. All right.
23 Anyone else for anybody else? And then I'm going to let Ms.
24 Wilson have the last word.

25 Okay. Go ahead, Ms. Wilson. Last word?

1 Anything?

2 MS. WILSON: My computer's been

3 CHAIRPERSON HILL: Yes. We can hear you.

4 MS. WILSON: Okay. Great. Thank you again for
5 the opportunity to present today and for allowing us the
6 opportunity to present additional information.

7 This property has a history of failed businesses
8 and neglect, and without the relief, unfortunately, Pacci's
9 would add would be the next victim of that list. We
10 appreciate you all considering all of the information in the
11 record. And with that, I'll I'll conclude.

12 CHAIRPERSON HILL: Okay. Great. Thanks, Ms.
13 Wilson. All right.

14 If my fellow Board members, unless you have any
15 other questions, I'm going to close the hearing and the
16 record.

17 (No audible response.)

18 CHAIRPERSON HILL: Okay. Going to close the
19 hearing and the record. Thank you all very much for your
20 participation today.

21 Okay. Let's see. So so I, in this case, am
22 going to disagree with the Office of Planning. So I think
23 that the applicant has made their case, and I'm going to see
24 if I can convince some of my Board members that they've made
25 their case, right?

1 I think that the building is unique. I think that
2 the fact that that third floor would take more cost in order
3 to convert it into a residential unit, and it's not really
4 a feasible residential unit, in my opinion, as well as the
5 other items that the applicant has put forward in terms of
6 a confluence of factors. I think that those things not being
7 separately metered, that's also something that I would agree
8 with.

9 I think that, you know, it I guess, you know,
10 the track record of that building not being able to succeed
11 as a restaurant, I mean, you know, or a commercial space, I
12 think that that also does indicate some uniqueness to this
13 situation or sorry to the condition.

14 I guess, the comparison with the other unit at the
15 end of the block and how it's a much larger mixed-use, in
16 order to have the residential units on there might, again,
17 add to the uniqueness of this particular property. I think
18 that that those some of those criteria that I mentioned
19 do lend to the property owner of the building having issues
20 and having a practical difficulty.

21 I think that the easiest argument and I'll
22 continue to hope that some of my Board members can help me
23 make my argument, or I will continue to try is that the
24 third prong, the community you know, and it being
25 detrimental to the zone plan I don't think is correct.

1 I think that, and I might not be articulating this
2 as well as possible, but I think that the fact that, like,
3 we listen to the ANCs and are supposed not supposed
4 we're supposed to give great weight to the ANCs. The ANCs,
5 I think, actually took the time to give their analysis to the
6 criteria of the regulations and not just we want a good
7 restaurant. And so, they took time.

8 The community there is a tremendous amount of
9 outreach to the community or from the community that this
10 location has had difficulty with the use. This location has
11 had difficulty with the use. And that we have a letter from
12 the council member from that Ward also speaking to the
13 regulations and not just that they would like this particular
14 business to stay there. I'm going to think a little bit
15 harder about some of my arguments as I hear from my fellow
16 Board members. Who would like to go next?

17 VICE CHAIRPERSON JOHN: Okay. I'll try.

18 CHAIRPERSON HILL: There you go, Vice Chair John.

19 VICE CHAIRPERSON JOHN: So I'm going to give great
20 weight to the Office of Planning's report. Now, I I don't
21 know if this is fixed in stone, but I've really struggled
22 with this application. It seems to be a great restaurant,
23 and the community is in support. And I would love to go to
24 lunch or dinner there, but at the end of the day, we have to
25 look to see how the application complies with the criteria

1 for relief.

2 And it seems to me that the hardship here, if
3 there's one, is self-created, that the applicant bought the
4 property for the purpose of it seems to me; I don't know.
5 That's what I get from form the testimony and the record
6 with the purpose of building of operating a restaurant,
7 which has done well and needs more space. And so, the
8 applicant is now seeking to expand to the second floor.

9 There is only a brief time when that second floor
10 was used for commercial purposes, and that was in June of
11 1982. The rest of the time it was either not used or used
12 as an apartment for the original owner of the property.

13 What's missing for me is what was the condition,
14 in the record, of that upstairs, why it could not be brought
15 up to code and operated as a residential unit for one or two
16 units. It was configured as a residential unit with two
17 doors, and we see that a lot at the Board and separate
18 stairs. And there's certain things that have to be changed
19 to make it, you know, compliant for a residence, and we don't
20 have that information in the record. We have information
21 about what it would cost now after the changes were made.

22 And looking at the photographs, it's it's
23 renovated for a non-residential use is, I think, everyone
24 agrees. So in terms of the exceptional hardship or or
25 exceptional condition, I can't get there.

1 I appreciate Ms. Wilson's photograph of the store
2 at the corner, the corner store with the six units above.
3 And that doesn't help this case because it showed that
4 that there is residential use that can be made above an
5 existing commercial use. That's how I look at that
6 photograph.

7 So I will stop rambling for now. As I said, this
8 is a very difficult case. We see these from time to time,
9 and it's always a struggle. So I would like to hear what the
10 rest of the Board says.

11 MEMBER SMITH: I guess I'll go next. I have
12 struggled with this case as I've struggled with the previous
13 variance request. But based on the information that was
14 presented in the record and the testimony provided by the
15 applicant and the Office of Planning, I give great weight to
16 OP's staff report on this particular case for the exact same
17 reasons Ms. John is always so so much more articulate
18 than me. I you know, I probably should've went to law
19 school probably. I would've been trained better with public
20 speaking. But I agree with her assessment of the exceptional
21 situation.

22 The exceptional situation that was presented to
23 us was predicated on this being a mixed-use building or
24 this being a very a small building and residential would
25 not work on the upper floor of this of the third the

1 upper floor in this building. To me, that's a very extremely
2 weak argument and in not only the District of Columbia but
3 across the country because there are many buildings of this
4 particular size and of this particular nature, different
5 that has different uses on multiple floors of a building of
6 this particular size.

7 And matter of fact, all over Capitol Hill. There
8 are a number of of pocket of buildings that are they
9 may be non-conforming because they may be some this the
10 ground floor space has been continuously occupied with some
11 type of commercial use. But there was some type of there
12 is and was some type of residential use that is above these
13 buildings.

14 And as Ms. John stated, I don't think that the
15 applicant advanced their argument her argument by showing
16 or using an example of a mixed-use building. While slightly
17 larger with an additional floor, it does show that this
18 particular type of arrangement, use mixed-use arrangement
19 does work and has worked. And it has historically worked
20 within this within this particular building.

21 I do agree that, based on the information within
22 the record, and note specifically that exhibit that shows the
23 picture, that the request before us is more of an undue
24 hardship that a self-imposed hardship because there was
25 a renovation that was completed. And it seems to me that

1 that renovation the renovation that was done, whether it's
2 you know, it can be you know, they can go do the the
3 Department of Buildings and and pull a C of O or not, the
4 renovation that was completed was with the intent for this
5 particular space to be used as non-residential use.

6 It is not it seems that it's an open question
7 of whether there's a separate the ductwork is separate.
8 The AC system, the HVAC system is separate. We are the
9 the property owner is on the record that the electrical
10 system is fully tied together. The water system is fully
11 tied together. And that was fully completed at least the
12 electrical because we can see that was fully completed as
13 part of the the renovation of this building with no
14 anticipation for it to remain a conforming use, which would
15 be residential.

16 I do also want to bring up a point that was raised
17 by the Office of Planning and that I had raised periodically
18 regarding non-conforming uses. It is the intent of the
19 Zoning Ordinance for non-conforming uses to go away. And for
20 it to remain, it must you must show beyond beyond
21 reasonable doubt, ironclad case, to me, that the zoning
22 regulations for this particular property are in error. I
23 don't think they were in error. I don't think were in error
24 previously when we heard the previous variance.

25 This the preponderance of uses here, within

1 this area, are residential. And it was the intent of the
2 Zoning the intent of Zoning Ordinance for these
3 non-conforming uses to go away. And for me, I am
4 uncomfortable with expanding a non-conforming use even
5 further, when I do believe that there could've been reason
6 for this to remain residential. This is entirely
7 self-imposed. So with that, I would recommend denial of the
8 request at bear.

9 CHAIRPERSON HILL: You're the only one left, Mr.
10 Blake.

11 MEMBER BLAKE: This situation is very challenging
12 because this is clearly what the people in the community want
13 is a restaurant in their neighborhood. And this is a
14 successful restaurant. And because the people want it so
15 much, it just -- it's very difficult as we go through the
16 regulations to determine how to get there.

17 I do believe that the comments that you made, Mr.
18 Chairman, did meet the practical difficulty standard, but not
19 the undue hardship standard as you described it in your
20 discussion. When Vice Chair John outlined her position, I
21 think, too, it did speak to the difficulty in making this
22 reach the standard for an undue hardship, likewise, the
23 as well as being the a unique circumstance and as Mr.
24 Smith also pointed that out.

25 I think that, you know, I I really look at

1 this, and I think about the fact that this restaurant has
2 failed because it's not a restaurant building. It's a
3 residential building that we're somehow trying to make fit
4 a commercial space. So everything every every time I
5 hear it didn't work, it's because it wasn't supposed to work.
6 And it when you when I hear, you know, it's not
7 configured properly, because it wasn't configured for this.
8 And so, we're trying to make this work because people really
9 want it in the community, but the reality of it is is this
10 really wasn't designed for that purpose.

11 We look back in the history, and we see that
12 you know, I I agree with the argument that was made about,
13 you know, was this commercial space. It was built as a
14 single unit. It was used and once they started using it
15 as a commercial space, it made it more difficult to have the
16 upper level used as a residential space. Now, granted, we
17 could have somebody who says, look, I'm going to have my
18 I'm going to, you know, make up a camp-like structure up on
19 the second floor, so I could sleep there sometimes when I'm
20 working late, and that happens.

21 But the building has changed its usefulness as a
22 pure residential structure as they started using it for
23 as we used the first floor for the deli and all the other
24 things, and then as we used the lower floor. So its
25 usefulness changed. And it's also a very small building.

1 So and it was constructed as a single unit. So for those
2 reasons, I think it it's interesting.

3 But trying to do this, the you go back to the
4 applicant purchase of this building. It wasn't necessarily
5 perfect for it then, and but we've tried to make it work.
6 And if you go back to Dwyer v. D.C. BZA, the expectation was
7 that, you know, maybe we could make this thing bigger and
8 better and work out. But that's not a good reason for us to
9 say that this works, and it meets the criteria because I
10 don't necessarily think it does.

11 But this is very challenging. So I'm going
12 kind of going back and forth because I see elements at which
13 this should be okay, but it does run aground and afoul with
14 most of the elements here. We've seen cases cited, you know,
15 in various places, even by one of our councilmen, but there's
16 some elements of, you know, detrimental reliance that support
17 those cases. These they all of these are very
18 different. So this case, to me, gives me is very
19 challenging.

20 So I am definitely in agreement with the Office
21 of Planning and the other Board Board Member Smith and
22 Vice Chair John that this does not meet the criteria for
23 approval, even though it is what we want to do, the community
24 wants done. And it's what they it just it's struggling
25 to make the meet the criteria. So I I would be voting

1 against the application.

2 CHAIRPERSON HILL: Okay. Thanks. So I don't know
3 what you all might or might not be willing to do, right?
4 Insofar as I've got one more well, okay. Let me see.

5 I've worked with all of you guys for years, and
6 I appreciate your analysis. And at the beginning of each
7 thing that you said was that you were struggling with this,
8 right? So if we put it might not change you all's mind
9 if we put this off another week and think about it, okay?
10 And then come back for decision. I, at least, got one shake
11 of the head yes. And I know I got one shake of the head no.
12 I know where my no's are, Mr. Smith. And so, I'm just
13 teasing.

14 And so, I guess, I will make a statement. And
15 this is where I wish the Zoning Commission had us have a
16 little bit more flexibility. I mean, to me, it seems like
17 the Board is here for also the grey areas, right? That's
18 why, you know, if we if everything is black and white,
19 then we can just check off all the boxes, and the
20 applications can just move through the way they move through,
21 right? It's the grey that comes into where we believe an
22 argument one way or the other.

23 And I am not trying to change the opinion that's
24 I'm really not. I'm really not trying to change the
25 opinion of people. I'm just trying to understand that the

1 applicant and the attorneys have put forward an argument that
2 could be understood as being accurate, right? Sorry.
3 They're putting forward their argument.

4 And I know that the Office of Planning is
5 listening to me, and even OZLD is listening to me. I wish
6 I was a better articulator at times about an argument. And
7 I might try this week to wrap my head about a better argument
8 if you all would be willing to put this off one week just for
9 a decision. I don't necessarily think the thing's going to
10 change.

11 So just to let the applicant know and the
12 community know, I don't necessarily think it's going to
13 change. But if you all would be willing to put it off for
14 one week, at least then I could get Commissioner Stidham's
15 vote. And then, at least, I can think about whether I can
16 make a better argument. I might not be able to make a better
17 argument. Would you all mind if we put this off one week?

18 VICE CHAIRPERSON JOHN: No.

19 MEMBER BLAKE: No.

20 MEMBER SMITH: I'm good on that.

21 CHAIRPERSON HILL: So I would like to clarify for
22 the audience, I don't know if this is going to change at all
23 because I'm it doesn't seem like this I I would
24 it seems as though the Board is understanding that this
25 argument is not enough to meet the criteria for us to grant

1 this relief. Nonetheless, I appreciate the I appreciate
2 the willingness of my colleagues to put this off for a week.
3 Okay. All right. I'm going to put this off for a week.

4 So, Mr. Moy, we'll come back for a decision next
5 week.

6 VICE CHAIRPERSON JOHN: Mr. Chairman

7 (Simultaneous speaking.)

8 VICE CHAIRPERSON JOHN: One thing. We're not
9 requesting anything for the record. We're going to disregard
10 anything that comes in. This is a very full record. It's
11 already difficult. And I don't know what anybody else can
12 say at this point.

13 CHAIRPERSON HILL: Nope. The record is closed.
14 Yeah, the record is closed, Mr. Moy.

15 MR. MOY: Yes. The record is closed, and you are
16 going to, of course, allow the opportunity for Zoning
17 Commissioner Stidham to weigh in.

18 CHAIRPERSON HILL: Yeah. Okay. What's next week?
19 Next week is

20 MR. MOY: March 15th.

21 CHAIRPERSON HILL: All right. We'll do decision
22 3/15.

23 MR. MOY: 3/13. 3/13.

24 CHAIRPERSON HILL: 3/13. 3/13. Okay. Great.
25 Okay. So, you guys, let's take lunch, okay? Is one is

1 1:40 okay?

2 (No audible response.)

3 CHAIRPERSON HILL: We'll try for 1:40 and see what
4 happens.

5 VICE CHAIRPERSON JOHN: Okay.

6 CHAIRPERSON HILL: Okay. All right. Let's
7 let's do 1:45. Is 1:45 better?

8 VICE CHAIRPERSON JOHN: Well, I I have an
9 appointment, Mr. Chairman. I may miss a case after lunch.

10 CHAIRPERSON HILL: Okay. I'll call you, Vice
11 Chair John.

12 VICE CHAIRPERSON JOHN: Thank you. Thank you.

13 CHAIRPERSON HILL: Okay. Thank you. All right.
14 We'll try, let's try 1:40 then. Okay. We'll come back at
15 1:40. Thank you.

16 (Whereupon, the above-entitled matter went off the
17 record at 1:03 p.m. and resumed at 1:43 p.m.)

18 MR. MOY: I did hear you.

19 CHAIRPERSON HILL: I think, I mentioned I wanted
20 to push back 20997 to the end of the day.

21 MR. MOY: Yes, sir.

22 CHAIRPERSON HILL: So let's go ahead. I don't
23 know what you have next because I didn't see the line up.

24 MR. MOY: I can tell you.

25 CHAIRPERSON HILL: Okay.

1 MR. MOY: That's 21054 of Marie.

2 CHAIRPERSON HILL: Okay. Okay, then you may call
3 it.

4 MR. MOY: Okay, after a quick lunch recess, the
5 Board has returned to its public hearing session. The time
6 is at 1:44 p.m., at or about 1:44 p.m. And the next case
7 before the Board is Application No. 21054 of Marie Joelle-
8 Voil, I'm going to spell that, J-O-E-L-L-E dash V-O-I-L-E.

9 This is an application for special exceptions
10 pursuant to Subtitle X, Section 9, Section 901.2 under
11 Subtitle D, Section 5201 from rear yard requirements.
12 Subtitle D, Section 207.1 which would allow an accessory
13 structure in a required rear yard and accessory building
14 location requirements Subtitle D, Section 1105.2.

15 And the variance pursuant to Subtitle X, Section
16 1002 from accessory building requirements of Subtitle D,
17 Section 1105.6 permanently located in the R-3/GT zone at 1921
18 37th Street Northwest Square 1296 Lot 356.

19 And only ones in the Panel, Mr. Chairman, is the
20 applicant's team. Thank you.

21 CHAIRPERSON HILL: Okay, if the applicant can hear
22 me, if they could please introduce themselves for the record.
23 Can the applicant hear me? Oh, great. Could you introduce
24 yourself for the record?

25 MS. VOIL: Yes. I am Marie-Joelle Voil. I bought

1 -- thank you first for the Board to consider my case. And
2 to listen to what I have to say. So --

3 CHAIRPERSON HILL: Ms. Joelle Voil, Ms. Joelle
4 Voil, are you able to use your camera?

5 MS. VOIL: Is it okay?

6 CHAIRPERSON HILL: It's not working yet.

7 MS. VOIL: -- I have --

8 CHAIRPERSON HILL: Oh, there we go. There we go.
9 Okay great.

10 MS. VOIL: Okay.

11 CHAIRPERSON HILL: Okay. Go ahead. Ms., could
12 you say your name please again?

13 MS. VOIL: Yes. Marie-Joelle first name and last
14 name Voil, V-O-I-L.

15 CHAIRPERSON HILL: Okay. Ms. Voil, is it just you
16 that's here today?

17 MS. VOIL: No, on my architect is here too. Mr.
18 Roberto Ramirez.

19 CHAIRPERSON HILL: Do you see the architect, Mr.
20 Young?

21 MR. YOUNG: I do not see him yet. Staff said they
22 talked to him and said he should be getting on shortly.

23 CHAIRPERSON HILL: Okay.

24 MS. VOIL: Maybe I should give him a call. No?

25 CHAIRPERSON HILL: It's possible. Ms. Voil, let

1 me do this. Why don't, we're going -- we'll do the next case
2 and bring yours back.

3 MS. VOIL: Okay. Okay.

4 CHAIRPERSON HILL: We'll wait for the architect.

5 MS. VOIL: Okay. Thank you so much.

6 CHAIRPERSON HILL: Sure. Mr. Moy, can we do that?

7 MR. MOY: Yes, we -- staff can do whatever you
8 want, Mr. Chairman, you're the Chair.

9 CHAIRPERSON HILL: Yes, I wish. If that were the
10 case, then I would get to decide.

11 MR. MOY: Okay, sir. So if staff can line up the
12 next group of Panelists to Application No. 21059 of 44th
13 Street LLC. This is a self-certified application for area
14 variance pursuant to Subtitle X, Section 1002 from lot
15 dimension requirements Subtitle D, Section 202.1 property
16 located in the R2 zone at 1053 48th Street Northeast Square,
17 5153 Lot 801.

18 And let me check one other thing. And again, we
19 have the applicant's team. Thank you, sir.

20 CHAIRPERSON HILL: Thank you, Mr. Moy. If the
21 applicant can hear me, if they could please introduce
22 themselves for the record. Or wait a minute, they're coming
23 on perhaps.

24 MR. MOY: Yes, just a second, Mr. Chairman. I've
25 got to get a hold of the staff to bring in the applicant.

1 CHAIRPERSON HILL: Sure, no problem.

2 MR. MOY: He's waiting to be called into the
3 Panel.

4 MR. YOUNG: Who was it? All I have on my list is
5 Dave Bloom.

6 MR. MOY: Marty Sullivan. Marty Sullivan, Paul.
7 Oh, perfect.

8 CHAIRPERSON HILL: Mr. Sullivan, can you hear us?
9 Great. Could you introduce --

10 MR. SULLIVAN: Hi, yes. I'm sorry. That may have
11 been my fault. I may not have, I thought I had signed up to
12 testify. Maybe I didn't. I just did now, but so that's
13 probably why I wasn't in there. Sorry about that, Mr. Young.

14 CHAIRPERSON HILL: Could you introduce yourself
15 for the record, Mr. Sullivan?

16 MR. SULLIVAN: Thank you, Marty Sullivan with
17 Sullivan and Barros on behalf of the applicant.

18 CHAIRPERSON HILL: Okay, great. Okay, Mr.
19 Sullivan, if you want to go ahead and walk us through your
20 client's application and why you believe they're meeting the
21 criteria for us to grant the relief requested.

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

24 MR. SULLIVAN: Thank you. If Mr. Young could
25 please load the presentation. And also, the architect is

1 with us, but he's available for questions. I don't -- I
2 think I can handle the presentation by myself.

3 CHAIRPERSON HILL: Okay.

4 MR. SULLIVAN: This is 1053 48th Street Northeast.
5 Next slide please. So the property is in the R2 zone. It's
6 a vacant lot. The applicant is proposing to construct a new
7 semi-detached two-story single family dwelling.

8 But in order to construct the building, the
9 existing tax lot must be converted to a record lot. So new
10 record lots for semi-detached buildings require 30 feet of
11 lot width and 3,000 square feet of land area.

12 The tax lot has 23 feet of lot width and 2,674
13 square feet of land area. The proposed building itself will
14 meet all development standards with some granted minor
15 deviations for the side yard which is 7.75 feet instead of
16 8.

17 And without this relief, the applicant cannot
18 construct anything on the vacant lot. So we're seeking area
19 variance relief from the lot width and lot area dimensions
20 for a new record lot for this lot. Next slide please.

21 The Office of Planning recommends approval ANC7C
22 voted in support of the application. Their letter was
23 submitted just this morning. And we've also met with
24 Deanwood Citizens Association and DDOT has no objection.

25 Next slide please. So this is, you're looking at

1 the lot in between the white house on the right and the
2 building on the left. Next slide. This is the plat. The
3 applicants actually significantly underbuilding what they
4 could build.

5 They just to fit in with the area they're building
6 two stories. It's about 27 percent lot occupancy I think.
7 A 48-foot rear yard and it's a semi-detached zone so they're
8 straddling the north lot line which is adjacent to a side
9 yard of a building to the north.

10 Next slide please. So there's at least about
11 eight or ten feet of the side yard to the north of that.
12 Next slide. Next slide. Next slide. Next slide. Sorry,
13 I have too many engineering plans in here. This is the floor
14 plan for the building.

15 It's a three bedroom, two-story building. No
16 basement either. Next slide please. And this is the front
17 elevation. The side elevation. The side elevation is on
18 this side straddling the lot line. Next slide please.

19 And next slide please. So I'm going to go to the
20 next slide first please before we get back to this. So when
21 these lots were originally established around 1908 is when
22 this plat was from, the entire block was made up of 25 foot
23 wide lots.

24 Our lot is on the left side of the two lots you
25 see in square 5153. It's about three or four lots down. It

1 starts at lot 24 then goes 23, 22, 21. We're lot 22. The
2 lot to the south of us is lot 21. So next slide please.

3 Now this diagram explains what happens. At some
4 point long ago the owner of record lot 22 conveyed a two foot
5 wide strip along it's south property line to the owner of
6 record lot 21. At that point, the lot to the south became
7 a tax lot.

8 The lot to the north became a tax lot. The north
9 lot is 23 feet wide. The south lot is 27 feet wide. But it
10 effectively obstructed the record lot situation in that case
11 which still exists so there are still record lots there, but
12 the record lots are 25 feet wide as originally established.

13 The tax lots have different widths. So the owner
14 of tax, of this tax lot, the applicant in this case, does not
15 own the entire record lot and therefore it can't get a
16 building permit for that record lot. So it needs to plat
17 lot, the 23-foot wide lot as a record lot.

18 In doing so, in granting the variance, the Board
19 isn't giving anybody the ability to do more homes than were
20 originally contemplated for this. It's essentially just
21 changing the yards from the two subject lots.

22 And without the relief, the applicant can't build
23 on it. So what I've measured here is just measurements to
24 show the lot width on the left of the two record lots, 22 and
25 21, the 25 feet wide.

1 And then on the right side of this it shows the
2 23 foot dimension and the 27 foot dimension of the actual tax
3 lots which represent the ownership interest in these lots.
4 The applicant owns the smaller lot of these two. Next slide
5 please.

6 Or, I'm sorry, previous slide to this one. And
7 one slide previous to this please. So the extraordinary
8 condition affecting the property and the practical difficulty
9 is the vacant status of the lot and the tax lot status.

10 It's unbuildable without being a record lot. And
11 because of the history of this property, the tax lot has an
12 existing underlying record lot, but that doesn't line up with
13 the tax lot.

14 So the applicant can't utilize the record lot
15 because of the two feet of the underlying record lot being
16 owned by the neighbor. The applicant hasn't been able to
17 purchase that land without creating nonconformities with that
18 neighbor's side yard and also without considerable expense.

19 So without relief, the applicant cannot obtain a
20 record lot and cannot build anything on this property. Next
21 slide please. Next slide. Next slide please. Here's the
22 detail of those extraordinary conditions.

23 I went into most of this already. So I don't want
24 to repeat myself. I, just to note again, if improving the
25 variance doesn't create a new lot out of thin air, doesn't

1 allow for development beyond what was always intended for
2 these two lots just that instead of one home on each of the
3 two 25 foot wide lots there's now a home on a 23 foot lot and
4 a home on a 27 foot wide lot.

5 And our side yard is on the space facing the
6 larger lot. So theoretically the south owner could sell back
7 the two feet and then we would have a buildable lot. Now
8 even though it's undersized, it would be buildable because
9 it still is a record lot.

10 And if that happened, the ownership interest would
11 line up with the record lot. But that hasn't, that's not
12 possible. Haven't been able to do that. So the practical
13 difficulty exists. Next slide please.

14 There's no substantial detriment to the public
15 good or impairment of the zone plan. The applicant is
16 requesting relief based on the unique configuration of the
17 lot and the conditions in the area.

18 There's a mix of lot sizes in the area, but most
19 of them are 25 feet wide. The lot already exists as a tax
20 lot and the degree of relief is not significant, seven feet
21 of width and again, all the development standards are being
22 met and being significantly underbuilt.

23 They are with the two stories, no basement, 27
24 percent lot occupancy and a 48 foot rear yard. We do have
25 a parking space as well. Next slide please. And that's it.

1 So if the Board has any questions for myself or Mr. Bloom,
2 the architect. Thank you.

3 CHAIRPERSON HILL: Okay, before I turn to my
4 Board, may I hear from the Office of Planning?

5 MS. THOMAS: Yes. Good afternoon, Mr. Chair,
6 members of the Board. Karen Thomas with the Office of
7 Planning. And as explained by Mr. Sullivan, the Office of
8 Planning concurs that the basically the lot's history and the
9 inability to create increase this lot size creates a
10 practical difficulty.

11 It is an exceptional situation rather that creates
12 a practical difficulty in developing the lot. So without
13 being able to convert to a record lot from the tax lot
14 status, the applicant will not be able or anybody, or the
15 owner would not be able to build on this lot.

16 So with that, we will rest on the record of our
17 report and I will be happy to take any questions. Thank you.

18 CHAIRPERSON HILL: Thank you, Ms. Thomas. Does
19 the Board have any questions for the Office of Planning or
20 the applicant? Go ahead Commissioner, I mean yes, Dr.
21 Imamura.

22 COMMISSIONER IMAMURA: No questions. Just a
23 comment for Mr. Sullivan. I know he said there are too many
24 engineering plans. I like to think there are architectural
25 plans and you can never have too many, Mr. Sullivan. But

1 thank you very much.

2 MR. SULLIVAN: Noted. Thank you.

3 CHAIRPERSON HILL: Thank you, Dr. Imamura. Anyone
4 else for questions or comments? All right. Mr. Young, does
5 anyone here wish to speak? Mr. Sullivan, anything you would
6 like to add at the end?

7 MR. SULLIVAN: No, thank you.

8 CHAIRPERSON HILL: Okay. All right, go ahead and
9 close the hearing and the record. Thank you. Okay, I think
10 this one is actually relatively straightforward. I would
11 love to have understood the story as to those two feet as to
12 why the guy, I mean was just like his rose bed or her rose
13 bed or something was like, you know, they wanted the two
14 feet.

15 So I can understand the explanation and the
16 reasoning that the applicant is putting forward as well as
17 that of the Office of Planning as well as giving great way
18 to the ANC and I will be voting in favor of this application.
19 Mr. Smith?

20 MEMBER SMITH: I agree with your assessment of
21 this particular case, Chairman Hill, and I will rest on your
22 comments and will support the application as well.

23 CHAIRPERSON HILL: Thank you. Mr. Blake?

24 MEMBER BLAKE: As for the application, I will be
25 voting in favor of it.

1 CHAIRPERSON HILL: Thank you. Dr. Imamura?

2 COMMISSIONER IMAMURA: Likewise, Mr. Chairman.
3 I'm prepared to vote in support and agree with your summary.

4 CHAIRPERSON HILL: Thank you. Vice Chair John?

5 VICE CHAIRPERSON JOHN: I have nothing to add and
6 I am in support of the application.

7 CHAIRPERSON HILL: Great. Thank you. I'll make
8 a motion to approve the Application No. 21059 as captioned
9 read by the Secretary and ask for a second. Ms. John?

10 VICE CHAIRPERSON JOHN: Second.

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

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

18 COMMISSIONER IMAMURA: Yes.

19 MR. MOY: Mr. Smith?

20 MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIRPERSON JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as five to
3 zero to zero and this is on the motion made by Chairman Hill
4 to approve the application. The motion to approve was second
5 by Vice Chair John who also voted to approve the application
6 as well as approval from Zoning Commissioner Dr. Imamura, Mr.
7 Smith, Mr. Blake and again, Vice Chair John, and Chairman
8 Hill.

9 Motion carries, sir, on the vote of five to zero
10 to zero.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. Do you
12 want to call back the case? Do we have the architect on that
13 one now?

14 MR. MOY: Oh, okay, he's just entered the room.

15 CHAIRPERSON HILL: Okay, great. Then do you want
16 to go ahead and call it once again please?

17 MR. MOY: Yes, I will. Thank you. One second.
18 Okay, so once again, for clarity in the transcript, this is
19 Application No. 21054 of Marie-Joelle Voil. This is for
20 special exceptions pursuant to Subtitle X, Section 901.2
21 under Subtitle D, Section 5201 from rear yard requirement,
22 Subtitle D, Section 207.1 to allow an accessory structure in
23 a required rear yard, assessor building location requirement
24 Subtitle D, Section 1105.2.

25 And a variance pursuant to Subtitle X, Section

1 1002 from accessory building requirement Subtitle D, Section
2 1105.6 property in the R-3/GT zone at 1921 37th Street
3 Northwest Square, 9th Square 1296 Lot 356. And once again,
4 it's the applicant and her architect. Thank you, sir.

5 CHAIRPERSON HILL: Okay, thank you. Could the
6 applicant again introduce themselves for the record? You're
7 on mute. There you go.

8 MS. VOIL: Okay. Sorry, my name is Marie-Joelle
9 Voil. And I am living at 1921 37th Street Northwest.

10 CHAIRPERSON HILL: Okay, Ms. Voil, is your
11 architect here? Mr. Ramirez, can you hear me?

12 MR. RAMIREZ: Yes, I can hear you.

13 CHAIRPERSON HILL: Could you introduce yourself
14 for the record please, sir?

15 MR. RAMIREZ: First name Roberto, last name
16 Ramirez.

17 CHAIRPERSON HILL: Great. Mr. Ramirez, are you
18 going to be doing the presentation for us?

19 MR. RAMIREZ: I will.

20 CHAIRPERSON HILL: Okay. Can you use your camera?
21 It's okay if you can't, just curious.

22 MR. RAMIREZ: Yes, hold on.

23 CHAIRPERSON HILL: Sure.

24 MR. RAMIREZ: I'm having a hard time with, there
25 you go.

1 CHAIRPERSON HILL: Okay.

2 MR. RAMIREZ: Can you see me?

3 MS. VOIL: No.

4 CHAIRPERSON HILL: No, but that's all right, Mr.
5 Ramirez. Why don't you go ahead and walk us through your
6 client's application and why you believe they're meeting the
7 criteria for us to grant the relief requested?

8 I'm going to put 15 minutes on the clock and you
9 can begin whenever you like.

10 MR. RAMIREZ: Okay, would you be able to show the
11 drawings that were submitted or --

12 CHAIRPERSON HILL: Sure. Do you know which
13 exhibit it might be? Or that you want us to look at?

14 MR. RAMIREZ: Right, the plans and elevations we
15 can start with.

16 CHAIRPERSON HILL: Okay, do you know which
17 exhibit? Let me just look here.

18 MR. RAMIREZ: Oh, I would have to look it up.

19 CHAIRPERSON HILL: Yes, that's all right. I'm
20 also -- maybe Mr. Young can take a guess. I'm pulling it up
21 right now.

22 MR. YOUNG: 18.

23 CHAIRPERSON HILL: Let's go ahead and pull that
24 up then please. All right, I see it.

25 MR. RAMIREZ: Yes.

1 MR. MOY: There's a brief pause. I was just
2 notified that the, that the Commissioner Putta from ANC2E has
3 made a filing in the case record. If you will allow it into
4 the record, then you could view it.

5 CHAIRPERSON HILL: Oh, yes, please. Thank you.

6 MR. YOUNG: The Commissioner is also on.

7 CHAIRPERSON HILL: Oh, great. Commissioner Putta,
8 can you hear me? Commissioner Putta, can you hear me?

9 MR. PUTTA: Yes, I can. Yes, I can. Hi. How are
10 you?

11 CHAIRPERSON HILL: Good Commissioner, doing well.
12 Would you like to introduce yourself for the record?

13 MR. PUTTA: Oh, thank you. Thank you, Chair Hill.
14 Hi. I will put myself on camera in a few minutes, but for
15 now, thank you for having me. Sorry I didn't sign up in
16 advance.

17 We have a new Executive Director for our ANC and
18 our meeting was held just less than 36 hours ago. But we did
19 unanimously support this project. My name is Kishan Putta.
20 I am the Commissioner for this District ANC2B01. Thank you.

21 CHAIRPERSON HILL: Great. Great, Commissioner.
22 Thank you for joining us today. Let's see. Okay, Mr.
23 Ramirez, you can go ahead and begin.

24 MR. RAMIREZ: Okay, so were we able to pinpoint
25 to the exhibit that has the --

1 CHAIRPERSON HILL: It was Exhibit 13 I think.

2 MR. RAMIREZ: Okay.

3 MR. YOUNG: 18.

4 CHAIRPERSON HILL: Oh, 18, 18. Do you see it in
5 front of you?

6 MR. RAMIREZ: Yes, hold on. I can, yes. Okay,
7 sorry about that. Okay, so that's the cover sheet. That
8 just gives you a breakdown of the zoning information that we
9 submitted which pretty much tells you the square footage of
10 the rebuild garage.

11 And the rear lot setback encroachment. But what
12 I wanted to get to is if you could switch to the next page,
13 so basically this is an existing structure that it's under,
14 you know, over the years it just has been deteriorating and
15 so Marie has elected to rebuild it.

16 And in the process, if you can switch to the next
17 slide, then you can see the size of it in elevation. The
18 next slide. That's pretty standard. It's just a little shed
19 garage and what we're proposing if you go back to the next
20 slide, is a much-improved esthetically garage with a new
21 overhead door, new entry and small window looking towards the
22 rear wall.

23 And a new set of stairs that would take you up to
24 the roof. If you could show the next slide, and it would be
25 a flat roof with some railing. Right? Which Ms., which

1 Marie is proposing to utilize as an area -- basically she
2 wants to maximize her rear yard.

3 As you can see, it's very narrow. The path to get
4 to the house is about seven feet from the alley so there is
5 no, you know, real room to do any kind of planting, gardening
6 on the side here along the adjacent neighbor. And I
7 apologize about the two pets.

8 CHAIRPERSON HILL: No, you're good.

9 MR. RAMIREZ: Timing.

10 CHAIRPERSON HILL: We can hear you.

11 MR. RAMIREZ: So you know, so that's kind of what
12 the layout of the rear yard, the garage and the alley is here
13 and what she's proposing is to, you know, capture some of the
14 outer space for her use.

15 She's an older person who doesn't have the funds
16 to do a, you know, another fixation of the house and she can
17 put a roof, I mean a deck on top of the roof so being that
18 she's going out of her way to improve the aesthetics of the
19 alley by putting in a new garage, she wants to, you know,
20 take advantage of the outdoor space that the roof provides
21 and have that be kind of a retreat for her.

22 Somewhere where she could, you know, put up a
23 chair, read in the afternoons on a nice day. Have some
24 planters decorated with different type of flowers so that's
25 just, it would bring esthetics and color and just overall

1 beauty I think to this alley that's just a pretty typical
2 alley for a, you know, D.C. neighborhood.

3 You know, so that's kind of where, you know, we
4 are with this. I realize that Office of Planning didn't
5 really appreciate her I guess sentimental value of, you know,
6 her property and what she wanted to do with the space.

7 I just wanted to also emphasize for the Board that
8 there is precedence for this. There's several houses within
9 walking distance of her house that have done this or
10 currently have the same situation where it's an existing
11 accessory building with a deck.

12 Or some type of deck that it is no way near as
13 aesthetically pleasing as what she's proposing to do. So you
14 know, that's yes, so that's kind of where we are in terms of
15 her, you know, her proposal and what, you know, she wants to
16 give back to the neighborhood.

17 I mean, other than that, I mean, she's had support
18 from the, she's got full support from the ANC. All her
19 neighbors, there's several letters like seven of them I think
20 we submitted from her, you know, adjacent end neighbors
21 within walking distance that are in support of her doing
22 this.

23 So we feel like this is a, you know, not only it
24 will be a benefit for her, but also for the neighborhood.
25 If you think about an older person having the advantage of

1 not having to go up three stories up to the roof to, you
2 know, enjoy some of her outdoor activities because there's
3 no really a way to do that on the ground below, you know,
4 because of the amount of space that she has unfortunately.

5 And also, I mean, she was telling me that she also
6 has like pollen allergies and so forth. Therefore, she
7 cannot, you know, it's not like she can walk to a park. She
8 doesn't drive so there are a lot of aspects I guess to this
9 that, you know, we would like for you guys to consider
10 realizing that Office of Planning was against it.

11 But we see a lot of value in doing this for her,
12 improving her, you know, her daily life, you know, for the
13 better. And I think overall. I mean, if you look at the,
14 if you scroll down to the last couple of images, you'll see
15 the elevation. It's pretty generic.

16 It's, you know, the material that's going to be
17 used is sympathetic to the neighborhood. I mean, you know,
18 fabric siding for the walls and the railing. I mean, it
19 could be very nice.

20 I don't know if the Board had a chance to see some
21 of the pictures that she submitted also as part of the
22 packet, that kind of gives you an example of what she has in
23 mind for the space.

24 That's kind of where we are with this and I, you
25 know, so we, you know, we would like for you guys to consider

1 all the parameters and all the variables for this project.

2 CHAIRPERSON HILL: Thank you, Mr. Ramirez. All
3 right, you want to drop that? Thank you, great. Okay, may
4 I turn to the Office of Planning please.

5 MS. MYERS: Crystal Myers with the Office of
6 Planning. The Office of Planning is recommending approval
7 of the special exception relief requested in this case
8 related to the rear yard of the house and the accessory
9 building distance to the property line, to the rear property
10 line.

11 But we are in denial of the use variance for the
12 roof deck for the accessory building. According to the
13 Zoning Administrator's Office, the existing garage is
14 nonconforming because it does not conform to the current
15 setback requirements.

16 I just want to note that we wrote our report
17 related to the relief in the revised Zoning Administrator
18 letter and just responded to those noted relief. So I
19 understand that you probably would like me to go into the
20 denial section of our report.

21 As I said, we are in support of the special
22 exception, but I suspect perhaps not require me to go through
23 that as much so I'll just get straight down to the use
24 variance.

25 So when it comes to the use variance, while the

1 provision of an additional private open space on the property
2 is understandable, the applicant has not presented a case
3 that indicates an undue hardship.

4 The applicant argues the property is very narrow
5 and does not have sufficient private open space. They point
6 out that there are accessory garage and the brick pathway
7 take up most of their rear yard.

8 OP reviewed the subject property and surrounding
9 neighbor properties and the property is not exceptionally
10 narrow or small in this area. Though the property is
11 slightly smaller and narrower than the minimum for the zone,
12 this is not an exceptional, this is not exceptional for this
13 row.

14 Most of the neighboring properties are similar in
15 size and some are even smaller than the subject property.
16 And similar to the subject property all of the properties in
17 this row have small rear yards.

18 The applicant in regard to the undue hardship, the
19 applicant could increase their open space on their property
20 in other ways without a use variance. In regard to the no
21 substantial detriment to the public good, the requested use
22 relief would not appear to likely result in a roof deck that
23 would cause a substantial detriment to the public good.

24 The proposed roof deck would be alongside the
25 parking areas of the adjacent properties so it should have

1 little impact on them as they park their cars. And the
2 applicant, has been discussed, the applicant did submit
3 photos of five examples of existing accessory garage roof
4 decks in the nearby area.

5 These examples further show that the proposal
6 would likely not be greatly out of character for this area,
7 however, OP does not know the history of these projects and
8 assumes they were probably done before zoning disallowed this
9 use.

10 As for substantial impairment to the zoning
11 regulations, while OP is generally supportive of the owner's
12 attempts to maximize the enjoyment of her space, of her
13 property including through the provision of decks, the zoning
14 regulations were specifically amended to not allow a roof
15 deck on an accessory building in this zone.

16 So granting the requested use variance would be,
17 without identifying an extraordinary or exceptional situation
18 on the property would substantially impair the purpose and
19 integrity of the zoning regulations which is why we are
20 unable to be supportive of the variance relief.

21 But again, the additional, the other relief needed
22 we are in support of. And so with that, I will conclude our
23 testimony on this.

24 CHAIRPERSON HILL: Thank you, Ms. Myers. Yes,
25 sure, Mr. Smith?

1 MEMBER SMITH: Ms. Myers, I have no qualms with
2 what you presented. I just have a question about the
3 decision about this being a use variance versus an area
4 variance.

5 Was that, the decision to go with a use variance
6 is because that was what the application was? It was for a
7 use variance? And that's the reason why the analysis was
8 done from the standpoint of it being a use variance?

9 MS. MYERS: This case was, it was referred to by
10 the Zoning Administrator's Office so we're relying on their
11 determination. And admittedly, their determination letter
12 doesn't say either way.

13 MEMBER SMITH: Right.

14 MS. MYERS: It's an area variance or a use
15 variance so I followed up with them. And they communicated
16 with me through emails that it's a use variance case. So we
17 wrote our report in response to that determination.

18 MEMBER SMITH: Okay. That was in writing that
19 they sent you?

20 MS. MYERS: Yes, in writing. They unfortunately
21 they did not update their referral letter to specify. But
22 I mean it does sort of make sense. It's a use, you know, so
23 it kind of, you know, understand why it's considered a use
24 variance.

25 But I realize that it would have been much more

1 helpful if they would have updated their referral letter.

2 MEMBER SMITH: Okay, thank you. That was the
3 clarity I needed. Still not sure that it, still not clear
4 that it's a use variance, but thank you for the clarity that
5 they at least on the record saying that they see it as a use
6 variance. Thank you.

7 CHAIRPERSON HILL: Okay, anyone else? Okay, --

8 VICE CHAIRPERSON JOHN: Just --

9 CHAIRPERSON HILL: Sure, go ahead, Vice Chair
10 John.

11 VICE CHAIRPERSON JOHN: Just to make things
12 difficult for you, Ms. Myers, why do you think it's a use
13 variance?

14 MS. MYERS: Use variance because it's not related
15 to one of the development standards so like what occupancy
16 or rear yard, you know, width or anything like that which are
17 typically where area variances related to.

18 So that's just my understanding, but I have not
19 talked extensively with the Zoning Administrator's office
20 either way on that particular issue.

21 VICE CHAIRPERSON JOHN: Okay, fair enough. Thank
22 you.

23 CHAIRPERSON HILL: Mr. Blake?

24 MEMBER BLAKE: Yes, Ms. Myers, do you have any
25 comment on the intent of that regulation?

1 MS. MYERS: It did look into this a little bit.
2 I was not around at the time this changed, but apparently it
3 changed back in 2016 and my understanding is that at the time
4 the community asked for it.

5 So it was part of the updates that were done at
6 the 2016 version of the regulations.

7 CHAIRPERSON HILL: Okay, Commissioner Putta, can
8 you hear me?

9 MR. PUTTA: How are you? Would you, I can get on
10 camera --

11 CHAIRPERSON HILL: That's all right, Commissioner.
12 That's all right.

13 MR. PUTTA: It's not allowing me to so, --

14 CHAIRPERSON HILL: That's all right.

15 MR. PUTTA: All right, cool.

16 CHAIRPERSON HILL: Would you mind just telling us
17 what happened at the ANC meeting?

18 MR. PUTTA: Yes.

19 CHAIRPERSON HILL: Or give your testimony.

20 MR. PUTTA: For sure, for sure. Thanks, it's good
21 to see you all again. I came before you maybe a little more
22 than a year ago. In ANC2E, if you -- just to remind you all,
23 we, you know, most of the individual property cases are with
24 the Old Georgetown Board, but my neighborhood, Berleith, is
25 not in Old Georgetown, so I get the BZA cases.

1 It's more and more of them it seems. And I don't
2 come before you and take up your time unless it's a, unless
3 I think that it's worth doing so. And I think so in this
4 case. The last time I came before you was another case where
5 I couldn't understand it.

6 I couldn't understand it and even the members of
7 this Board couldn't understand and you had to ask similarly
8 why was, what was the history here? Why was this strange
9 rule put in? And in that case it was for an accessory
10 dwelling unit in my zone.

11 You could only be on one floor and it had to be
12 the top floor. It couldn't be the ground floor where, you
13 know, someone with a knee injury or a disabled person
14 couldn't, you know, would have to climb stairs and they
15 needed a special, not an exception, but something else in
16 order to have a two-floor, a tiny 450, you know, square feet,
17 but on two floors.

18 And similarly, the answer came back after a break
19 where they were trying to find out. They said a community
20 requested it way back when it was formed. At that time,
21 there were objections to that ADU, but our ANC supported it
22 unanimously and you supported it at the time.

23 Once again, once again ANC supports this
24 unanimously, but in a difference from that case, is that this
25 one had no objection. No neighbors have objected. You know,

1 I can, the neighbors who would have, you know, asked for this
2 last time, they all knew that this was on our agenda, but no
3 one objected to it.

4 The immediate neighbor wrote a letter of support.
5 The other immediate neighbor is a landlord and doesn't care.
6 Seven letters of support. No objections. I don't, I usually
7 do rely on the Office of Planning as often do you as well.

8 They are smart, they are capable, and they do good
9 work for our city and I support their goals of more housing.
10 And they said that they usually do try to let people maximize
11 their enjoyment.

12 Here, it's, you know, I'm before you as a
13 community guy, as a Commissioner, not as a zoning expert.
14 It seems like they, the Office of Planning admits there's
15 really no harm that they can think of from this. DDOT has
16 no issue with it. They have no issue with it.

17 It's not out of character. There is precedent.
18 There are at least five other addresses that I could list to
19 you within one or two blocks where there's a roof deck on top
20 of a garage. And so the only real harm is to, you know, to
21 the rules which are very strange in this situation so I would
22 ask you to in this case support it.

23 I didn't understand why it was a variance at
24 first. Because we support so many accessory dwelling
25 buildings that are not just one floor, but two floor and all

1 this is a deck on top of the, on top of one floor.

2 It's not tall, it's not obtrusive. There are
3 several others like this already and I know the variances --
4 unfortunately, it's supposed to be a variance. Again, I'm
5 not the rules expert.

6 I wish it was a special exception and we could get
7 this through like we have with so many other special
8 exceptions including the one two years ago. This is a
9 variance. I guess technically and I'm not a lawyer.

10 Ms. Marie-Joelle Voil, she can't afford a lawyer.
11 She has a very small house, she has a renter in the basement.
12 She doesn't have the money. She barely had the money to get
13 all this together. And I feel for her.

14 I know that a variance, the standard is supposed
15 to be undue hardship. And I'm just here to tell you that's
16 in the, in my view, that's in the eye of beholder. That's
17 relative. What is undue hardship?

18 I'm sure there's technical definitions. I didn't
19 look up the lawyerly definitions of undue hardship, but in
20 my view, it is an undue hardship for Ms. Voil and she has to
21 get a variance first of all, not just a special exception,
22 a variance.

23 And so all the work she did, she wrote a Burden
24 of Proof document and submitted it back in September. She
25 went around and took pictures of all of the other five

1 houses. You can look at it. I believe it is Exhibit 8
2 possibly.

3 And if you could let her speak, she'll tell you
4 herself. She went around, took pictures of all of her
5 neighbors who have already done this. Not just in the
6 distant past, I mean you, there was one I'm sure one of them
7 was done recently.

8 It's very modern looking and I know that one. It
9 was, it was pretty recently. I don't know what year, but I
10 think it was in the last decade. And so it just seems like
11 an undue hardship to me. She has a tiny, tiny, back yard.

12 She doesn't have a place to even garden. She's
13 a wonderful elderly woman in our neighborhood. Let her have
14 her garden on top of her garage is what I'm here to tell you.
15 I think I might have had more to say, but I'll be happy to
16 answer any questions.

17 We voted for this unanimously and there was no
18 question about it from start to end.

19 CHAIRPERSON HILL: Thank you, Commissioner. Yes,
20 Commissioner, I know you're ANC, I know you guys, I know you.
21 And I know that you all do good work trying to understand the
22 regulations and I don't know what's going to happen here, but
23 what I'm saying is we also from the BZA perspective, don't
24 want to stop things from happening that sound good for an
25 idea.

1 It's just that the regulations for us tend to keep
2 us from being able to do things maybe that we want to do.
3 I don't know if that's going to, I'm just, I'm just
4 explaining like there was something that happened earlier
5 that is also kind of we're pushed up against regulations.
6 Mr. Blake, you had a question?

7 MEMBER BLAKE: For Ms. Myers if possible. Yes,
8 could you please just give me a quick glimpse of what is
9 matter of right and what might be special exception for this
10 accessory dwelling in this?

11 Just so that I can be clear on what the
12 alternative to this would be under lesser standard.

13 MS. MYERS: You mean in the accessory building
14 what would be matter of right? For the accessory building?

15 MEMBER BLAKE: Yes, what could be matter of right
16 or special exception in this spot? Different than what we're
17 talking about right now?

18 MS. MYERS: I mean, she currently would like to
19 use it as a garage. That is allowed. Storage, that's all
20 I can think of at the moment. But I think a garage is
21 primarily what she would like to use it for.

22 MEMBER BLAKE: Would she be allowed to have a
23 second story on it?

24 MS. MYERS: Yes, I'm not sure. I mean, accessory
25 buildings, usually you can go up to a second story, but I'm

1 not sure in this one --

2 MEMBER BLAKE: A special exception.

3 MS. MYERS: A special exception is what you're
4 saying? Then I guess as a special exception, I just don't
5 know off the top of my head. But I mean, in this specific
6 zone, it specifically calls out roof decks on accessory
7 buildings are prohibited.

8 MEMBER BLAKE: Okay, so Ms. Myers, I guess my
9 question is if you removed the roof deck from this structure,
10 would that be a matter of right or would it be special
11 exception?

12 MS. MYERS: If it had complied with the setback
13 requirements, then it would have been a matter of right. We
14 would never even have this case before us. The special
15 exception is more related to the existing building not being
16 in the required setbacks.

17 And so even though the applicant kind of looks at
18 this as replacing their existing building, the Zoning
19 Administrator's Office looks at this as a new building. And
20 it didn't, and the setbacks currently are non-conforming so
21 the special exceptions would allow for the new building to
22 be essentially in the same space as the existing building
23 which would allow it to continue serving as a garage.

24 MEMBER BLAKE: I was talking more about the
25 variance requirement. So it's --

1 MS. MYERS: The variance is -- that's just a roof
2 deck. If you were to remove the variance --

3 MEMBER BLAKE: Roof deck, remove the roof deck.

4 MS. MYERS: Yes.

5 MEMBER BLAKE: Off that exact structure. Is it
6 permissible by matter of right or would -- it would be
7 special exception because of the location. Right? But aside
8 from that, is there any other requirement that we'd have, any
9 other relief we require?

10 MS. MYERS: The very, the roof deck, there is no
11 matter of right for the roof deck. So once the, if the
12 variance relief were not granted, then this would just
13 strictly be I think what she would like to use it for would
14 be strictly a garage.

15 MEMBER BLAKE: But it would be the same
16 configuration say for the staircase and the platform above
17 the garage.

18 MS. MYERS: I believe so, but I mean, I think the
19 architect would probably have to weigh in on that. If you
20 were to remove the roof deck, would that change anything
21 else? I don't know.

22 MEMBER BLAKE: Okay, thank you.

23 CHAIRPERSON HILL: Can you hear me?

24 MR. RAMIREZ: Yes, I can hear you.

25 CHAIRPERSON HILL: If the roof deck isn't

1 approved, can this move forward with -- like how would you
2 alter the plans?

3 MR. RAMIREZ: We, well it's been, you know the way
4 it was designed was done with a flat roof with the idea of
5 building the, you know, we anticipated the roof decks so it's
6 already, the structural support's already in place.

7 So it would just be a matter of adding the
8 railing. In other words, yes. It could move forward. I
9 don't know.

10 CHAIRPERSON HILL: I'm asking a couple of
11 questions I guess.

12 MR. RAMIREZ: Okay.

13 CHAIRPERSON HILL: If you, if this didn't get, if
14 the roof deck did not get approved, would you change the
15 design?

16 MR. RAMIREZ: We could. But I don't see the need
17 for it.

18 CHAIRPERSON HILL: No, no, no, I'm not saying you
19 could. I'm just saying like maybe you would and I got the
20 architect actually here today with us, but like, you know,
21 would you make, you know, a triangle roof or would you do
22 something else?

23 MR. RAMIREZ: Oh.

24 CHAIRPERSON HILL: If you didn't get the roof
25 deck?

1 MR. RAMIREZ: Right. We would have to revisit the
2 roof design.

3 CHAIRPERSON HILL: So you might do something for
4 storage.

5 MR. RAMIREZ: If Ms. Marie felt like she wanted
6 to change the look of it, the --

7 CHAIRPERSON HILL: Right.

8 COMMISSIONER IMAMURA: Mr. Ramirez?

9 CHAIRPERSON HILL: Go ahead Dr. Imamura.

10 COMMISSIONER IMAMURA: Sorry, Mr. Chairman. I
11 just couldn't help myself. Mr. Ramirez, why would you want
12 to, I mean essentially what it is just removing the
13 staircase.

14 So I'm not sure why you'd want to put more time
15 and money into redesigning the project.

16 MR. RAMIREZ: I guess I'm not, I'm sorry, I
17 didn't, did not, I didn't answer the question?

18 CHAIRPERSON HILL: That's all right, Mr. Ramirez.
19 I think I'm the one confusing the question limit. Dr.
20 Imamura, I was asking if the roof that were gone if you
21 would, you know, if you would do something different with the
22 --

23 COMMISSIONER IMAMURA: If you would, right, Mr.
24 Chairman. I mean, that would an aesthetic preference, but
25 in order to keep costs down, I mean all it is as just really

1 the removal of the railings and the staircase that's leading
2 to the roof deck.

3 CHAIRPERSON HILL: Right.

4 COMMISSIONER IMAMURA: It's pretty simple.

5 CHAIRPERSON HILL: Ms. Myers, can you hear me
6 again? I'm sorry, now I'm confused. So there's an accessory
7 building that is a new accessory building. Do you know if
8 they could put a second story on there?

9 MS. MYERS: I just looked it up. I mean, the regs
10 in D50, 5,002 so 5-0-0-2, says that you can do an accessory
11 building up to 22 feet. So it could be a second level. And
12 my understanding is that would be a matter of right.

13 MR. PUTTA: No.

14 MS. MYERS: Oh, no?

15 MR. PUTTA: It's not.

16 MS. MYERS: Okay. Well I --

17 MR. PUTTA: Our zone is just so restrictive.

18 MS. MYERS: Oh, okay. I will concede on that.
19 This zone is not the typical R zone because they do have some
20 more special combined as we know with the roof deck so I just
21 hadn't noted --

22 CHAIRPERSON HILL: That's all right. So it's
23 possible that they could do a second story with a special
24 exception?

25 MS. MYERS: That's what I'm hearing.

1 CHAIRPERSON HILL: Commissioner Putta, that's what
2 you're saying?

3 MR. PUTTA: Yes, that's what's required, but
4 that's not what she wants to do. She doesn't have the money
5 --

6 (Simultaneous speaking.)

7 CHAIRPERSON HILL: -- Commissioner.

8 MR. RAMIREZ: I'm sorry. Did you say something?

9 CHAIRPERSON HILL: No, one second, Mr. Ramirez.
10 I'm just making a point.

11 MR. RAMIREZ: Yes.

12 CHAIRPERSON HILL: Commissioner Putta, I --

13 MR. PUTTA: She could. She could with a special
14 exception.

15 CHAIRPERSON HILL: Got you. Commissioner Putta,
16 like we've been here again with your neighborhood and I get
17 it. Like I don't remember, I wasn't around, well I was
18 around when --

19 MR. PUTTA: Yes.

20 CHAIRPERSON HILL: -- the regulations were
21 rewritten. But I wasn't involved in them and I guess you
22 guys -- I don't know, I mean, you've been a Commissioner for
23 a long time. Like it sounds as though you all came down and
24 lobbied the Commission for --

25 MR. PUTTA: No.

1 CHAIRPERSON HILL: -- certain things. No?

2 MR. PUTTA: Not our ANC. Not our ANC. It was a
3 couple of loud people possibly.

4 CHAIRPERSON HILL: Okay, well that's too bad that
5 that's how that might have happened because it's in the
6 regulations now that you can't have the roof deck on the
7 garage.

8 MR. PUTTA: Right.

9 CHAIRPERSON HILL: And I can see why people would
10 have argued that meaning, you know, we have people argue all
11 the time that people now will look down into their yards,
12 they'll be able to see into their windows and during the
13 regulations or when they were rewritten, perhaps your
14 neighborhood just was very vocal or a couple of people were
15 vocal. You know?

16 And so that has, that is what is changing this
17 into, according to the Zoning Administrator, a use variance.
18 And I know we've had discussions about variances before and
19 use variances and how high a bar that is for us to get over.

20 MR. PUTTA: Right. Just a, can I just quickly
21 ask? I was just curious. Even so, you are technically
22 legally allowed, you -- the Board, are allowed to approve
23 this if you wanted to?

24 CHAIRPERSON HILL: It's not so much if we wanted
25 to, it's --

1 MR. PUTTA: Right, if you -- oh, okay.

2 CHAIRPERSON HILL: If we believe that the, oops,
3 if we believe that the applicant --

4 MR. PUTTA: Right.

5 CHAIRPERSON HILL: -- is meeting the criteria of
6 the use variance and I don't know again if you were here
7 earlier. We were having a discussion about a use variance.
8 And it was a very difficult discussion. And so --

9 MR. PUTTA: I'm just wondering, well I'm just
10 wondering why this was, why this was on the agenda if it's
11 not legally allowed or I don't know what is required for this
12 use variance. I would like to know.

13 CHAIRPERSON HILL: It is, it is legally allowed
14 to ask for the use variance. And so then they're asking for
15 the use variance and now we have to determine whether or not
16 they meet the criteria for us to grant the use variance.

17 MR. PUTTA: Right. Undue hardship basically.
18 Right?

19 CHAIRPERSON HILL: Well the three-prong test. I
20 mean undue hardship is, you know, what's the exceptional
21 situation that's leading to a practical difficulty that also
22 isn't going to harm the zone plan.

23 MR. PUTTA: Right.

24 CHAIRPERSON HILL: And the Office of Planning is
25 actually saying that the zone plan is going to be harmed.

1 You know? Which is something that they usually, you know,
2 the third-prong is usually the easiest one.

3 MR. PUTTA: Yes, I see.

4 CHAIRPERSON HILL: And so --

5 MR. PUTTA: I see, I see.

6 CHAIRPERSON HILL: So, Commissioner, give me one
7 second now. So I thought I said, oh, so Mr. Ramirez, you had
8 a question?

9 MR. RAMIREZ: Yes, I just find it interesting that
10 the Office of Planning or variance per se, you know, it
11 sounds like a two-story accessory building would be favorable
12 which it's taller, it's more obstructive, you know, in terms
13 of --

14 MR. PUTTA: Right.

15 MR. RAMIREZ: -- blocking an area, daylight to the
16 neighbors, et cetera. As opposed to what Marie is trying to
17 do which is basically do a roof deck over her --

18 CHAIRPERSON HILL: Right. She has, we can, I'll
19 just again refer you and know Commissioner Putta, to the
20 Office of Planning's report.

21 MR. PUTTA: Right.

22 CHAIRPERSON HILL: And the Office of Planning
23 points out the three criteria that the Board looks at and,
24 Commissioner, you know that we look at that for area
25 variances, we look at that for use variances.

1 MR. PUTTA: Yes.

2 CHAIRPERSON HILL: I'm going to just move on real
3 quick here. Mr. Young, is there anyone here wishing to
4 testify?

5 (No audible response.)

6 CHAIRPERSON HILL: Okay. Does the Board have any
7 final questions of anybody?

8 (No audible response.)

9 CHAIRPERSON HILL: Okay.

10 MS. VOIL: Sorry, could I say something?

11 CHAIRPERSON HILL: Sure, of course.

12 MS. VOIL: Oh, okay. I just want to tell you that
13 apparently according under the 1105.4 it's two stories
14 allowed in R3GG. So that my zoning so and I saw them in my
15 neighborhood also.

16 So I mean, so I was, you know, I was thinking if
17 they'll allow another floor on the top of my accessory
18 building, you know, why I can't have my little deck?

19 CHAIRPERSON HILL: How do you say your name, Voil?

20 MS. VOIL: What is it, why?

21 CHAIRPERSON HILL: Viola.

22 MS. VOIL: Voil.

23 MR. RAMIREZ: Voil, Voil, Voil.

24 MS. VOIL: Yes. And if I could say something too
25 that I bought my house in 1986. And so it has been, you

1 know, after I retired. When I was working at the French
2 Embassy then in 1992 they shipped me back to Pakistan and
3 then I've been all over the world.

4 And then my always my dream for me was to come
5 back to my house and to fix it up for my old age. So I made
6 the paper, I finally arrive in America, and then, you know,
7 it's really important for me to have this little deck.

8 Because, you know, Ms. Myer I don't think that,
9 I don't know if she saw the plan, but there is no other room
10 for me to do anything to have any plan because the brick it's
11 a pass way to go down --

12 MR. PUTTA: That's right.

13 CHAIRPERSON HILL: Okay, Ms., how do you say your
14 last name?

15 MS. VOIL: -- to the apartment so there is no
16 other way for me and if, you know, I can't go to the park,
17 I mean for me to be really easy to have something like that
18 in my back yard, it will be safer, it will be peaceful and
19 I'm sure, you know, like Mr. Putta say, it's wonderful for
20 the neighborhood to have some flowers, some plants.

21 So you know, I really, it was my dream and I have,
22 you know, I don't think that it's fair to not allow me to do
23 it. And so I --

24 CHAIRPERSON HILL: It's not --

25 (Simultaneous speaking.)

1 MS. VOIL: -- can't see other --

2 CHAIRPERSON HILL: Ms. Voil, how do you say it?
3 I want to make sure I'm pronouncing it.

4 MS. VOIL: It's okay. Voil.

5 CHAIRPERSON HILL: Voil.

6 (Simultaneous speaking.)

7 MS. VOIL: My first name is Marie-Joelle and my
8 last name is Voil.

9 CHAIRPERSON HILL: Ms. Voil, it's not an issue
10 that we don't want you to have the deck. It has nothing to
11 do with whether or not we want or don't want you to have the
12 deck. The deck seems perfectly lovely to me and everything
13 that you said sounds perfectly lovely to me.

14 We're not allowed to grant something if we don't
15 think that it meets the criteria. And unfortunately it's in
16 the regulations. It says decks on roofs are not to be
17 allowed.

18 MS. VOIL: Yes, but then you could build another
19 story so could I have another story instead of my deck?

20 CHAIRPERSON HILL: That again, that again, that
21 again I guess you can talk with the Office of Planning and
22 I can, we can see what the Office of Planning -- maybe you
23 can work with the Office of Planning. I don't really know
24 enough about that particular zone now as to whether or not
25 you would then have to go through a special exception and get

1 all the architectural drawings for the second story.

2 And I think that, you know, that is something that
3 I don't know enough about off the top of my head right now
4 to say one way or the other. Mr. Blake, had your hand up?

5 MEMBER BLAKE: I do see the reading at D1105.4
6 that she could do some other things and I think it would be
7 helpful just to clarify first which another issue which
8 concerns me, is this the use variance or an area variance?

9 I know the Office of Planning had said that it is
10 a, that they cooperated with the, you know, Zoning
11 Administrator that it's a use variance, but it seems to me
12 we should clarify whether it's an area variance or it's a use
13 variance. It's a lesser standard.

14 Still may not make move, but it definitely I think
15 important to determine whether it is a use or an area
16 variance because it seems more like an area variance to me
17 than a use variance in the sense that all the things that can
18 be done, the actual building itself can exist.

19 It can exist with everything except this deck
20 which the deck is not a use, the deck is a component of the
21 building. But I understand that the stipulation, I just want
22 to make sure we're clear, as to whether it's a use variance
23 or an area variance.

24 CHAIRPERSON HILL: Now, Mr. Blake, where was all
25 this great arguments when I needed it earlier? You know,

1 these are lovely, you know, particular, I need, yes, so okay.
2 So I think let's go ahead and, okay, Mr. Smith, before you
3 move on, Mr. Smith, I was going to say I think we're going
4 to ask, we're going to ask for clarification from the Zoning
5 Administrator if this is a use variance or an area variance.

6 Okay? And that means we can come back. I don't
7 know who we have to ask to get that. Right? And then, if
8 perhaps -- oh, go ahead Mr. Smith.

9 MEMBER SMITH: Well, I'll tell you we have the
10 clarification. I think Ms. Myers said that in an email she
11 received an email from the Zoning Administrator or her office
12 stating that this is a use variance.

13 So I think it's on the record that the Zoning
14 Administrator considers it a use variance. I disagree. I
15 do believe, I believe it's an area variance. Because a roof
16 deck is not a use, it is an accessory structure related to
17 a matter of right use.

18 So I think personally it's an area variance and
19 we can make a decision now. We're vested with the power to
20 make the decision of whether it's an area variance of use
21 variance or not.

22 So I think amongst the Board, I think we can make
23 that determination without additional clarification from the
24 Zoning Administrator because we have it.

25 CHAIRPERSON HILL: Is that correct, OZLD?

1 (No audible response.)

2 CHAIRPERSON HILL: Okay, so if the Board
3 determines that this is an area variance, this is the first
4 I've done this, then we would then request the Office of
5 Planning to review this as an area variance meaning --

6 MEMBER BLAKE: Correct.

7 CHAIRPERSON HILL: -- that the difficulty test
8 will be applied. Ms. Myers, do you know how long that might
9 take for the Office of Planning? Oh, sorry, hold on, hold
10 on. I got Ms. Johns' hand up.

11 VICE CHAIRPERSON JOHNS: And we still have to find
12 that there's an exceptional condition.

13 CHAIRPERSON HILL: Yes, I don't know. I mean, I'm
14 just --

15 VICE CHAIRPERSON JOHNS: Well --

16 CHAIRPERSON HILL: -- I'm just moving along with
17 the steps here.

18 VICE CHAIRPERSON JOHNS: -- well, you know, we
19 still have to have an exceptional condition. And so I'll
20 just end there.

21 CHAIRPERSON HILL: Okay. So let me, there's a
22 variety of things we can do. We can also just vote. Right?
23 So I would suggest perhaps we ask the Office of Planning to
24 look at this as an area variance.

25 And then also, if they would be willing to speak

1 to the applicant because the applicant is not represented by
2 counsel, if there are other possible things that they might
3 be able to do with that second story, insofar as -- and
4 again, I apologize Ms. Myers to throw this on you.

5 But I don't know what is and isn't allowed in
6 terms of a second story on an accessory, you know, building
7 there. Handling in that ANC or in that zone, they might have
8 to go through a special exception for that.

9 So perhaps the Office of Planning could at least
10 let the applicant know what the options are and then given
11 the fact that the ANC has already approved a roof deck, and
12 seems to be in favor of a second story of some kind, perhaps
13 Commissioner Putta, you would know whether or not your ANC
14 in general seems to be in favor of second stories on garages.
15 You don't know?

16 MR. PUTTA: Yes, no, of course I know. That's
17 what all the cases are Chair Hill. And I don't come before
18 you for most of them, but there was the one last year when
19 the person wanted to live on both floors because he had a
20 parking space and didn't need a garage on the first floor.

21 And that needed even more than a special
22 exception. In any case, it's a special exception. Yes, we
23 would approve it. My neighbor, Ms. Voil, doesn't have the
24 money for a ADU. She just wants a garden and she didn't have
25 any other place to put it so it's unfortunate. But I hope

1 you'll consider it.

2 CHAIRPERSON HILL: Commissioner, I know you. I'm
3 also trying to consider. We're moving along here. Right?
4 And so go ahead, Dr. Imamura. Give me a second, Ms. Voil.

5 COMMISSIONER IMAMURA: All right, Chair Hill.
6 This is a great example of the Board I think for the public
7 anyway with that we try to get to yes. We find creative ways
8 to do that.

9 I'm curious, I certainly understand Commissioner
10 Putta's comment about Ms. Voil's economic circumstance and
11 the additional time, money and effort to, you know, for the
12 second floor. You know, as a special exception or whatever
13 it might be.

14 I would only ask and you can see, Commissioner
15 Putta, that this, you know, the Board's trying to move in a
16 direction that could potentially support the applicant here
17 as Vice Chair John mentioned that there's still this
18 exceptional circumstance or exceptional condition.

19 I would ask I guess, I don't -- I'm curious. Does
20 that second story structure have to be enclosed?

21 MR. PUTTA: Enclosed, oh right.

22 COMMISSIONER IMAMURA: Or can that be an open air
23 structure?

24 MR. PUTTA: Yes, I mean, it's an EDU. Right?
25 Well, sorry. Whenever it comes up, it's an EDU so it's a

1 dwelling unit so that would, I meant that would seem to mean
2 that it has to be enclosed and livable, but I mean --

3 COMMISSIONER IMAMURA: Does it --

4 MR. PUTTA: -- it can be used for other things.

5 (Simultaneous speaking.)

6 COMMISSIONER IMAMURA: -- really need four
7 enclosed walls? It's architecturally speaking, it could be
8 framed. Right? With a trellis of some kind?

9 MR. PUTTA: Yes.

10 COMMISSIONER IMAMURA: Right? To have sort of the
11 volumetric space of a second story --

12 MR. PUTTA: Yes.

13 COMMISSIONER IMAMURA: -- but, I guess my point
14 here is --

15 MR. PUTTA: Yes. Get it to us as a special
16 exception.

17 COMMISSIONER IMAMURA: -- it would be, it wouldn't
18 take an incredible amount of additional time by the architect
19 if it were an open air structure as a second story. So --.

20 MR. PUTTA: Yes. Yes, I was wondering the same
21 thing. If it was a special exception to a second floor, you
22 know, like nobody would object. Nobody would --

23 (Simultaneous speaking.)

24 MR. PUTTA: -- it would still require --

25 CHAIRPERSON HILL: I have to interrupt. I have

1 to interrupt. So we have to move on. I know that some of
2 our Board members have some issues that we have to kind of
3 get to. Ms. Voil, you had your hand up?

4 MS. VOIL: Yes, I would like, you know, because
5 I'm not American, you know. My English is not very well, but
6 you know, I read the 1105.4 and they say that you don't need
7 an exemption to build a second story.

8 CHAIRPERSON HILL: No, you do.

9 MS. VOIL: And if --

10 (Simultaneous speaking.)

11 MS. VOIL: -- then somebody with American could
12 read it.

13 CHAIRPERSON HILL: One second.

14 MS. MYERS: I think the confusion is that --

15 MR. PUTTA: Wrong zone.

16 MS. MYERS: We're not looking at an accessory
17 dwelling unit. If this were an accessory dwelling unit, then
18 it would be a special exception.

19 MS. VOIL: Yes, it is an accessory, on the eleven
20 --

21 MR. PUTTA: I see.

22 MS. MYERS: This is not an accessory dwelling
23 unit. This is just a garage so she --

24 MR. PUTTA: I see.

25 MS. MYERS: -- could do the second level.

1 MR. PUTTA: Oh, as long as it's not for living,
2 she can do second level. Got it, got it, got it.

3 MR. RAMIREZ: Real quick, it's interesting that
4 you guys are supportive of an open structure because that's
5 something that --

6 MEMBER SMITH: Let me, can we tone it down just
7 because it is coming to a point that it sounds like it's a
8 deliberation. It's not a deliberation. The reason why I
9 brought up an area variance is it has nothing to do with
10 trying to move to yes.

11 It is more of a procedural discussion of whether
12 this falls under use variance or an area variance. I do
13 agree with Ms. John, I don't think that we need to go into
14 a back and forth discussion of whether you're putting a roof
15 or something over top of that that you know, whatever, okay
16 Chairman Hill.

17 CHAIRPERSON HILL: I kind of lost control here for
18 a little while.

19 MEMBER SMITH: Yes.

20 CHAIRPERSON HILL: This is what we're going to try
21 to do. Okay? Again, and Dr. Imamura, I appreciate your
22 comment. And again, for the record, the Board is not always
23 trying to get to yes. The Board is here to make sure that
24 the regulations are upheld.

25 And that is what we're here for. And if you guys,

1 that's all, that's the only reason why we're here. And so
2 per these regulations, the way that this application is
3 before us, I believe that the Office of Planning is looking
4 at their analysis correctly.

5 So therefore, the roof deck would probably get
6 denied. So I'm curious to go back. The Board has now
7 determined that it could possibly be an area variance. Oh,
8 I'm sorry, we've now determined that it is an area variance.

9 I don't think that's anything we have to vote on.
10 Is that correct, OZLD?

11 MS. MYERS: Correct.

12 CHAIRPERSON HILL: Okay. So now we're going to
13 ask the Office of Planning to review this as an area
14 variance. It still might be no, because there might not be
15 any extraordinary or exceptional situation. Okay?

16 Which is still the first prong. So you still
17 might be in a no. Okay? Which is fine, that's just the way
18 the regulations are. However, if Ms. Voil, if you would meet
19 or if Ms. Myers, if you would be willing to have a
20 conversation with Ms. Voil because she doesn't have
21 representation, just to kind of speak to the regulations and
22 what could possibly be some options, that would be helpful.
23 Is that something that would be acceptable, Ms. Myers?

24 MS. MYERS: I'm happy to talk further with her.

25 CHAIRPERSON HILL: So Ms. Myers, Ms. Voil, I'm

1 sorry, Ms. Voil, Ms. Myers is going to reach out to you.

2 MS. VOIL: Okay, thank you.

3 CHAIRPERSON HILL: All right, so that being the
4 case, I'm going to hold this in, not abeyance. I don't know
5 what we're going to do. We're going to now wait for the
6 Office of Planning to give us a new report on an area
7 variance.

8 And then we'll have an opportunity to speak with
9 the applicant where something different might happen. And
10 so I'm going to put this on, Mr. Moy, what is the 27th
11 looking like for us?

12 MS. VOIL: Sorry, I won't be here the 27th.

13 CHAIRPERSON HILL: Okay.

14 MS. VOIL: I be leaving from the 20th to the 5th
15 of April.

16 MR. PUTTA: You could do it virtually though.
17 Right?

18 MS. VOIL: Yes.

19 CHAIRPERSON HILL: Commissioner, let me move on
20 here. Okay, right. So then, okay, all right, Ms. Voil, are
21 you going to be, you think you're going to be able to do this
22 virtually from wherever you are on the 27th?

23 MS. VOIL: Oh, okay, I will try. I will try.

24 CHAIRPERSON HILL: Well, okay, if you can't I
25 guess then you can ask for a postponement. So let's try to

1 get, actually, Mr. Moy what does the 27th look for us, look
2 like for us?

3 MR. MOY: On the 27th, your docket, on your docket
4 you have six cases and one appeal.

5 CHAIRPERSON HILL: Oh, dear God. Okay. Well
6 that's not good for us. So when are you back, Ms. Voil?

7 MS. VOIL: After the 5th of April.

8 CHAIRPERSON HILL: After the 5th of April. So
9 let's, what about the 10th of April, Mr. Moy?

10 MR. MOY: 10th of April, well, that's not any
11 better because right now you have nine cases on the 10th of
12 April.

13 CHAIRPERSON HILL: I'll take the 10th case over
14 six and appeal. Okay?

15 MS. VOIL: Okay.

16 CHAIRPERSON HILL: Unless, Mr. Moy, you got
17 another alternative?

18 MR. MOY: Well, on the 17th of April you have only
19 four cases and one appeal.

20 CHAIRPERSON HILL: Cases and appeal, this is all
21 confusing. The appeal could be --

22 MR. MOY: You don't like that one?

23 CHAIRPERSON HILL: No, that's -- I don't like any
24 of them so far. So, let's go with the 7th, Ms. Voil?

25 MS. VOIL: Yes.

1 CHAIRPERSON HILL: All right, would you be able
2 the 17th of April?

3 MS. VOIL: Yes.

4 CHAIRPERSON HILL: Okay, so all right. So then,
5 if you are available the 17th of April, then how about we get
6 a report from the Office of Planning, by the 10th of April.

7 MS. VOIL: Okay.

8 CHAIRPERSON HILL: Is that okay, Ms. Myers? And
9 then Ms. Voil, like Ms. Myers, you're going to reach out to
10 Ms. Voil in the next couple of days?

11 MS. MYERS: The architect as well. Right?
12 Because he's been my primary communication with her, yes.
13 But yes, I will reach out to the applicant team.

14 CHAIRPERSON HILL: Okay, great. So, Mr. Ramirez,
15 they're going to be reaching out to you and what again,
16 they're looking at the Office of Planning has now been asked
17 to look at this as an area variance.

18 MR. RAMIREZ: I understand.

19 CHAIRPERSON HILL: Meaning the roof deck. Okay?
20 And the Office of Planning has been asked to speak with you
21 about possible alternatives that would be either a special
22 exception or matter of right options for Ms. Voil. Do you
23 understand?

24 MR. RAMIREZ: Yes.

25 CHAIRPERSON HILL: And I would find, and I'll be

1 thankful that the Office of Planning is speaking to you.

2 MR. RAMIREZ: Okay.

3 (Simultaneous speaking.)

4 CHAIRPERSON HILL: So and I mean it in a good way.
5 I mean it in a good way. I mean it in a good way meaning
6 they're trying to help. Okay? This is not an adversarial
7 conversation. Okay?

8 MR. RAMIREZ: Okay. Thank you.

9 CHAIRPERSON HILL: All right, then we will see you
10 back here on April 17th.

11 MS. VOIL: Okay.

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: If, just listening to your conversation
14 with the submissions, would you also open up the opportunity
15 for depending on OP's submission working with the applicant
16 with the applicant adding new information into the record
17 that may be depending on the alternatives and maybe possibly
18 revising her burden of proof?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: Because we were talking about the three-
21 prong test.

22 CHAIRPERSON HILL: Yes. So then, you, Mr.
23 Ramirez, will have to after speaking with the Office of
24 Planning, determine what is the next step forward and then
25 make your argument for that step.

1 MR. RAMIREZ: Okay.

2 CHAIRPERSON HILL: Okay? All right. That still
3 puts me, Mr. Moy, at getting reports from the Office of
4 Planning by the 10th. Correct?

5 MR. MOY: Correct.

6 CHAIRPERSON HILL: So are you looking for
7 additional submissions of some point, is that why you're
8 asking?

9 MR. MOY: Well it would be, it would be the one
10 that I just suggested because depending on the findings with
11 OP and the applicant, she may, the applicant may need to do
12 more.

13 CHAIRPERSON HILL: So you might have to give us
14 information by April 3rd, Mr. Moy.

15 MR. MOY: That could work.

16 CHAIRPERSON HILL: Okay, so Mr. Ramirez, you talk
17 with the Office of Planning. Ms. Voil, you talk with the
18 Office of Planning and see what your next decision is. You
19 can leave it the way it is, the Office of Planning is going
20 to make their analysis based on what the Board has all just
21 asked for which is an area variance for a roof deck.

22 I'm sorry for an area variance for the plans that
23 you have put forward. I still don't know whether you're
24 making it. Apparently, you know, some of my fellow Board
25 Members have pointed out that the first prong it's there's

1 probably nothing necessarily extraordinary or exceptional
2 with your situation.

3 But maybe the Office of Planning will have a
4 different idea. However, it only needs to be a practical
5 difficulty now which is a lower standard. However, if you,
6 Mr. Ramirez, decide that things change and you need to submit
7 new information to us, please submit it to us by April 3rd,
8 including an argument for the area variance.

9 MR. RAMIREZ: Okay, but so earlier you stated that
10 you wanted a response from the Office of Planning by April
11 10th.

12 CHAIRPERSON HILL: So what's going to happen is
13 you're going to speak with the Office of Planning. Okay?
14 If you decide to do nothing and stick with the area variance,
15 you will have to submit something to us that argues for an
16 area variance. It won't be terribly difficult.

17 It's not different really from what you've already
18 put forward. Just say that now you're arguing an area
19 variance. Okay?

20 MR. RAMIREZ: All right.

21 CHAIRPERSON HILL: Submit that by April 3rd.
22 Okay? And any other possible alternatives. I got you Mr.
23 Blake. And any other possible alternatives, you don't, I
24 don't know what's going to happen in your discussions.

25 You might have some different idea and by April

1 3rd we'll need to know it because then the Office of Planning
2 is going to tell us what they think of your submissions by
3 April 10th. Okay?

4 MR. RAMIREZ: Got it.

5 CHAIRPERSON HILL: Which will then bring us back
6 here for a hearing, a continued hearing, on April 17th.
7 Okay? Mr. Blake, you had your hand up?

8 MEMBER BLAKE: Yes, there was some questions about
9 what the actual special exception relief being requested was.
10 Well we should clarify that in the application as well I
11 think.

12 CHAIRPERSON HILL: Okay, I'm confused. What was
13 the special exception questions?

14 MEMBER SMITH: We are set back. I think Mr. Blake
15 is referencing.

16 CHAIRPERSON HILL: Whether or not that was even
17 needed?

18 MEMBER SMITH: That's correct.

19 CHAIRPERSON HILL: Okay. So Ms. Myers, I guess
20 in your report if you can clarify on April 10th whether or
21 not that rear yard requirement is needed or not, special
22 exception.

23 MS. MYERS: To reach out to the Zoning
24 Administrator's Office to see if they can submit an updated
25 or if they would like to revise their -- okay, then I will

1 do that.

2 CHAIRPERSON HILL: Thank you. For the record, I
3 had my thumbs up. Okay. All right, are we all good? Okay.
4 We will see you all on April 17th. Have a nice trip, Ms.
5 Voil.

6 MS. VOIL: Okay, thank you.

7 CHAIRPERSON HILL: Okay, bye-bye. Bye
8 Commissioner Putta.

9 MS. VOIL: Bye-bye.

10 MR. PUTTA: Take care.

11 CHAIRPERSON HILL: Bye-bye.

12 MR. RAMIREZ: Thanks.

13 CHAIRPERSON HILL: Okay, you're welcome. Bye-bye.
14 Give me a second. Go ahead and call the next one, Mr. Moy.

15 VICE CHAIRPERSON JOHN: I'm sorry, Mr. Chairman,
16 I have to step away for a few minutes.

17 CHAIRPERSON HILL: Yes, sure.

18 VICE CHAIRPERSON JOHN: So I won't be on this
19 case. Thank you.

20 CHAIRPERSON HILL: Yes, thank you.

21 MR. MOY: Okay, so the next case is Application
22 No. 21060 of Delafield, LLC, self-certified application
23 pursuant to Subtitle X, Section 901.2 for a special exception
24 under Subtitle U, Section 421 to allow a new residential
25 development.

1 I believe it's a six-unit apartment house probably
2 located in the RA1 zone at 333 Delafield Place Northwest
3 Square 3304 Lot 79 and CN and well who you have before you,
4 Mr. Chairman and the Board is the applicant's team. Thank
5 you.

6 CHAIRPERSON HILL: Can you tell me the number
7 again, Mr. Moy?

8 MR. MOY: 21060.

9 CHAIRPERSON HILL: Okay, if the applicant can hear
10 me, if they could please introduce themselves for the record.

11 MR. WILLIAMS: Hi members of the BZA. This is
12 Zach Williams, attorney representing the applicant.

13 CHAIRPERSON HILL: Mr. Williams, have you been
14 watching today?

15 MR. WILLIAMS: I have.

16 CHAIRPERSON HILL: I hope you have as more
17 smoother case than we've had today, Mr. Williams.

18 MR. WILLIAMS: I hope so too.

19 CHAIRPERSON HILL: Well we both are hoping for the
20 same thing, Mr. Williams.

21 MR. WILLIAMS: Hope to make this one quick for you
22 all.

23 CHAIRPERSON HILL: You can go ahead and tell us
24 why you believe your applicant, your client is meeting the
25 relief, meeting the criteria for us to grant the relief

1 requested. I'm going to put 15 minutes on the clock so that
2 I know where we are and you can begin whenever you like.

3 MR. WILLIAMS: Thank you, sir. I do have a
4 presentation. It's brief and I'll allow Mr. Young to pull
5 that up. Great, thank you so much. Members of the Board
6 Zoning Adjustment, with me today are the owners of the
7 project Vic Narula and Chirag Patel as well as our architect
8 Dave Bloom who will all be available for questions at the
9 conclusion of the presentation.

10 This is a case at 333 Delafield Place Northwest.
11 I am Zach Williams as I mentioned. I am with the firm of
12 Venable and representing the applicant today. Next slide
13 please. The first slide shows the zoning map with the
14 property highlighted in green.

15 As you can see, this block of Delafield Place
16 Northwest is shown to the RA1 zone and comprised mainly of
17 existing apartment houses. Next slide please. Going down
18 to the lot that is at issue today, 333 Delafield Place, this
19 is a single lot with a little bit over 3,000 square feet of
20 land area.

21 You can see the survey here on this slide of the
22 existing building on the lot. As I mentioned, it's zoned
23 RA1. At this time, there's a two-story apartment house on
24 the lot that has four units.

25 The floor print that you see here on the survey

1 is not going to be changing this application. All the work
2 that's proposed is within the existing building. Next slide
3 please. Here are two photographs of the property.

4 On the left, you can see the property from the
5 front looking at the property from Delafield Place Northwest,
6 the road and in the rear there's an alley in the rear and
7 you're looking at the rear of the property there of 333
8 Delafield Place. Next slide please.

9 The proposed project is fairly straightforward.
10 It's to add two units to the cellar of this existing
11 apartment house to bring it up to six units total. There
12 will be no exterior changes to the structure except that we
13 will be adding a parking pad with three parking spaces at the
14 rear along with the fence and the screening that's required
15 for that area. Next slide please.

16 The relief requested is special exception to add
17 two units to an existing four-unit apartment house in the RA1
18 zone. All of the work is by right, permitted without any
19 further zoning relief. Next slide please.

20 Walking through the special exception standards,
21 first the relief must be in harmony with the general purpose
22 and intent of the zoning regulations. Here the RA1 zone
23 allows for low to moderate density development and we will
24 be adding just two units to this existing four-unit apartment
25 house.

1 So we'll be in harmony with the purpose and intent
2 of the RA1 zone. The project, as I mentioned, is going to
3 meet all development standards in the RA1 zone. Will not
4 make any additional changes to the exterior of the building
5 except for and except for lot occupancy and density which are
6 currently not in conformance. Those will not be changing.

7 Those have been there since the house was first
8 built. The neighborhood in this block as I mentioned, has
9 apartment houses that actually run along both sides. So this
10 particular project is in harmony with the existing buildings
11 on the street.

12 And actually here the case just after this case,
13 another apartment house on this exact same block that I
14 believe has 20 or so units. So this one is obviously a lot
15 less than that, but that's an existing project already
16 existing on the street. Next slide.

17 Finally, the relief is not going to adversely
18 affect the neighboring properties here. We typically think
19 about light, air and privacy. We're not going to change the
20 footprint here so there should be no impacts in that aspect
21 of the project.

22 We will be adding three parking spaces however.
23 And that will mitigate the additional two units that we're
24 proposing. Next slide. There's also some good precedent
25 here. Actually the house just next door adjacent to this one

1 received BZA relief just last year, just a year ago to do the
2 exact same thing to add two additional units to a four-unit
3 apartment house.

4 The difference there is they actually were not
5 adding any parking spots and we are adding parking spots as
6 I already mentioned. Next slide. Finally, we do have ANC
7 and OP support in the record. ANC40 voted to support the
8 application.

9 And Office of Planning recommends support with
10 conditions that are acceptable to the applicant. And that
11 concludes my presentation. Thank you.

12 CHAIRPERSON HILL: Thank you, Mr. Williams. All
13 right, could I hear from the Office of Planning?

14 MR. JURKOVIC: Good afternoon, Chairman and
15 Members of the Board. This is Michael Jurkovic, Development
16 Review Specialist with the Office of Planning. OP recommends
17 approval with conditions of the special exception for
18 expansion of the apartment house use relief as requested by
19 the applicant.

20 And stands on the record of the report. I am here
21 to answer any questions. Thank you.

22 CHAIRPERSON HILL: Okay, does the Board have any
23 questions for the applicant or the Office of Planning? Go
24 ahead, Mr. Blake.

25 MEMBER BLAKE: There's a second condition from the

1 Office of Planning which requests that the rear yard area is
2 not dedicated to parking, pedestrian access or trash and
3 recycling storage should remain grass or other soft
4 landscaping. Is that reflected in the existing plans?

5 MR. JURKOVIC: From the most recent plans that I
6 reviewed that were in the record, the rear of the property
7 was just generally marked to be asphalt. And as the
8 applicant's represented it was stated that the applicant is
9 in acceptance of the recommended conditions.

10 So I would, like I said, the condition is based
11 on the most recent site plan submitted to the record and with
12 the purpose of this review to include site plan review for
13 the purposes of landscaping and other items, we would
14 recommend that as much of the areas in the back stay, you
15 know, even landscaped or grass as feasible.

16 MEMBER BLAKE: Yes, I think the question was
17 actually to applicant if it had been reflected in the
18 existing plans with that condition.

19 MR. WILLIAMS: Yes, that's actually a good
20 question. It reminds me that I should have raised earlier
21 we actually submitted plans after the 21-day deadline in
22 response to some staff comments.

23 And I don't know that the Board officially ruled
24 on that motion that we filed. I just want to make sure the
25 record is accurate so we have the most recent plans formally

1 as part of the record.

2 CHAIRPERSON HILL: Mr. Moy, do you know if those
3 are uploaded in the record yet?

4 MR. MOY: I can check, Mr. Chairman.

5 CHAIRPERSON HILL: Okay. Let's let, let's let the
6 staff check while we continue to move forward. Mr. Young,
7 is there any one here wishing to speak?

8 MR. YOUNG: We do not.

9 CHAIRPERSON HILL: Okay. All right. I mean, in
10 an effort to get something done today, I am pleased, I am
11 fine with the conditions. And I believe the applicant will
12 do what they say they're going to do. But I will wait until
13 we find the plans.

14 MR. JURKOVIC: The record that the applicant did
15 actually submit plans soon after I added my report to the
16 record.

17 CHAIRPERSON HILL: Okay.

18 MR. MOY: Could you take a look at Exhibit 20 and
19 Mr. Zachary Williams and tell me if those are the plans we're
20 referring to? Exhibit 20. Then it's in.

21 CHAIRPERSON HILL: Okay, well let me just look at
22 them. We're just looking to the rear yard now. Here later
23 on to ask about it. Mr. Williams, where does it show
24 Condition 2?

25 MR. WILLIAMS: So there was a couple of things we

1 changed in these plans. One was the screening so the fence
2 around the trash receptacles, that's a new feature of the
3 plan. And direct response to comments from staff.

4 And then there's also, you can see where it says
5 turf there in the back.

6 CHAIRPERSON HILL: Yes.

7 MR. WILLIAMS: That's another feature as well.

8 CHAIRPERSON HILL: Mr. Jurkovic, oh, God.
9 Jerkovich?

10 MR. JURKOVIC: Yurokovich.

11 CHAIRPERSON HILL: Yurokovich, sorry. Mr.
12 Yurokovich. I'll get it right one day. Is that acceptable
13 with the Office of Planning is speaking on concerning their
14 condition?

15 MR. JURKOVIC: That would be obviously better than
16 what was initially submitted to the record. We would
17 encourage, you know, any sort of landscaping the applicant
18 would be willing to place there past just grass and turf.
19 But ultimately I would say that it would be acceptable.

20 CHAIRPERSON HILL: Mr. Williams, you're getting
21 a very mediocre pass here. So are you going to try to do
22 more than that?

23 MR. WILLIAMS: Well, like I said, we are, the
24 conditions as written in the report from OP are acceptable
25 to the applicant. And if the Board wants to include those

1 conditions as part of its approval, that's fine with us.

2 CHAIRPERSON HILL: Okay. All right. I'm -- okay.
3 Does the Board have any further questions or comments? Mr.
4 Williams, do you have anything at the end you'd like to add?

5 MR. WILLIAMS: I do not, thank you.

6 CHAIRPERSON HILL: Okay. I'm going to close the
7 hearing and the record. Okay. I think that it was
8 relatively straight forward. In so far as, you know, they're
9 not changing the envelope or the footprint of the existing
10 building.

11 They're trying to add the two units in the
12 basement. I think that the conditions of the Office of
13 Planning has put forward do help with some of the possible
14 issues with the project. I mean, I will go ahead and agree
15 with their conditions that they are putting in their report.

16 I'm not going to read them. I'm just going to
17 cite them if a motion is made and I will be voting in favor
18 of this application. Mr. Smith, do you have anything to add?

19 (No audible response.)

20 CHAIRPERSON HILL: Mr. Blake?

21 MEMBER BLAKE: I am in support of the application
22 and agree to the assessment and give great weight to the
23 Office of Planning's report and recommendation.

24 CHAIRPERSON HILL: Thank you. Dr. Imamura?

25 COMMISSIONER IMAMURA: Mr. Chairman, I'm in

1 agreement with my colleagues.

2 CHAIRPERSON HILL: Thank you. I will make a
3 motion to approve Application No. 21060 as captioned and read
4 by Secretary including the conditions that are mentioned on
5 the first page of the Office of Planning's report one through
6 three and ask for a second, Mr. Blake.

7 MEMBER BLAKE: Second.

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

10 MR. MOY: I recite here your motion, the OP Report
11 was the reference to Exhibit 19 or Exhibit 18?

12 CHAIRPERSON HILL: That's a good question. Give
13 me a second here. Exhibit 19. The conditions of the OP
14 Report in Exhibit 19.

15 MR. MOY: Okay. When I call your name, if you'll
16 please respond to the motion made by the Chairman Hill to
17 approve the application for the relief requested along with
18 the conditions that as cited by the Office of Planning.

19 I'll leave it at that. The motion was second by
20 Mr. Blake. So Commissioner, Dr. Imamura?

21 COMMISSIONER IMAMURA: Yes.

22 MR. MOY: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 MEMBER BLAKE: Yes.

1 MR. MOY: Chairman Hill?

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: The staff would record the vote as four
4 to zero to one. And this is on the motion made by Chairman
5 Hill to approve. Motion to approve was second by Mr. Blake
6 who also voted to approve the application as well as approval
7 from Zoning Commissioner Dr. Imamura, Mr. Smith, of course
8 Mr. Blake, Chairman Hill.

9 We have one Board Member not participating.
10 Again, the motion continues on a vote of four to zero to one.

11 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy,
12 you may call our next case.

13 MR. MOY: The next case before the Board is
14 Application No. 21075 of 301 Delafield Place Northwest, LLC.
15 Self-certified application pursuant to Subtitle X, Section
16 901.2 special exception under Subtitle U, Section 421.

17 Property located in the RA1 zone at 301 Delafield
18 Place Northwest Square 3304 lot 892 and before you is the
19 applicant's team. Thank you, sir.

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

23 MR. DeBEAR: Chair and Board Members, my name is
24 Eric DeBear from Cozen O'Connor, liaison counsel on behalf
25 of the applicant.

1 CHAIRPERSON HILL: All right, Mr. DeBear, nice to
2 see you. If you want to, please go ahead and walk us through
3 your client's application and why you believe they're meeting
4 the criteria for us to grant the relief requested.

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

7 MR. DeBEAR: I'm going to have my client also
8 introduce themselves, Chair.

9 CHAIRPERSON HILL: Okay.

10 MS. ZURBRIGG: Hi, good afternoon everyone. I'm
11 Elin Zurbrigg. I am Deputy Director of Mi Casa, Inc., we're
12 the applicant, obviously.

13 MR. DeBEAR: Thank you. And if Mr. Young could
14 pull up our presentation filed in the record. So this
15 application concerns Mi Casa's property at 301 Delafield
16 Place Northwest. Next slide please.

17 To provide the Board with some brief background,
18 the project is located at the corner of Third Street
19 Northwest and Delafield Place Northwest in the RA1 zone.
20 Next slide please.

21 The property is improved with an existing 23 unit
22 residential building that is two stories plus a cellar level.
23 There is a 16-foot wide public alley to the rear of the
24 property. And it is in the Petworth Brightwood neighborhood
25 that is primarily residential in nature. Next slide please.

1 I'm going to turn it over to Ms. Zurbrigg just to
2 give the Board some brief background on Mi Casa.

3 MS. ZURBRIGG: Thank you so much. So Mi Casa,
4 Inc. is an affordable housing developer based in the
5 district. We've been providing affordable rental and
6 homeownership opportunities for district residents for more
7 than 30 years.

8 And as in all of our affordable rental projects,
9 301 Delafield Place comes with a commitment to long-term
10 affordability for D.C. residents. We have equipment to keep
11 it affordable for at least 40 years.

12 We're currently working on securing our financing
13 to complete the building renovation. And that's why we are
14 here before you. We acquired the property under the District
15 Tenant Opportunity to Purchase Act law when the tenants voted
16 that they wanted to maintain the building as an affordable
17 rental building.

18 And as such, they voted to assign the rights to
19 Mi Casa to purchase the building. Could you go to the next
20 slide please? And so essentially what we committed to doing
21 in this project is through an agreement, a development
22 agreement with the residents.

23 We committed to keeping the building affordable,
24 very affordable to the income levels at the building
25 extremely low-income and very low-income. And also too

1 substantially renovated the building to improve living
2 conditions.

3 It took several years to secure the public
4 financing to renovate the building. And we are now at a
5 point where we are, we have applied for and are intending to
6 secure our permits and begin the building renovation in May
7 of this year.

8 And the plan is to significantly improve resident
9 comfort through energy efficiency upgrades especially heating
10 and cooling the building has had many, many, decades of
11 deferred maintenance and then transitioning away from fossil
12 fuels to convert the building to all electric and adding
13 solar.

14 The residents have patiently waited for this
15 renovation so it's very important to them to see it
16 fulfilled. And then as you can see here on the slide, our
17 plans are to renovate the entire building with no increases
18 for footage, no changes in the building footprint.

19 And only reconfiguring so that we can provide two
20 additional very affordable units to families who need them
21 so the two and three bedroom unit each that are in very high
22 demand.

23 MR. DeBEAR: Thank you. And if Mr. Young could
24 go to the next slide. So to give the Board a summary of
25 outreach ANC4D is in support of the Office of Planning is in

1 support and DDOT has submitted a report with no objection.
2 Next slide, please.

3 You see here the existing floor plan. Apologies
4 if it is a little blurry, but much of the cellar level is
5 either unused or underutilized. It was crawl spaces, there
6 is a laundry room, other spaces that just simply aren't as
7 useful as dwellings. Next slide please.

8 So what is being proposed you can see here is
9 basically just reconfiguring the cellar level to better use
10 that space and provide two additional units, one of which
11 will be a two-bedroom and one of which will be a three
12 bedroom.

13 Again, there's no structural expansion, no
14 increase to the footprint. The yellow highlights you see are
15 two new retaining walls. The one on the left would be for
16 bioretention, the one on the right would be for a window well
17 to provide light and air along that corner of the building
18 which will have one of the new units.

19 Next slide please. We're here before you today
20 seeking relief for a new residential development in the RA1
21 zone under Subtitle U 421.1 this is required despite being
22 an existing apartment building. It is required to add the
23 two units. Next slide please.

24 We believe we've met the general special exception
25 standard. This is a moderate density multi-dwelling

1 development that's consistent with the RA1 zoning. The
2 project will renovate underutilized space to create two
3 family sized affordable dwellings and it is otherwise
4 compliant with the RA1 standards.

5 We are not seeking any other relief including
6 vehicular and bicycle parking. Next slide please. There
7 will be no adverse impacts. The neighboring property can no
8 structural expansion and a modest increase in density of two
9 units.

10 Yet improvements to landscaping and storm water
11 management on the property. Next slide please. And there
12 are special conditions associated with this request that
13 existing planned area schools and public streets recreation
14 and other services can accommodate the increase in residents
15 for both of those.

16 We believe that net increase of two units will not
17 have a substantial impact. Nonetheless, the OP report
18 identifies sufficient capacity at area schools and again, in
19 terms of streets, public transit being able to minimize any
20 impacts. Next slide please.

21 The OP is required to refer for comment on a
22 variety of issues. Again, OP is supportive of the project.
23 There will be no impact to light and air because there's no
24 structural expansion.

25 In terms of parking, because we are expanding an

1 existing use, a Subtitle C705 does not require any additional
2 parking. So there is no parking at this building and there
3 will continue to be no parking.

4 And then we believe we are maintaining the
5 character and development scheme of the neighborhood. Again,
6 it is a neighborhood with several moderate density apartment
7 buildings as you, as the Board heard on the case just before
8 ours.

9 And we do believe we'll be improving the
10 landscaping of the property as reflected in the plans. Next
11 slide please. And finally, again, just identifying that
12 we've required, sorry, filed the required plan sets in the
13 case record as evidenced by the OP report as well.

14 Next slide please. And with that, I'll open it
15 up to any of the Board's questions.

16 CHAIRPERSON HILL: Thank you. Before I turn to
17 the Board, may I turn to the Office of Planning?

18 MR. JURKOVIC: Good afternoon, again, Chairman and
19 members of the Board. Mike Jurkovic, Development Review
20 Specialist for the Office of Planning. OP recommends
21 approval with condition for the special exception for
22 expansion of the apartment house use as requested by the
23 applicant and stands on the record of the report. I am here
24 to answer any questions. Thank you.

25 CHAIRPERSON HILL: Thank you. Does the Board have

1 any questions for the applicant or the Office of Planning?

2 (No audible response.)

3 CHAIRPERSON HILL: Mr. Young, is there anyone here
4 wishing to speak?

5 MR. YOUNG: We do not.

6 CHAIRPERSON HILL: Mr. DeBear, do you have
7 anything you would like to add at the end?

8 MR. DeBEAR: I do not, thank you to the Board for
9 your time today.

10 CHAIRPERSON HILL: All right. I'm closing the
11 hearing and the record. Mr. Young, if you could please
12 excuse everyone. Would someone else be willing to start
13 deliberation? Mr. Blake?

14 MEMBER BLAKE: Sure. Having viewed the case
15 record, the materials and the testimony today, I believe the
16 Applicant has met the burden of proof to grant the requested
17 relief pursuant subject to under U421, pursuant to 91.2.

18 This is basically the addition of two cellar units
19 which will not result in any change to the exterior or
20 massing of the building. So for that reason, I think
21 consistent with the Office of Planning's report, I believe
22 they've met all the conditions of that.

23 DDOT has no objections and ANC4D is in support of
24 the project. I do believe that the conditions outlined by
25 the Office of Planning should be incorporated and I would be

1 in support of the application.

2 CHAIRPERSON HILL: Okay. Sorry. Mr. Smith?

3 MEMBER SMITH: I have nothing to add. I agree
4 with Mr. Blake's assessment of this case and will support the
5 application as well.

6 CHAIRPERSON HILL: Thank you. Dr. Imamura?

7 COMMISSIONER IMAMURA: Mr. Chairman, and thank you
8 Board Member Blake for your analysis.

9 CHAIRPERSON HILL: Yes, thank you Board Member
10 Blake for your analysis as well as the recommendation for the
11 Office of Planning's recommendation in their condition. I
12 am going to go ahead and make a motion to approve application
13 No. 1, oh sorry, 21075 as captioned read by the Secretary
14 including the condition that was in the Office of Planning's
15 report in Exhibit 18. And ask for a second, Mr. Blake.

16 MEMBER BLAKE: Second.

17 CHAIRPERSON HILL: The motion is made and second.
18 Mr. Moy, if you will take a roll call.

19 MR. MOY: When I call your name, if you'll please
20 respond to the motion made by Chairman Hill to approve the
21 application for the relief requested along with the condition
22 that was noted in the OP report which I believe was under
23 Exhibit 18. The motion to approve was second by Mr. Blake.
24 Zoning Commissioner Dr. Imamura?

25 COMMISSIONER IMAMURA: Yes.

1 MR. MOY: Mr. Smith?

2 MEMBER SMITH: Yes.

3 MR. MOY: Mr. Blake?

4 MEMBER BLAKE: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Staff would record the vote as four to
8 zero to one. And this is on the motion made by Chairman Hill
9 to approve. The motion to approve was second by Mr. Blake
10 who also voted to approve the application as well as approval
11 from the Zoning Commissioner Dr. Imamura, Mr. Smith, Mr.
12 Blake, and Chairman Hill and one Board Member not
13 participating. Motion carries on a vote of four to zero to
14 one.

15 CHAIRPERSON HILL: Okay, great. You guys, we have
16 one more case. Can we just take a quick ten-minute break?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay, thank you.

19 (Whereupon, the above-entitled matter went off the
20 record at 3:35 p.m. and resumed at 3:48 p.m.)

21 MR. MOY: Yes, sir, I hear you.

22 CHAIRPERSON HILL: You want to go ahead and call
23 the last one?

24 MR. MOY: Okay. The Board has returned to its
25 public area session after just a very quick ten-minute

1 recess. The time is now at or about 3:48 p.m. The next
2 case, Application No. 20997, 20997 of Derrick Richardson and
3 408 Newcomb, LLC.

4 This application is pursuant to Subtitle X,
5 Section 901.2 for special exceptions. As follows, under
6 Subtitle C, Section 714.3, from the screening requirements
7 for surface parking, Subtitle C, Section 714.2, Subtitle D,
8 Section 207.5 to allow a rear wall of a semi-detached
9 building to extend further than ten feet.

10 And pursuant to Subtitle X, Section 1002, for a
11 use variance. Subtitle U, Section 201 to allow an apartment
12 house and a variance from Subtitle C, Section 204.1 to allow
13 expansion of an existing nonconforming use.

14 Property located in the R3 zone at 408 Newcomb
15 Street Southeast Square 5996 Lot 47. And the applicant's
16 team is in the Panel. Thank you, sir.

17 CHAIRPERSON HILL: Great. Thank you. If the
18 applicant can hear me, if they can please introduce
19 themselves for the record.

20 MR. McDONALD: Hi, my name is Matt McDonald. I'm
21 the architect for the applicant and Mr. Derrick Richardson
22 who I believe is also on the call.

23 CHAIRPERSON HILL: Okay, Mr. Richardson, can you
24 hear me? If so, would you introduce yourself for the record?

25 MR. RICHARDSON: Yes, sir. I don't know if you

1 can hear me or not.

2 CHAIRPERSON HILL: We can.

3 MR. RICHARDSON: Okay. Yes, sir, and good
4 afternoon. I am Derrick Richardson. I thank you all for
5 your time. It's the first time I've been through this
6 process. And with all due respect, I sat here all day and
7 I, you know, I envy your job.

8 But I appreciate you taking my time up.
9 Respectfully I just got out of the hospital yesterday and I
10 wanted to be here so Mr. Matt and also Valerie Sanderlin is
11 online to represent me. And for your allowing them to speak
12 for me, I certainly appreciate it.

13 CHAIRPERSON HILL: Thank you, Mr. Richardson.

14 MR. RICHARDSON: Yes, sir.

15 CHAIRPERSON HILL: Hi, Mr. McDonald. If you want
16 to go ahead and walk us through your client's application and
17 why you believe they're meeting the criteria for us to grant
18 the relief requested and I will follow along and give, I'm
19 going to put 15 minutes on the clock so I know where we are
20 and you can begin whenever you like.

21 MR. McDONALD: All right, thank you. I believe
22 the OP had our submitted Burden of Proof. I kind of walked
23 you through and if they can pull that up or do I pull that
24 up?

25 CHAIRPERSON HILL: Are you speaking of Exhibit 28?

1 MR. McDONALD: Probably. I don't have the exhibit
2 list in front of me.

3 CHAIRPERSON HILL: Well, one Burden of Proof is
4 an Exhibit 28.

5 MR. McDONALD: Okay.

6 CHAIRPERSON HILL: It's a written version --

7 MR. McDONALD: Yes.

8 CHAIRPERSON HILL: -- Burden of Proof. Okay,
9 right.

10 MR. McDONALD: Correct.

11 CHAIRPERSON HILL: Okay.

12 MR. McDONALD: I just got to -- so OP has already
13 reviewed our application and has recommended approvals and
14 we also have support from the local ANCs also. I'll run
15 through our Burden of Proof.

16 So we, there's some with physical, I think I know
17 for the Burden of Proof you have to address the three points,
18 the physical characteristics of the property create an
19 exceptional and undue hardship for that owner and you need
20 a property consistent with the zoning regulations granting
21 the applicational whether or not the substantial detriment
22 to the public good and granting the application will not be
23 inconsistent with the general intent and purpose of the
24 zoning regulations in that.

25 Regarding the physical characteristics of the

1 property, we believe the original configuration of the
2 property as designed was a four unit apartment building.
3 Many neighboring buildings including 404 Newcomb directly
4 adjacent which they share the party wall with our four unit
5 building configurations already.

6 The sale price of additional units in the area,
7 Ward 8 have a medium income of \$25,000 which is 38 percent
8 lower when compared to all other Wards of the district. A
9 48 configuration anticipates the sale price per unit between
10 280 and \$310,000.

11 If it was a two-unit configuration, the sale price
12 changes to closer to \$500,000 which limits access to the
13 local residents to purchase a property in their neighborhood.
14 Therefore, housing in a four-unit configuration is more
15 affordable and accessible to the current neighborhood
16 residents which is a very important request from the ANC in
17 granting this approval.

18 And in encouraging this application as well. So
19 to maintain this building with less than four units would
20 result in a hardship for the owner regarding the property's
21 value. And some of this stems from the building being
22 previously damaged beyond repair almost by fire.

23 The building was purchased in 2004 for \$187,000.
24 The construction costs are anticipated to be a minimum of
25 \$750,000. The owners also paid city fines to date due to the

1 vacant property and the entire damage in excess of \$90,000.

2 We're anticipating permitting costs between city
3 permits and design and engineering fees of over \$50,000. And
4 secured, site security costs which includes temporary
5 barriers to prevent, you know, essentially squatters is
6 almost \$8,000.

7 So the current owner costs are \$1.275 million.
8 So kind of based on that, we need to get a follow up for a
9 four unit configuration would result in sales of about \$1.24
10 million while a two-unit configuration would result in sales
11 closer to a million dollars.

12 Which both would likely be a financial loss for
13 Richardson, but a four-unit building makes it a little more
14 palpable I think for him to be able to renovate his property.
15 So I think between the existing, the original and historical
16 configuration of the building and the financial hardship,
17 that's why we're I think how we've complied with point one
18 of the Burden of Proof.

19 Regarding that this renovation will not be of, the
20 application will not be a substantial detriment to the public
21 good, prior to the purchase of this building by Mr.
22 Richardson, it was not being used as a single family home,
23 but as a two-unit apartment building.

24 Therefore, any current levels of noise, traffic,
25 lighting would be minimally affected and as well as the

1 addition of four parking spaces in the rear will actually
2 reduce the street frontage parking in the neighborhood.

3 In addition to this building, there also appears
4 to be at least 20 or more buildings located within several
5 blocks of this property that were designed and constructed
6 as four-unit apartment buildings.

7 I believe granting this application will maintain
8 the character of this neighborhood and be consistent with the
9 current use of the neighboring buildings. The building is
10 currently in the current state, has been damaged by fire and
11 is unable to be occupied.

12 Granting this application will allow the owner to
13 upgrade the building both from an aesthetic and safety
14 standpoint and provide newer, cleaner, safe living units for
15 the residents.

16 By expanding the building to allow units with two
17 bathrooms and two bedrooms, two bathrooms, I think this
18 allows more potential open and more potential residence which
19 is overall positive for the public good.

20 We've also reviewed this project with the ANC
21 twice and I have received support every time from them, most
22 recently we received a letter of support from the ANC8C
23 Commissioner for this project and the unanimous support from
24 the ANC indicates their belief that this is a project that's
25 for the betterment of the neighborhood.

1 And just to reiterate the lower sale price assists
2 with the neighborhood with affordable housing inventory and
3 is aligned with the affordable housing goals within the
4 district.

5 And then granting the application will not be
6 inconsistent with the general intent and purpose of the
7 zoning regulation map for several reasons. Based on the
8 floor plan on adjacent properties, it's clear this property
9 was previously existed in a four-unit configuration.

10 And the purpose of the R3 zone is to allow for
11 road dwellings while including an area within each roadway
12 or mingled and detached dwellings, semi-detached dwellings
13 and groups of three or more road dwellings.

14 The intent appears to be in this design is to
15 limit the scale and size of buildings and provide a lower
16 density than zones which allow large format apartment
17 buildings.

18 We're not proposing a large format apartment
19 building. It's just a four-unit use which brings it back to
20 the historical use. The scale is street fronted, the façade
21 of the building will remain unchanged.

22 And the two bedroom configuration actually I think
23 brings it closer to what the intent of the zoning is for not
24 just, you know, single person living in a small one-unit
25 apartment building.

1 So for that reason we saw granting this
2 application will not be inconsistent with the general intent
3 and purpose of the zoning regulations. And then
4 additionally, there have been previous cases of a similar use
5 variance being approved or similar variances.

6 404 Newcomb and 411 Mellon are both approved
7 fairly recently to almost the exact same configuration. I
8 think that was BZA case 19710. But I think it is a strong
9 precedent in that neighborhood for this type of a, this type
10 of renovation.

11 MEMBER SMITH: Mr. McDonald?

12 MR. McDONALD: Yes.

13 MEMBER SMITH: I have a question. Thank you for
14 giving that history, but variances all stand on their own.
15 It's not a precedent set when we pass, when a Board or a
16 previous Board has approved something similar, a similar
17 variance.

18 But I do have a question for you that you had
19 stated. You had said that the units were while there was a
20 CFO for two units --

21 MR. McDONALD: Yes.

22 MEMBER SMITH: -- about for the operation of two
23 units that historically or the design, the interior design
24 and layout gives the preponderance of it being four units.
25 So where there two vacant units in there? Can you expand on

1 how the layout and how there was four units?

2 MR. McDONALD: So it's hard, it's hard to when I
3 first visited the property, it was completely gutted with
4 fire. There was no, there were no rooms. I actually had
5 originally assumed it was a four-unit building based on my
6 walk through after the fire because it looked like there
7 were, there you, you know, it looked like where there were
8 essentially spaces for two kitchens on each floor.

9 I am assuming one of the kitchens may have been
10 converted to a under-sized bedroom that really wasn't an
11 appropriate bedroom before in order to make the two-unit
12 configuration.

13 There was an original four unit certificate of
14 occupancy from 1984 so I think this was, this was changed
15 sometime in the 1990s from a four unit to a two unit.

16 MEMBER SMITH: Was there some type of remnants of
17 a wall between --

18 MR. McDONALD: Yes, there were remnants, so the
19 units were first floor and second floor. I believe is how
20 I assumed what the pre-fire condition was. So just based on
21 my understanding of the, my familiarity with the building
22 next door, it looked like there were plumbing hardware and
23 roughage for what would have been a kitchen on, two kitchens
24 on each level that had been abandoned.

25 MEMBER SMITH: Okay. So you're basing on the

1 rough-in and the layout of the adjacent four-unit apartment
2 buildings?

3 MR. McDONALD: And the previous certificate of
4 occupancy as well.

5 MEMBER SMITH: Okay. Great, that's helpful.
6 Thank you.

7 MEMBER BLAKE: And could you address that question
8 because it seems pretty much you would know. You used the
9 facility. Correct?

10 MR. RICHARDSON: Yes, sir. When I bought the
11 property, as a matter of fact, it was an inspector who
12 referred me to the property. I bought the property as first
13 to live in and it was a Section 8 tenant living on the top
14 floor.

15 Now what he did, the person I bought it from, he
16 said he converted it because as Section 8 go, he has Section
17 8 tenants, whatever. He said you get more money for four
18 bedrooms than two bedrooms so he knocked the walls down and
19 made it two, just two units, upper floor and lower floor.

20 The walls in there, there were four kitchens in
21 there, but it made it a set of four one-bedroom units. He
22 took the wall out on each floor and made it what's it, four
23 bedrooms, two bath.

24 And that's where it was and then they was there
25 when I bought it with the intent to do the construction, of

1 course, the Section 8 tenants that were on my property and
2 suddenly we got a fire over there from vagrants. But that's
3 the way it was. There was four kitchens in there.

4 But he just changed the wall to get more money.
5 I wasn't concerned about this. You know, it was good to have
6 the money for the tenants being Section 8, but again, it was
7 the first property I bought.

8 I bought to live in, of course, to help me retire
9 also to get some income. But as time went on that's what
10 happened. And looking to convert it back since the fire
11 happened and everything in the neighborhood has turned over
12 to, you know, there have been four units.

13 So I was trying to put it back after the fire.
14 That's when I found out we had to go through all this process
15 to do that.

16 MEMBER BLAKE: Thank you. Sorry, Mr. Chair.

17 CHAIRPERSON HILL: Mr. McDonald?

18 MR. McDONALD: I think I don't have much else to
19 add. I was starting to answer questions from people at this
20 point.

21 CHAIRPERSON HILL: Okay, that's fine. All right,
22 I am going to turn to the Office of Planning.

23 MR. JESICK: Chairman and members of the Board,
24 my name is Matt Jesick representing the Office of Planning
25 in this case. In our initial report at Exhibit 24, we were

1 unable to recommend approval of the requested variance and
2 asked the applicant to provide more information.

3 And since that time, we did meet with the
4 applicant and they did submit additional information to the
5 record. And based on that new information, we were able to
6 conclude that they met the three-part variance test.

7 And I can get into more detail on that if the
8 Board would like. We are also recommending approval of the
9 special exception for the parking lot screening. And that
10 analysis is in Exhibit 24 and also as we stated in Exhibit
11 24, we do not feel that the relief to C204 or D207 is
12 necessary in this case.

13 That concludes my verbal testimony, but happy to
14 answer any questions. Thank you.

15 CHAIRPERSON HILL: Okay, Mr. McDonald, are you
16 aware that the Office of Planning doesn't think you need
17 C204.1 or D207.5?

18 MR. McDONALD: I am now, yes. I think that was,
19 we received a memo from the Zoning Administrator that
20 included those originally which is why we have them in there,
21 but we're happy to follow OP's recommendation on this.

22 CHAIRPERSON HILL: Okay and withdraw then your
23 request for D207.5 and C204.1?

24 MR. McDONALD: Yes, sir.

25 CHAIRPERSON HILL: Okay. All right, Mr. Young,

1 is there anyone here wishing to speak?

2 MR. YOUNG: We do not.

3 CHAIRPERSON HILL: Okay, Mr. McDonald, do you have
4 anything you would like to add at the end?

5 MR. McDONALD: I just wanted to, you know,
6 reiterate that the ANC, I think they -- I believe you have
7 their support letter, but I think this is a very, the
8 Affordable Housing aspect that's triggered by the four units
9 was a very key and important part of the ANC approval and
10 support for this project.

11 CHAIRPERSON HILL: Okay, thank you, Mr. McDonald.
12 Okay, I'm going to close the hearing and the record. Will
13 you excuse everyone, Mr. Young? Thank you all very much.
14 Okay, so now what's before us again is a special exception
15 for the screen requirements, for the surface parking and then
16 the use variance for the four apartment house units.

17 I would agree with the analysis of the Office of
18 Planning as provided concerning both the screen requirements
19 and the four units. I think that, you know, it was the
20 argument that it was originally four units, now if they can
21 only do two units it's not going to be financially feasible.

22 And due to the fire, had some other implications
23 that made this a unique situation that results in a practical
24 difficulty for the owner. So I'm going to be in favor of
25 this. And I also note that the ANC8C was in support and I

1 will be voting in favor of this application. Mr. Smith, do
2 you have anything you would like to add?

3 MEMBER SMITH: I don't have anything to add. I
4 agree with the Office of Planning's assessment of this
5 particular case of the findings of a hardship due to from
6 financial standpoint.

7 And also the fact that this property has
8 historically been it seems prior to up until that fire, based
9 on information submitted by the applicant, the property
10 owner, and the representative for the property owner that
11 this was in a four-unit configuration.

12 And I do believe that it meets the standards for
13 the three-prong test for relief from the variance. So I will
14 support the application.

15 CHAIRPERSON HILL: Thank you. Dr. Imamura?

16 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.
17 I am in agreement with your analysis as well as the Board
18 Member Smith. Don't have anything further to add.

19 CHAIRPERSON HILL: Thank you. Mr. Blake?

20 MEMBER BLAKE: I'm in favor of the application.
21 I do believe that concludes the factors does contribute to
22 an exceptional situation. And given the location, it's
23 consistent.

24 It's, you know, inconsistent with the neighborhood
25 and I will be voting in favor of the application. In favor

1 of both the special exception as well as the variance.

2 CHAIRPERSON HILL: Thank you. All right, I'm
3 going to make a motion to approve Application No. 20997.
4 Pursuant to Subtitle X 901.2 for special exceptions under
5 Subtitle C 714.3 from the screening requirements for service
6 parking in Subtitle C714.2 and pursuant to Subtitle X1002 for
7 a use variance from Subtitle U201 to allow an apartment house
8 four unit and ask for a second, Mr. Blake.

9 MEMBER BLAKE: Second.

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

12 MR. MOY: Thank you, sir. When I call your name,
13 if you will please respond to the motion made by Chairman
14 Hill to approve the application for the relief requested as
15 amended as well by the Board and the motion was second by Mr.
16 Blake. Zoning Commissioner Imamura?

17 COMMISSIONER IMAMURA: Yes.

18 MR. MOY: Mr. Smith?

19 MEMBER SMITH: Yes.

20 MR. MOY: Mr. Blake?

21 MEMBER BLAKE: Yes.

22 MR. MOY: Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: Staff would record the vote as four to
25 zero to one. And this is on the motion made by Chairman Hill

1 to approve. The motion to approve was second by Mr. Blake
2 who voted to approve the application as well as approval from
3 Zoning Commissioner Dr. Imamura, Mr. Smith, Mr. Blake,
4 Chairman Hill, no other Board member participating. Motion
5 carries, sir, on the vote of four to zero to one.

6 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy,
7 is there anything else before the Board today?

8 MR. MOY: There's nothing from the staff, sir.

9 CHAIRPERSON HILL: All right, gentlemen, it seems
10 longer today. I don't know, maybe it's the gray day or
11 something. No? It seems --

12 MEMBER SMITH: Not in comparison to the last two
13 weeks.

14 CHAIRPERSON HILL: Okay. All right, okay well
15 then it must just be me. So you all have a good day then.
16 We are adjourned. Thank you.

17 (Whereupon, the above-entitled matter went off the
18 record at 4:09 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC BZA

Date: 03-06-24

Place: teleconference

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
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