

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

APRIL 24, 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. EDT, Lorna L. John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
MICHAEL SAKINEJAD, Zoning Data Coordinator

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

RON BARRON
CRYSTAL MYERS
KAREN THOMAS

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

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

The transcript constitutes the minutes from the
Regular Public Hearing held on April 24, 2024.

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

(9:57 a.m.)

VICE-CHAIR JOHN: So we will move to our hearing session. And please call the first case when you are ready.

MS. MEHLERT: The first case in the Board's public hearing session is application number 21103 of Developer RE1, LLC.

This is a self-certified application pursuant to Subtitle X, Section 901.2 for Special Exceptions under Subtitle G 5200.1 from the rear yard requirements of Subtitle G 207.6 and the closed court requirements of Subtitle G 209.1.

This is to build a 47-unit apartment house with below grade parking and a new four-story detached building in the MU-4 Zone.

It is located at 71 Kennedy Street Northwest, Square 3389, Lot 138.

VICE-CHAIR JOHN: Good morning.

MR. DEBEAR: Good morning.

VICE-CHAIR JOHN: Good morning. Mr. DeBear, are you presenting today?

MR. DEBEAR: I am, Vice Chair John.

VICE-CHAIR JOHN: Thank you. Commissioner Brooks, would you like to introduce yourself as well?

MR. DEBEAR: While we're waiting for Commissioner

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1 Brooks, we also have the developer here, Mr. Negussie, if you
2 can introduce yourself.

3 MR. NEGUSSIE: Good morning, my name is Mel
4 Negussie. I'm part of the development team.

5 MR. DEBEAR: Thank you.

6 VICE-CHAIR JOHN: Thank you. Okay, we can go
7 ahead then, Mr. De Bear, and wait for Commissioner Brooks to
8 join us.

9 MR. DEBEAR: Great if --

10 VICE-CHAIR JOHN: Please tell us how your
11 application meets the criteria for approval.

12 MR. DEBEAR: I'd be happy to if the PowerPoint
13 file in Exhibit 63 could be loaded into the record. Or, I'm
14 sorry, brought up on the screen.

15 VICE-CHAIR JOHN: Thanks.

16 MR. DEBEAR: Thank you. Next slide, please. So
17 to situate the Board members, this property is located at the
18 corner of First Street and Kennedy Street Northwest, and it's
19 in the MU-4 Zone. Next slide, please.

20 Currently, there are existing structures at the
21 property. As part of this development, those existing
22 structures would be razed and a new ground-up development
23 would be constructed. Next slide, please.

24 I do think it's important to talk about the
25 history of this project, particularly given the amount of

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1 letters in the record.

2 So to orient the Board, back in October 2018, a
3 BZA Case 19897 was filed. That is for this same property.
4 It was a very similar development.

5 I'll outline some of the changes since then. That
6 BZA case, which was seeking virtually the exact same belief
7 from the closed court and rear yard requirements was approved
8 with the support of ANC 4B.

9 In March 2023, the order expired. In August 2023,
10 Mr. Negussie filed a modification of consequence, or a minor
11 modification, of the project that is currently before the
12 Board.

13 So that case was processed in BZA Case 19897 C.
14 In September, Mr. Negussie presented, again, without counsel,
15 to ANC 4B's housing committee and then at the full public
16 meeting of ANC 4B.

17 In October, ANC 4B adopted a resolution to support
18 the project that again was part of that modification but is
19 the exact same project that is before the Board in this new
20 application.

21 In December 2023, the Board dismissed that
22 modification because it was discovered that the order was not
23 vested.

24 So the order had expired. Therefore, the
25 modification could not be processed and a new application had

1 to be filed.

2 So that brings us to 2024 when Mr. Negussie,
3 through our firm, filed this new application, which again is
4 the same project plans that was part of that modification in
5 the fall. Next slide, please.

6 The current proposal, as I mentioned, is to raze
7 those existing buildings on the property and construct a new
8 four-story, 47-unit residential building.

9 There would be 40 one-bedroom units and 7
10 two-bedroom units. Seventeen parking spaces would be located
11 in the below-grade parking level.

12 There will be inclusionary zoning compliance,
13 although Mr. Negussie is aiming depending on DHCD financing
14 to provide greater affordability at this project.

15 And then as part of this project, Mr. Negussie
16 will be paving the paper alley that runs along the eastern
17 side of the property, and this will provide access to that
18 low-grade parking level and then the loading area that's
19 provided on the eastern side of the building.

20 Other than the closed court and rear yard relief
21 that we're seeking from the Board today, this project is
22 fully compliant with the MU-4 use and development standards.

23 The project is proposed to be 48 ½ feet with 50
24 feet permitted. The FAR with IZ compliance can go up to 3.0,
25 and this will provide a 2.86.

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1 And then we're below the 75 percent permitted lot
2 occupancy. So from a density perspective, it is fully
3 consistent with the MU-4 standards. Next slide, please.

4 Again, just to orient the Board in talking about
5 the prior approval and the current proposal, you can see the
6 footprint of the building is virtually identical.

7 You can see the closed court that I've identified.
8 That's also where the rear yard is located along the northern
9 lot line.

10 So again, virtually, the same relief. The closed
11 court dimensions have been altered slightly. But other than
12 that, it's the same relief that was approved back in 2019.
13 Next slide, please.

14 The material changes from that prior approval are
15 that the prior approval included one less unit and 4,000
16 square feet of ground level commercial space.

17 Obviously, that project was not constructed. And
18 the property is exactly how it was at the time of that
19 approval.

20 And again, parking has been modified. There's
21 five fewer parking spaces and one less below-grade level.
22 With that being said, we still need the zoning requirement
23 for parking and loading, which is zero. Next slide, please.

24 To go over community agency outreach, ANC 4B
25 enacted a resolution in connection with the modification last

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1 fall.

2 Again, Mr. Negussie presented at multiple public
3 meetings. And the ANC 4B enacted a resolution at a public
4 meeting.

5 That resolution was authorized by ANC Chair
6 Brooks, and I am sure we will hear from her. She's also the
7 single member district commission for this property.

8 The Office of Planning is in support. DDOT has
9 no objection, and we did work with them on the paper alley
10 construction.

11 And of course, as I'm sure the Board has seen,
12 there are a number of letters of opposition in the record.
13 The primary issue is the removal of the commercial space and
14 the community's desire for that commercial space.

15 And as I'll discuss a little later on, that's
16 simply not part of what's before the Board today, which is
17 really just the rear yard and the closed court relief. Next
18 slide, please.

19 To briefly walk through the plans, which I'll try
20 and move through quickly, but we can always circle back and
21 Mr. Negussie can also speak to that if the Board has
22 questions, this is the ground level plan.

23 You can see the paper alley on the right side of
24 your screen with the access to the below-grade parking level,
25 and the ground floor, instead of retail previously, will now

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1 be units and a lobby. Next slide, please.

2 This is the typical floor. The only thing I note
3 is the courts at the top of the slide you see along that
4 northern property line, which is part of the relief that is
5 being requested.

6 Second through fourth floor will be entirely
7 dwelling units. Next slide, please.

8 The project will have a fully compliant and set
9 back penthouse level with units in it. Next slide, please.
10 And then here you can see the parking level with the 17
11 parking spaces. Next slide, please.

12 To give the Board an idea of what the building
13 will look like from the exterior, here is the elevation that
14 will be facing First Street, which is the side of the
15 property. Next slide, please.

16 This is the southern elevation that will be facing
17 Kennedy. Next slide, please.

18 This is the eastern elevation. So along the
19 alley. You can see that parking entrance as well as an
20 informal loading area on the right side of your screen.
21 Again, we're less than 50 residential units, so no formal
22 loading berth is required.

23 However, to meet the needs of the unit, the
24 loading area will be provided for things like trash pickup
25 and residential move in and move out. Next slide, please.

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1 And then this is the northern elevation. Because
2 this is where the court and rear yard relief is, I would just
3 note that it directly abuts a blank wall, which we will see
4 later on in the presentation.

5 But again, we are not aware of any opposition from
6 that neighboring property. Next slide, please.

7 So to recap the special exception relief we're
8 seeking from the Board, there are two closed courts, one that
9 northern lot line.

10 Both are non-compliant. The requirement based on
11 the height of the building is 16 feet in width and 300 square
12 feet of area. So both are non-compliant.

13 And then the rear yard requirement is 15 feet.
14 But again, none is being provided. Next slide, please.

15 In terms of harmony with the purpose and intent
16 of the regulations, the MU-4 Zone calls for moderate density
17 housing with access to main roadways and that's exactly what
18 this project is achieving.

19 We are increasing the housing stock with 47 new
20 dwelling units including affordable units. And as I
21 mentioned earlier, the goal is to, subject to DHCD financing,
22 to provide greater affordability of this project.

23 It's consistent with the pattern development along
24 Kennedy Street. You saw the MU-4 Zone along Kennedy Street.
25 So, we believe it's consistent with that.

1 And then of course, we have the Office of Planning
2 support that I mentioned earlier in outlining how we are
3 harmonious with the zoning regulations. Next slide, please.

4 In terms of adverse impact, you can see that
5 northern lot line inside the blank building that faces us,
6 again, the proposed density is fully consistent with the MU-4
7 standards.

8 The closed courts are provided and are sufficient
9 to allow light and air to those units along the northern lot
10 line.

11 Without the courts and without the rear yard
12 relief, there would be no windows on that side, so these
13 allow for very usable and inhabitable space to be provided.

14 Again, we don't believe we're adversely impacting
15 the directly abutting apartment building to the north, which
16 has a blank wall facing us.

17 Their rear yard is also just used for parking.
18 So it's not really utilized as a space where people
19 congregate. And then to the east, we do have that alley that
20 would buffer us from the apartment building that is across
21 the alley to the east.

22 And as I mentioned earlier, and one of the reasons
23 we talked about the prior cases, the Board obviously found
24 no adverse impact and that the special exception standard had
25 been met in the prior case which was five years ago.

1 And conditions in the neighborhood have not
2 changed in terms of how the closed court and rear yard relief
3 would impact any neighboring properties. Next slide, please.

4 There are special conditions for the rear yard
5 relief that we've met. No apartment windows would be located
6 within 40 feet in front of another building.

7 There's no windows on the side of the residential
8 building that abuts the rear property line. This is not an
9 office project, so there are no office windows being
10 proposed.

11 The project is parallel to adjacent buildings
12 along Kennedy Street with no rear-facing windows. And again,
13 it's been carefully designed and the Board previously found
14 that it would not limit sightlines with having rooms on
15 neighboring buildings. Next slide, please.

16 Finally, the provision of appropriate parking and
17 loading, meet the parking requirement and while there is no
18 loading requirement, we will be providing a loading area for
19 again all the necessary back of house type functions,
20 including move in and move out. Next slide, please.

21 And enclosing, again, given the number of
22 community involvement and the number of comments in the
23 record, I did want to address those.

24 Again, the primary comments we have seen are
25 two-fold, one being the community's desire for the retail

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1 commercial component, and the desire for more three-bedroom
2 units.

3 Again, the scope of this review is limited to
4 whether the conditions for closed court and rear yard relief
5 have been met. There is no requirement for that special
6 exception relief or the MU zone to provide commercial space.

7 There are zones in the zoning regulations that
8 have preferred or mandatory uses. This is not one of them.
9 I know the Board sees many projects in the MU-4 zone.

10 You're simply not required to provide any sort of
11 particular use. Again, a residential multi-family is
12 obviously a bi-right use here.

13 So we are fully compliant with the use standards
14 in the MU-4 zone. With that being said, Councilmember George
15 and ANC Chair Brooks, who I'm sure can speak on this, held
16 a community meeting that was attended by Mr. Negussie at the
17 end of March to talk about some of these issues.

18 I won't put words in anyone's mouth. I can let
19 them speak to it. But my understanding was some of the
20 confusion was explained and the understanding of why Mr.
21 Negussie's seeking the project he is, again, that's
22 consistent with the permitted zoning. Next slide, please.

23 And finally, I just wanted to address something
24 that DDOT requested in connection with their report and our
25 discussions with them. We are perfectly content with working

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1 with them on a horizontal public use agreement that will
2 control the design, construction, and acceptance of that
3 existing paper alley once it is improved by Mr. Negussie into
4 their repertoire.

5 And with that, you can move to the next slide and
6 we will be happy to take any questions from the Board.

7 VICE-CHAIR JOHN: Thank you. Before we move the
8 slides, can you show me where that second court is on one of
9 the slides.

10 MR. DEBEAR: Yes, if you can move back to Slide
11 10. So you can see, there's one court, a smaller court,
12 which is toward the eastern side of the building.

13 And again, this starts at the second level. And
14 then there's the larger court toward the center of the
15 building. You can see there.

16 VICE-CHAIR JOHN: Thank you. I suspected this was
17 the slide it would show. It was very difficult for me to
18 find it. So this was not really very helpful. Okay, thank
19 you. So, are there other questions from Board members?

20 MEMBER BLAKE: Madam Chair, one quick question.
21 It's not quite on point, but I would just be curious to know
22 how the site property of development is about the same.

23 I'd just be curious to know how that 4,000 square
24 feet was repurposed since obviously the apartment they added
25 is not 4,000 square feet. Just curious about that.

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1 MR. DEBEAR: Mr. Negussie, do you want to take
2 that one?

3 MR. NEGUSSIE: Sure, I'm happy to do that. First
4 of all, thank you for the Board to allow me to at least
5 answer questions and to make these presentations today.

6 VICE-CHAIR JOHN: Thank you. Just a minute,
7 please. OZ, please drop the slide. Thank you.

8 MR.NEGUSSIE: Okay.

9 VICE-CHAIR JOHN: Go ahead.

10 MR. NEGUSSIE: Thank you.

11 VICE-CHAIR JOHN: Please introduce yourself again
12 for the record.

13 MR. NEGUSSIE: Sure. My name is Mel Negussie.
14 I'm part of the development team with RE1 LLC. The timing
15 and reason, let me actually back up a little bit, initially,
16 the original design was to have two levels of below-ground
17 space, the much lower level, the second level, P2, as we call
18 it, was going to be parking.

19 And the level right below it was going to be a
20 combination of residential and other amenities. And the
21 reason we actually got rid of the lower level is because
22 there's a huge water issue once you go beyond about 20 feet
23 into the ground on Kennedy Street.

24 And I've had this experience myself on another
25 project. So it was going to be financially unfeasible to go

1 33 to 35 feet below ground. So we have to eliminate one
2 level.

3 So when we eliminated one level, we wanted to be
4 sure that we still maintained the number of parking spaces.
5 So we ended up having the parking spaces on the lower level.
6 So now we're going, I think a maximum of about 33 feet into
7 the ground, depending where the elevation is.

8 And basically, when we repurposed, to answer your
9 question directly now, when we repurposed that ground level,
10 we took some of the units that were already below ground into
11 the first level and then we have common areas and so forth.

12 So that's basically how we ended up with 47 units
13 instead of 46 units initially. Floors 2-5, 2-4 including the
14 penthouse, are primarily identical to what it was in the
15 previous application. Thank you.

16 VICE-CHAIR JOHN: Thank you. Any other questions
17 from the Board? Thank you. I see that commissioner has
18 joined us. Can you introduce yourself, please? Commissioner
19 Brooks?

20 MR. DEBEAR: You're muted.

21 MS. BROOKS: Good morning. My name is Allison
22 Brooks, and I am the single member representative for 4B 08,
23 and I also happen to be the chair.

24 VICE-CHAIR JOHN: Thank you. Please, go ahead and
25 give a statement, if you wish.

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1 MS. BROOKS: Yes, I've written, I've typed my
2 statements. I'm just going to read --

3 VICE-CHAIR JOHN: Sure, go ahead.

4 MS. BROOKS: The ANC initiates recommendations for
5 improving city services conducting neighborhood improvement
6 programs and monitoring resident complaints.

7 In this case, to hear the voices of the people,
8 the ANC held a Housing Justice Committee meeting, SMD
9 meetings, public ANC meetings, all of which were noticed to
10 the public via listservs, emails, and newsletters.

11 Since the pandemic, our meetings have been virtual
12 with our agendas, minutes, and resolutions housed on our
13 website. On this issue, I've attended the Longfellow Block
14 Club, South Manor Neighborhood Association, a Lamond-Riggs
15 Civic Association, citizens aware, held SMD meetings, and
16 discussed over the last six years with many residents.

17 While discussing this issue, many residents that
18 attended those early meetings have said that they do not want
19 new retail until we fill the vacant buildings along the
20 corridor and address the parking concerns that currently
21 exist.

22 Had the residents that submitted letters of
23 opposition attended any of those meetings, they would have
24 had the opportunity to share their concerns.

25 The residents that you've heard from recently

1 didn't participate in any way and therefore didn't receive
2 any updates about the project unless they received our
3 newsletter.

4 So the public outreach on many occasions and to
5 say -- there was public outreach, excuse me, on many
6 occasions, and to say to the contrary would be untrue.

7 There will always be voices on both sides of the
8 development, and it is my responsibility to make the best
9 decision I can with all of the information that I have at the
10 time.

11 When you look at the BZA case record for this
12 case, there is an attempt to apply unanimous feeling with
13 regard to retail and refusing to support -- and that I am
14 refusing to support the will of the people.

15 However, that is not the case. Now, specifically,
16 to bring us to case number 21103, which was created when case
17 number 19897 was closed in March, Coloma River originally
18 purchased the lots with the intention of adding housing and
19 first-floor retail.

20 And once Coloma River sold the property, their
21 vision for the property left with them. The ANC does not
22 have the authority to force an owner to keep the same plan
23 as the previous developer.

24 RE 1 as a different plan for the building, and it
25 does not include retail. The MU-4 Zone does not require

1 specific mixed uses. It just permits it.

2 So the letters that were permitted were not all
3 from the SMD. They were not all from within our boundaries,
4 and they were not even all from Ward 4.

5 At least 9-10 of the letters don't even indicate
6 where in D.C. they live. The same is true of the petition
7 that was created, and in most cases, the opposition has only
8 spoken with a few residents who do not fully understand the
9 role of the ANC, what authorities we have, and what we have
10 done over the last several years, because they were not
11 engaged in the process.

12 ANCs can notice meetings, but unfortunately, we
13 cannot force people to attend. This application is for
14 special relief, special exception relief, for closed court
15 relief and rear yard relief, and as a result, unlimited to
16 whether or not they meet the requirements of the regulations
17 set forth for the use of the property.

18 Therefore, closed court relief and rear yard
19 relief are the only two issues that should be considered,
20 excuse me, because retail is not a part of consideration for
21 the application for relief.

22 The ANC's main job is to be the neighborhood's
23 official voice, and I understand my responsibility. As an
24 SMD commissioner, I arrived at the decision that it's in the
25 best interest of the community to support the special

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1 exception.

2 The ANC has to respond to the case at hand.
3 Because of the Passover holiday, our meeting was delayed and
4 there is this implication that we postponed for some other
5 reason other than that. And that is not the case.

6 So, I can look at what already exists. Excuse me.
7 As a commissioner, I cannot require retail and development,
8 force the owner to provide it.

9 I can't require a specific type of retail, either.
10 I can look at the street and the potential underground
11 parking and what can be supported.

12 I can look at what already exists and whether it's
13 thriving or not. Lastly, I cannot discount the voices of
14 those who participated throughout the process and only listen
15 to a local subset of uninformed residents who didn't engage
16 in the process until March of 2024 when your favorite local
17 coffee shop was moved four blocks down the street.

18 So lastly, this should not be a race to see who
19 can send the most documents to the record. It shouldn't be
20 a popularity contest. It shouldn't be defamed and threatened
21 of showing up at today's hearing. And I should be able to
22 do what I was selected to do.

23 In the words of the mayor, affordable housing
24 decisions that we make today will inform the affordability
25 of the district for decades to come.

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1 We're focused on doing what we need to do to keep
2 more Washingtonians in D.C. and a part of that means making
3 these very difficult decisions. Thank you.

4 VICE-CHAIR JOHN: Thank you, Commissioner. Does
5 the Board have any questions for the Commissioner at this
6 time? Does the Applicant have any questions for the
7 Commissioner?

8 MR. DEBEAR: We do not. I just want to thank the
9 Chair Brooks for being here this morning.

10 VICE-CHAIR JOHN: Thank you. So Commissioner
11 Brooks, can you tell us what happened at the meeting for the
12 application, the previous application? It was last year,
13 there was a meeting.

14 MS. BROOKS: Oh, yes.

15 VICE-CHAIR JOHN: ANC on that application.

16 MS. BROOKS: Yes.

17 VICE-CHAIR JOHN: And as I understand it, that
18 application is exactly the same as what is presented today?

19 MS. BROOKS: Well, we've not voted yet, because
20 our meeting is this coming Monday.

21 VICE-CHAIR JOHN: Okay.

22 MS. BROOKS: But the new resolution has been
23 circulated and, yes, it is 99.9 percent the same with the
24 change in the case number.

25 VICE-CHAIR JOHN: Okay, so I'm a little confused

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1 now.

2 MS. BROOKS: So we -- I'm sorry.

3 VICE-CHAIR JOHN: Let me try to see if I can ask
4 the question again. So the ANC met last year, late last
5 year, and approved the previous application without the
6 retail.

7 MS. BROOKS: Yes.

8 VICE-CHAIR JOHN: is that correct?

9 MS. BROOKS: That is correct.

10 VICE-CHAIR JOHN: Okay. What happened at that
11 meeting?

12 MS. BROOKS: It was uneventful.

13 VICE-CHAIR JOHN: Okay.

14 MS. BROOKS: With the resolution. The owner, Mr.
15 Negussie, came to the meeting. He came to our Housing
16 Justice Committee Meeting prior to the full meeting.

17 He spoke there. There were people in attendance.
18 He came to the ANC meeting. He spoke there. There were
19 residents in attendance from 4B 08 and every other SMD within
20 the commission boundaries.

21 Typically, our meetings are anywhere from 50-75
22 people depending on the topic. And, actually, we have
23 greater attendance now that we are virtual than we did when
24 we were in person.

25 There was no opposition presented at that time.

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1 The commission voted and it received 100 percent support at
2 that time. We submitted that resolution at that time.

3 That was the only case number we had at that time.
4 When this case number came about, there was some confusion.
5 The understanding was the exact same case, and that it needed
6 to have a new case number because the old case closed.

7 But I didn't receive notification that the old
8 case closed until March. So between January and March, there
9 was some confusion about whether or not the resolution that
10 we voted on last year was sufficient, or whether or not there
11 would need to be a new resolution.

12 By the time we learned that there would need to
13 be a new resolution, we had already held our March meeting.
14 And so I was told that it would be okay to have it on our
15 April agenda. And that's what we did.

16 VICE-CHAIR JOHN: I see. So there would have been
17 an ANC meeting on April 29.

18 MS. BROOKS: Yes, ma'am.

19 VICE-CHAIR JOHN: Okay. Mr. Blake?

20 MEMBER BLAKE: Yes, I have one question for the
21 Commissioner. You had mentioned in your earlier statement
22 the main issue that the residents had expressed throughout
23 the earlier development and this was a parking issue that
24 they wanted to have addressed.

25 Is that correct? Were there any other issues that

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1 came up?

2 MS. BROOKS: No, not that I can recall. Nothing
3 that was, you know, people don't like development. People
4 don't want to hear construction.

5 Seniors that are retired don't want to have to
6 wake up early. So there's always those kinds of comments.
7 But there was nothing that was sort of large in number in
8 terms of complaint.

9 There's an ongoing issue with parking along
10 Kennedy Street corridor. Years ago, when there was a
11 revitalization effort, and I'm talking maybe a decade ago or
12 more, a few parking spaces along that corridor were
13 eliminated, and then ever since then, more people drive.

14 There are more cars and less parking. And so now,
15 residents are finding that people along Kennedy Street are
16 parking on Longfellow, and people on Longfellow have to then
17 park on Madison, and it just pushes out parking concerns.

18 Now, we're finding that more people from the
19 northwest side of Kennedy Street are parking even on the
20 northeast side of North Capitol Street because there's less
21 and less parking.

22 And so that's just something that I hear on an
23 ongoing basis, not just because of the project at hand.

24 MEMBER BLAKE: Okay, thank you.

25 MS. BROOKS: How do I get residential parking?

1 How do I get permitted parking? How do I get handicapped
2 parking? Because now they're having issues with parking.

3 MEMBER BLAKE: Okay, thank you very much.

4 MS. BROOKS: You're welcome.

5 VICE-CHAIR JOHN: And so, Commissioner, one last
6 thing. How much retail is there on that level?

7 MS. BROOKS: One moment. During the meeting that
8 we held on the 29th, I listed some of the buildings that are
9 within a two-mile radius.

10 And so I'm going to open that document and I can
11 read that to you as well.

12 VICE-CHAIR JOHN: I don't need the specific names,
13 just an idea of what's there. I'm familiar with the area,
14 so just a general idea.

15 MS. BROOKS: There are approximately currently 14,
16 within two miles of the property, there are at least 15
17 different business.

18 VICE-CHAIR JOHN: Walking distance. Let's say
19 from, let's say from First Street to Georgia Avenue. I think
20 that's the right -- First Street.

21 MS. BROOKS: I didn't count from -- I only counted
22 from First to Third and there were 15.

23 VICE-CHAIR JOHN: Okay.

24 MS. BROOKS: And you're going to get -- if you go
25 all the way to Georgia, there are many, many more business.

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1 VICE-CHAIR JOHN: Okay. First to Third.

2 MS. BROOKS: Yes, because that's the end of our
3 boundary. I didn't count the businesses in ANC 4D, which
4 would continue from Third and Kennedy over to Georgia.

5 VICE-CHAIR JOHN: Okay. So we're looking at about
6 15 businesses in those three blocks.

7 MS. BROOKS: Yes.

8 VICE-CHAIR JOHN: Okay.

9 MS. BROOKS: Yes, ma'am.

10 VICE-CHAIR JOHN: So, if there are no more
11 questions, I'll go to the Office of Planning.

12 MS. BROOKS: Also, I'm sorry, may I say one more
13 thing?

14 VICE-CHAIR JOHN: Please, go ahead.

15 MS. BROOKS: To be fair, what you won't find in
16 terms of businesses in that great distance is a market. And
17 so, what we've talked about doing is bringing a farmer's
18 market to the corridor.

19 We've been working to do that with the
20 councilmember's office as well as uptown Georgia Avenue, the
21 Main Streets program. And so that would then provide the
22 opportunity for residents to buy fresh groceries.

23 It's not there yet, but we expect it to come.

24 VICE-CHAIR JOHN: Okay. Thank you, Commissioner.

25 Ms. Thomas?

1 MS. THOMAS: Hi. Good morning, Madam Chair,
2 members of the board. Karen Thomas with the Office of
3 Planning. And essentially, we will rest on the record of our
4 report.

5 It is the same determination we made in the
6 original case and not much has changed in this application,
7 except that the applicant has included residential ground
8 flow which is permitted.

9 And so, we do not have anything more to add beyond
10 our report. And we rest on the record of our report. Thank
11 you.

12 VICE-CHAIR JOHN: Thank you. Does the applicant
13 have any questions for the Office of Planning?

14 MR. DEBEAR: I do not.

15 VICE-CHAIR JOHN: Commissioner, do you have any
16 questions for the Office of Planning? Commissioner Brooks?

17 MS. BROOKS: No, I do not.

18 VICE-CHAIR JOHN: Does the Board have any
19 questions for the Office of Planning? Okay, Mr. Office of
20 Zoning, is there anyone signed up to testify?

21 MR. SAKINEJAD: Yes, we have four people who would
22 like to speak in opposition?

23 VICE-CHAIR JOHN: Okay, could you let them in,
24 please?

25 MR. SAKINEJAD: Yes, ma'am.

1 MS. BROOKS: Commissioner John, I'm still here,
2 but I'm going to turn my camera off for a moment.

3 VICE-CHAIR JOHN: Okay, please go ahead. And who
4 is the first witness?

5 MR. GARNESS: My name is Brad Garness. I'm not
6 sure if you guys can hear me.

7 VICE-CHAIR JOHN: Yes, we can. Please give us
8 your name and home address.

9 MR. GARNESS: Yes, my name is Brad Garness,
10 B-R-A-D, G-A-R-N-E-S-S. I live at 103 Longfellow Street, so
11 I'm on the northwest corner, about 250 feet from the proposed
12 building.

13 VICE-CHAIR JOHN: Okay. Please give us your
14 statement and you will have three minutes.

15 MR. GARNESS: Okay, and there's a lot. This
16 project has been going on for almost, closer to 10 years, so
17 there's a number of things that have happened.

18 One important thing to realize is that at some
19 point, they moved the liquor license from the liquor store
20 into the building across the street, which is our community
21 market.

22 Ever since then, we've lost our community market.
23 Now, this new project is combining that old liquor store with
24 La Coop.

25 We, as neighbors, have come together, and there's

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1 a tremendous volume of us. We've signed petitions. We've
2 written letters.

3 We've done everything we can. Because of the way
4 that COVID and the waivers and the extensions have been
5 pushed, there was no -- the last time that real notice of a
6 change or a substantial modification was over six years ago.

7 So on the issue of the closed court, this is a
8 quality of life concern. We have a tremendous problem with
9 violence on that corner.

10 In the last year and a half, we've had three
11 people shot, two of which were children. So when the
12 community originally approved these types of waivers that
13 would allow for no courtyard, we expected to have community
14 spaces.

15 As it stands, adding 47 apartments to that
16 location with no place for people to go, it would only
17 exasperate a situation.

18 The urban planning principles, these courtyards
19 are for sunlight, denying a waiver for that, ensures that we
20 have adequate access and that people living there have
21 adequate access to amenities such as green space.

22 Denying the waiver for closed courtyards helps
23 preserve and promote the integration of green space within
24 these urban areas.

25 The proposed courtyard waiver would negatively

1 impact the community and it would undermine public policy
2 goals.

3 The previous waiver for the closed courts was
4 acceptable as community spaces would be found in the proposed
5 4,000 square foot retail space.

6 The developer is now proposing a 74.6 percent lot
7 occupancy with solely residences. This is a terrible idea.
8 It leaves no room for the community space.

9 And the lack of this community space is causing
10 and creating these unsafe public conditions. I would ask
11 that you guys look at Exhibit 69, specifically Page 17, where
12 it shows that there's been neglect in allowing so much
13 additional residential development without any of the retail
14 development.

15 What we heard our Commissioner speak about was
16 that people in the neighborhood, I'd like to see these
17 people, they're not writing letters, that there's enough
18 retail space.

19 Well, this retail space is outdated. And when you
20 read, there are several articles that have been written, but
21 the last article discusses how these retail spaces are
22 outdated and they're not competitively for market cross.

23 Now, moving over, I'm running out of time,
24 regarding the waiver for the rear yard relief, I humbly
25 remind the Board that the ordinances are prescribed minimum

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1 setbacks to ensure adequate spacing between these buildings
2 to promote the privacy and allow for sufficient light and
3 ventilation.

4 The people that live in the apartments across the
5 street and next door do not have air conditioning, and they
6 require open windows.

7 So if you go and look on a day like today, all
8 those windows are open and people need access to that air.

9 The rear yard request contravenes the established
10 zone regulations for the area, and these regulations are in
11 place to ensure the orderly development of the properties and
12 protect our neighborhood for the character and public health
13 and safety.

14 Like I was just talking about, I've lived here
15 over a decade. I've seen four or five people killed on First
16 and Kennedy Street.

17 Last year, we had a four-year-old shot, we had a
18 13- year-old shot, and an adult, that triple shooting that
19 occurred in an alley very similar to the one that they're
20 discussing building now.

21 The community has come together several times.
22 The vast majority of the neighbors are opposed to allowing
23 this development.

24 And we're not opposed because we're like nimbies
25 saying not in our backyard. We're saying, yes, we're

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1 nimbies. Yes, it's in our backyard, but give us a community
2 space.

3 It's unsustainable to just shove in more
4 development in this very troubled corner, as the people have
5 been forced to -- we're coming together.

6 There's a real public interest. And the denial
7 of the rear yard is in the best interest of the community as
8 a whole. Upholding the established zoning requirements, it
9 serves to protect the public health, the safety of the
10 community, and it should take precedence over the individual
11 interest of these developers.

12 VICE-CHAIR JOHN: Mr. Garness, you're out of time.
13 Can you wrap it up, please?

14 MR, GARNESS: Yes, so I really do urge you guys,
15 please look at Page 17 of Exhibit 69, which shows just this
16 tremendous building of retail and no building of these
17 commercial spaces.

18 And these are community spaces. And so, you guys
19 have all my love and I hope you guys do the right thing. And
20 if you look at --

21 VICE-CHAIR JOHN: Mr. Garness, you are out of
22 time.

23 MR. GARNESS: All right, I'm out of time. All
24 right, guys. Thank you so much.

25 VICE-CHAIR JOHN: Thank you. Thank you for coming

1 down. Does the board have any questions for the witness?
2 Mr. DeBear?

3 MR. DEBEAR: I do not.

4 VICE-CHAIR JOHN: Okay.

5 MS. BROOKS: Commissioner John.

6 VICE-CHAIR JOHN: You have an opportunity -- go
7 ahead. Go ahead.

8 MS. BROOKS: Okay. Mr. Garness, question the
9 residents that are not opposed. When he first reached out
10 to me, I gave him names and addresses of people to speak to
11 along the corridor.

12 I gave him names of people that lived on
13 Longfellow Street, and he's never reached out to them. So
14 he could have met them. I asked him to meet them, and he did
15 not meet them.

16 With regard to violence along the Kennedy Street
17 corridor, unfortunately, the Kennedy Street corridor has had
18 a crime issue for a very long time.

19 The city is going through a crime problem right
20 now. Yes, there have been shootings in that area. They
21 aren't all on that corner.

22 In fact, I don't think any of them were actually
23 on that corner. I think they were within two blocks. They
24 were within two blocks.

25 The child that was shot was on a daycare that's

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1 next to the CVS. It's not at that corner. The domestic
2 violence issue that was in the alley across the street was
3 a domestic violence issue in the alley across the street.

4 Unfortunately, the day that I took off is, there
5 was a shooting in front of Jackie Lee's, which you know is
6 a nightclub in the area or a bar, whatever you want to call
7 it, in that area.

8 And so, yes, there's shootings. There's shootings
9 throughout the corridor. Unfortunately, yes, there's
10 shootings in my SMD and they are typically in that area,
11 because that's the commercial corridor.

12 My point is, to imply that they were all in that
13 one corner, that would not be an accurate statement.

14 MR. GARNESS: I think it's fair --

15 VICE-CHAIR JOHN: Mr. Garness, we are not doing
16 a back and forth. So, is that it, Commissioner?

17 C MS. BROOKS: Yes, ma'am.

18 VICE-CHAIR JOHN: Okay, thank you. Would OZ let
19 the next witness in? I see that there is Mr. Troxler. Or
20 Ms. Troxler. How about Ms. Daniels Benderev?

21 MS. DANIELS BENDEREV: Hi, yes, yes, good morning.
22 My name is Madeline Daniels Benderev. I live at 56
23 Longfellow Street Northwest. I share a public alley with
24 this development.

25 In fact, I'm looking at it right now. Thank you

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1 all for considering our concern about the ANC resolution from
2 the expired application being submitted as an exhibit for
3 this case, as cited by the attorneys for the developer and
4 the Office of Planning.

5 As you know, since this case expired, some of us
6 have received the required notice of virtual public hearing,
7 which really prompted the community to learn more about this
8 case.

9 And as you now know, based on the exhibits, there
10 has been a significant amount of pushback and concern among
11 my neighbors and conversations with all commissioners in the
12 ANC.

13 I think the timing of this pushback after
14 receiving the notice should not discount the views of many
15 impacting neighbors, and certainly wish we weren't being
16 reduced to a group of uninformed residents mad about our
17 coffee shop.

18 In fact, as development continues in our area,
19 we're seeing available retail disappear to residential only
20 projects, including a recent project at Kennedy and First
21 Place Northwest, and are watching the opportunity of a
22 walkable and vibrant community seemed to disappear.

23 But I also understand that the focus of today's
24 hearing is the rear yard requirement and the court
25 requirements the developer is seeking relief from.

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1 You know, this in and of itself is frustrating,
2 given that each agency seems to have a narrow scope with no
3 real mechanism to ensure urban planning best practice or
4 alignment with the Kennedy Street Revitalization Plan.

5 So this leaves residents like myself in a position
6 of real limited knowledge and information to meaningfully
7 weigh in at decision points.

8 But after speaking with subject matter experts,
9 I do have some concerns of the implications of the
10 application on the alley that I share with the major
11 modifications, including removing the entire grade.

12 And while the neighboring building certainly does
13 not have windows facing the lot, it seems to me like zoning
14 relief would permanent limit any redevelopment or renovation
15 to the neighboring people, which we're seeing a considerable
16 amount of in this neighborhood.

17 So really, I am appealing that you use your
18 judgement and subject matter expertise on behalf of the
19 community members who have weighed in by submitting letters.
20 Thank you so much.

21 VICE-CHAIR JOHN: Thank you. Does the board have
22 any questions? Does the applicant have any questions?

23 MR. DEBEAR: We do not.

24 VICE-CHAIR JOHN: Does the ANC have any questions?
25 Ms. Benderev, were you at the ANC meeting last year?

1 MS. DANIELS BENDEREV: Not the one last year, no,
2 but I have watched it since.

3 VICE-CHAIR JOHN: Okay, thank you. Ms. Troxler?
4 Ms. Troxler, can you hear me? Is there a Ms. Wallace?

5 MR. SAKINEJAD: She's on the line but she's muted.

6 VICE-CHAIR JOHN: Okay.

7 MS. WALLACE: I pushed the button. Hello.

8 VICE-CHAIR JOHN: No, go ahead. Please state your
9 name and give your address for the record, please.

10 MS. TROXLER: My name is Coretta Troxler. I live
11 at 5539 First Street Northwest, along Longfellow.

12 VICE-CHAIR JOHN: Go ahead and give your
13 statement. You have three minutes. And we're having
14 difficulty hearing you.

15 MS. TROXLER: Oh, no. All right, can you hear me
16 now?

17 VICE-CHAIR JOHN: That's much better.

18 MS. TROXLER: Okay. So I don't really have that
19 much knowledge of the government overall.

20 VICE-CHAIR JOHN: Ms. Troxler, Ms. Troxler, you're
21 fading again.

22 MS. TROXLER: I'm not sure why that's happening.

23 VICE-CHAIR JOHN: Okay.

24 MS. TROXLER: I'm driving.

25 VICE-CHAIR JOHN: We can hear you now. Try again,

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1 please.

2 MS. TROXLER: Okay, so, I don't have much
3 knowledge of what has gone on in the past, I just am an
4 observer of the community I've been living in since 2020 and
5 actually inherited some property that I have now.

6 But just overall, I would say, as a mom, as
7 someone who lives in the community, there's several other
8 things I feel like that space could be used for.

9 I know contracts have been signed and things have
10 went out. However, as a mom, there is a drastic need for
11 somewhere for children to play.

12 It's not really oftentimes you see a park or
13 smaller things that can help the community, like I said, get
14 out, explore the neighborhood.

15 I think there's only a couple of ours down the
16 street. I think it's in a way leading towards most of, not
17 a food desert because we have Wal-Mart and those things like
18 that, but just as far as something local you can get, maybe
19 some fresh produce, things like that, aren't necessarily I
20 would say as easily accessible.

21 So that's why I wanted to join is to speak on that
22 part, as far as someone who lives literally right there.
23 There's already apartments sprawling up everywhere.

24 And there's a lack of parking, like none other
25 just from my experience day-to-day living in the

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1 neighborhood.

2 But I would just ask you to consider those
3 thoughts. And I hope that this helps. Thanks for letting
4 me speak.

5 VICE-CHAIR JOHN: Thank you. Thank you for your
6 testimony. Is there anyone else wishing to testify?

7 MR. SAKINEJAD: Kim Wallace, that is, she is
8 calling in by phone.

9 VICE-CHAIR JOHN: Okay.

10 MR. SAKINEJAD: I can unmute her now.

11 VICE-CHAIR JOHN: Thank you. Ms. Wallace, can you
12 hear me? Ms. Wallace? Can you hear me, Ms. Wallace?

13 MS. WALLACE: I'm hoping you can hear me.

14 VICE-CHAIR JOHN: Yes, please state your name and
15 address for the record.

16 MS. WALLACE: My name is Kim Wallace in care of
17 100 Longfellow Street Northwest.

18 VICE-CHAIR JOHN: Okay, please give your
19 statement. You have three minutes.

20 MS. WALLACE: All right. Again, good morning,
21 all. What happens to a dream deferred? My name is Kim
22 Wallace. I'm representing 2113.

23 My testimony is interwoven with nine lines from
24 a montage What Happens to a Dream Deferred by Langston
25 Hughes. It happened to be written in 1951.

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1 A life in care of my mother at 100 Longfellow
2 Street Northwest, who alongside hundreds of other long-term
3 homeowners have suffered decades of trauma under the horrific
4 oppression that has been Kennedy Street Northwest.

5 She like most attached home ownership to a dream,
6 a dream that imagined the Kennedy Street corridor embedded
7 amongst validity and solidarity as one that was flourishing,
8 inviting, attractive, safe.

9 For 25 years, she waited, but the Kennedy Street
10 she imagined was underrealized, unrealized. In the last four
11 years, Kennedy Street has been idealized.

12 This year, my mother is demoralized but out of it.
13 What happens to a dream deferred? Does it dry up like a
14 raisin in the sun?

15 At issue is whether RE 1 in any or all of its
16 iterations should be successful in wielding a space in which
17 might. Should RE 1 be allowed to impart legalese to impose
18 on proprietors long-term consequence on longer and short term
19 invested neighbors?

20 What happens to a dream deferred? Does it fester
21 like a sore and then run? Or does it stink like rotten meat?
22 Like RE 1's paper alley paper solution.

23 And their unrealistic plan for trash and recycling
24 and parking. RE 1's after thought, after measure, doesn't
25 at all accommodate the realness of dumping 100 people on the

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1 corners of First and Second and Kennedy Street.

2 And without thought, without measure, without
3 community mindedness, and without abatement, will
4 subsequently dump hundreds more along the corridor who,
5 having to jockey for parking during the week, will have no
6 commutable place to walk on the weekends.

7 Like the poem idea of the continuance of blatant
8 disregard, where is RE 1's real investment? Where does Mel
9 Negussie live?

10 What happens to a dream deferred? Maybe it sags
11 like a heavy load. Or does it explode? For my mother and
12 I, alongside of a collective of deferred dreamers, on behalf
13 of the believers and one day beloved Kennedy Street, have
14 exploded.

15 You look forward to hearing from us again soon.
16 Thank you very much for your time this morning.

17 VICE-CHAIR JOHN: Okay, thank you for your
18 testimony. So were you at the last meeting of the ANC where
19 this project was discussed, Ms. Wallace?

20 MS. WALLACE: I was, and to refute Commissioner
21 Brooks's statement that folks were dully notified, I nor my
22 mother have ever received any notice regarding the plans,
23 changed plans, or amended plans for 71 Kennedy Street.

24 VICE-CHAIR JOHN: Okay. You have an opportunity,
25 Commissioner Brooks. Does the applicant have any questions?

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1 MR. DEBEAR: We do not.

2 VICE-CHAIR JOHN: And I think I asked the Board.
3 Okay, Commissioner, please go ahead and --

4 MS. BROOKS: When I indicate that I notice
5 residents, that's in the form of a newsletter that I pay for
6 out of pocket to create and distribute.

7 It's distributed every other month on a good day,
8 sometimes more frequently. And it talks about things that
9 are going on in the community.

10 It might talk about upcoming meetings. It might
11 talk about upcoming changes. It might talk about
12 neighborhood cleanups. Whatever the topic is at the time.

13 I'm not obligated to notice the meetings. The
14 commission is obligated to notice the meetings. And we do
15 that in multiple ways.

16 One of the ways that we do that is the same
17 listserv and platform that residents have used to complain
18 about this project.

19 So they're on the listserv that is providing the
20 notifications and posting the updates, one.

21 Two, residents, this is not the first development
22 that has come up along the corridor in my tenure. And no one
23 was concerned with the full price project across the street
24 from 71 Kennedy that also replaced a business.

25 They were concerned with this project only. And

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1 I think that that's meaningful. And I think that needs to
2 be examined.

3 And then lastly, one of the other residents, I
4 didn't get a chance to say this early, she did not indicate
5 that she wasn't aware because she attended a meeting, a
6 community meeting where I have updates on the project.

7 So I do give updates, and there are those that
8 know that I have given updates.

9 VICE-CHAIR JOHN: Thank you, Commissioner. Are
10 there any other questions from the Board or the Applicant?
11 I believe that's our last witness. Mr. Sakinejad?

12 MR. SAKINEJAD: Yes, ma'am, that is correct.

13 VICE-CHAIR JOHN: Okay. All right. Well, I want
14 to thank the witnesses for their -- oh, I'm sorry. Mr.
15 DeBear, do you have a closing statement?

16 MR. DEBEAR: I do, I do, Vice Chair, just a brief
17 closing statement. Again, I just wanted to reiterate the
18 board's scope here is a matter of whether the applicant has
19 met the special exceptions standard for closed court and
20 rear-yard relief.

21 The board found that back in 2019 for a very
22 similar project, virtually the same. We haven't heard
23 anything today about this adverse impact.

24 The closed court and rear yard relief, it has
25 nothing to do with crime or anything of the sort that we've

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1 heard from witnesses.

2 I would also just say about the questions on the
3 ANC resolution, and Chair Brooks can speak to this, but the
4 board in its discretion can accept the ANC's resolution from
5 the prior fall.

6 That was on a publicly noticed agenda as is
7 required and as Chair Brooks testified for the same project
8 for the same relief, it is just a new application.

9 So if the board were to accept that, we would not
10 need an additional ANC resolution based on what the zoning
11 regulations require.

12 So with that being said again, issues of retail,
13 of other matters that have been stated in the record are not
14 relevant to the standard, which we believe we've met as set
15 forth in our presentation.

16 We appreciate the board's time and are available
17 for any further questions or information that would be
18 needed.

19 VICE-CHAIR JOHN: Thank you. Commissioner Brooks,
20 do you have a closing statement?

21 MS. BROOKS: Yes. I think that when you look at
22 what we've done in real time and not from a 20/20 hindsight
23 position, we attempted and in good faith did everything that
24 we were supposed to do as time was passing.

25 There seems to be this hang-up about the prior

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1 resolution. At that time, there was no other case. And I
2 find that I'm in the position -- I'm finding that I'm in this
3 position of defending everything done by people, from people,
4 who weren't involved along the way.

5 And I'm fine with that because I can stand on what
6 I've done. I'm not, as has been implied, a puppet or in the
7 pocket of developers.

8 I've even been accused of being a thief and taking
9 kickbacks, which is not the case, and I want to say that for
10 the record as well.

11 This project is affordable housing, and the goal
12 is to have people that are police officers and teachers and
13 nurses who live in this community to have a place that they
14 can afford to live in.

15 And that in itself will also help to cure some of
16 the issues that we have found along the corridor. The goal
17 is not to eliminate all retail.

18 That's never been the goal. But by adding people
19 to the community, you can support the retail that exists
20 currently, which isn't fully supported by residents today.

21 So the goal is to keep other businesses in
22 business. The goal is to revisit vacant spaces and try to
23 repurpose them with new business.

24 We've always said that. I said that in the
25 community meeting in March and I stand by that now.

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1 VICE-CHAIR JOHN: Okay, thank you. So, Mr., I'm
2 going to mangle your name again, Mike, would you excuse the
3 witnesses, please, and thank you for your testimony.

4 I see Mr. Garness. Thank you, Commissioner.
5 Thank you, Mr. DeBear.

6 MR. DEBEAR: Thank you to the board.

7 VICE-CHAIR JOHN: Thank you.

8 C MS. BROOKS: Thank you. Have a good day.

9 VICE-CHAIR JOHN: Thank you. Okay, so are we
10 ready to deliberate? I'll just start off. I think that this
11 has been a long hearing.

12 And from my perspective, I would like to see a new
13 resolution from the ANC after its meeting on April 29.

14 Excuse me. And the reason is that we're not able
15 to give great weight to the current resolution in front of
16 us, because it does not apply to this particular case, even
17 though we recognize that there are no substantial changes
18 from the original proposal to what's before the board.

19 So, I'd like to hear from other board members.
20 Board Member Smith? You're breaking up.

21 MEMBER SMITH: Any better now? Am I still
22 breaking up?

23 VICE-CHAIR JOHN: Still breaking up. Go to Mr.
24 Blake while we're waiting for you to sort out your mic
25 situation?

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1 MEMBER BLAKE: Can you hear me? I agree with you
2 that I would prefer to see a resolution from the ANC to which
3 we could afford great weight, given the fact that in this
4 testimony, we did have some concerns raised by neighbors.

5 I do think that the case as it's presented to us
6 does have -- it deals with the court and rear yard, for which
7 I think the applicant has provided fairly strong argument in
8 support and with the support of the Office of Planning.

9 However, I would like to, and would prefer to
10 have, the complete report from the ANC that we could
11 incorporate weight given the express concerns.

12 VICE-CHAIR JOHN: Thank you. Commissioner
13 Stidham?

14 MEMBER STIDHAM: I, too, would like to see a final
15 ANC resolution so we know where the ANC is officially coming
16 from on this. But I do agree that the applicant had made a
17 good case.

18 And OP has been supportive in providing a good
19 justification. But hearing from the ANC I think is very
20 important.

21 VICE-CHAIR JOHN: Thank you. Mr. Blake? I'm
22 sorry, Mr. Smith, can you --

23 MEMBER SMITH: Okay, can you hear me better now?

24 VICE-CHAIR JOHN: That's a lot better. Thank you.

25 MEMBER SMITH: Okay, so I agree with all the

1 statements that have been made by Mr. Blake and Ms. Stidham.
2 I do believe that applicant has made a very strong case for
3 the reasons why they meet the special exception criteria, and
4 I will, as Mr. DeBear stated, and as I believe the
5 Commissioner stated, we hear what we're charged with hearing
6 is special exceptions for the rear yard requirements and from
7 the closed court requirements.

8 I understand from the concerns that were raised
9 about retail, commercial market. But again, what is before
10 us is those two special exceptions.

11 I'm not negating that there may be a need for more
12 market. This particular development may support the
13 potentiality of another developer or entrepreneur coming
14 along Kennedy Street to outfit a vacant retail space that's
15 there now with some form of a market.

16 Sometimes we have to have additional rooftops in
17 order to support those type of markets, especially within
18 this economic climate that we're in now. So again, I don't
19 think it's so much of a question about denial related to not
20 having retail on the ground floor.

21 But it would be nice to hear the stance of the ANC
22 officially so that we can give the ANC great weight. So I
23 agree with my colleagues, then.

24 I just wanted to put my two cents in on where I
25 think I am with this right now.

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1 VICE-CHAIR JOHN: Okay. So then I will go ahead
2 and close the hearing and the record, except for a new
3 resolution from the ANC, which the board can give great
4 weight.

5 And so, I will set this case down for decision and
6 ask, go ahead, Mr. Smith.

7 MEMBER SMITH: I'm sorry, I had another --
8 something else to say because of some of the other concerns
9 that were raised by some of the citizens about parking.

10 The applicant is proposing to construct a garage.
11 Yes, this is less than what they were proposing initially
12 with the initial development, which I believe did have some
13 type of commercial space with it.

14 But with this additional parking, they are meeting
15 the minimum parking requirements. They are constructing this
16 facility with 17 parking spaces within the garage.

17 They are required to have I believe, Mr. DeBear
18 said zero, but I believe it's 14 based on the staff report
19 provided by the Office of Planning.

20 So they are meeting the minimum parking
21 requirements. We cannot, as a Board, require them to go
22 above the minimum. They can meet the minimum requirements.

23 I will also note that if there was a commercial
24 component, that may further exacerbate some of the parking
25 problems that were brought up by many of the residents along

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1 Kennedy Street and I believe Longfellow Street related to the
2 existing concerns they have now about parking.

3 So I just wanted to put that out there. And it
4 seems to be meeting their requirements for trash. Because
5 there weren't any concerns raised by the Office of Planning
6 or DOT in regards to how they're programming and designing
7 where they're placing the trash.

8 So sorry, Chairman John. I just wanted to further
9 elaborate on some concerns that were raised, since we're
10 closing the case for the day.

11 VICE-CHAIR JOHN: Yes, well, thanks for proving
12 those additional details. My intention was to hold a
13 decision meeting at a later date, once we have the
14 information from the ANC.

15 Because our practice is not to make a decision
16 until the record is complete. And so, Madam Secretary, can
17 you suggest a date for the decision meeting?

18 MS. MEHLERT: Sure. I mean, you could do May 8,
19 to give it two weeks. So it would be like a week and a half
20 after the ANC meeting.

21 VICE-CHAIR JOHN: Okay. And we don't need any
22 response from anyone. The record is open only for the new
23 resolution from the ANC.

24 Okay, so we'll continue the case for decision on
25 May 8. It's 11:00 o'clock. Does the Board need a break?

1 I would say 10 minutes, or we could come back at 11:15, which
2 is nine minutes. Okay. All right, thank you.

3 (Whereupon, the above-entitled matter went off the
4 record at 11:06 a.m. and resumed at 11:21 a.m.)

5 MS. MEHLERT: Yes, the Board has returned from its
6 break and the next application in the hearing session is case
7 number 19542A of Bluebell Massage, LLC.

8 This is a self-certified request pursuant to
9 Subtitle Y Section 704, for Modification of Significance,
10 supported under 19542, which granted a special exception
11 under Subtitle U Section 513.1H for a massage establishment
12 use.

13 And this is to allow the expansion of the massage
14 establishment use to the first floor of the existing
15 three-story building.

16 The project is located in the MU-4 zone at 3705
17 Fourteenth Street Northwest, Units 1 and 2, Square 2826, Lot
18 12.

19 VICE-CHAIR JOHN: Okay, thank you. Mr. Sakinejad,
20 would you let the applicant in, please? Is that Ms.
21 Bradford?

22 MR. BRADFORD: Yes, good morning. Can you hear
23 me all right?

24 VICE-CHAIR JOHN: Yes, good morning. Can you
25 introduce yourself for the record and state your home

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1 address?

2 MR. BRADFORD: Yes, so my name is Sophie Bradford.
3 I'm an associate attorney with Weiss LLP. And my, I guess,
4 business address is 1101 Connecticut Avenue Northwest, Suite
5 410, Washington, D.C. 20036.

6 VICE-CHAIR JOHN: Thank you. Can you tell us
7 about your application and how it meets the criteria for
8 approval?

9 MR. BRADFORD: Yes, ma'am. So I am also here with
10 the applicant's principal, Mr. Carlos Machado. We had both
11 signed up to testify but he is attending with me in the
12 office.

13 VICE-CHAIR JOHN: Okay.

14 MR. BRADFORD: Just so everyone is aware. So I
15 also would ask, I had submitted Exhibit 28 for the record as
16 a presentation, if that could be brought up on the screen.

17 VICE-CHAIR JOHN: Thank you. Mr. Sakinejad, could
18 you pull up that presentation, please?

19 MR. BRADFORD: All right. Okay. Amazing. So
20 I'll start with a little bit of background on the application
21 for Modification of Significance and then go through some of
22 these detailed plans that are on your screen, and then we'll
23 go through how this complies with the zoning regulations.

24 So as background, the applicant, which is Bluebell
25 Massage LLC, which trades as Bluebell Spa, was founded in

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1 2016 by Mr. Machado as an upscale day spa.

2 It continues to be owned and solely operated by
3 Mr. Machado, who is a resident of Ward 4 and a licensed
4 massage therapist.

5 So as stated, the applicant is located at 3705
6 Fourteenth Street Northwest in a three-story mixed-use
7 commercial building that is zoned MU-4.

8 Unit 1 on the first floor was formerly occupied
9 by a barber shop. Unit 2 on the second floor is occupied by
10 the applicant currently.

11 And Unit 3 on the third floor is occupied by Mr.
12 Machado personally as his residence, and that is the only
13 residential unit in the building.

14 In 2017, the applicant applied for a special
15 exception from the BZA to permit therapeutic massage services
16 in Unit 2 in addition to the existing permitted day spa
17 services.

18 The BZA unanimously approved that special
19 exception in July 2017 pursuant to Board Order 19542. Since
20 then, Mr. Machado has operated Bluebell Spa out of Unit 2 on
21 the second floor.

22 There have never been any citations or complaints
23 against the applicant to Mr. Machado's knowledge. In 2023,
24 the applicant had the opportunity to sign a lease for Unit
25 1 on the first floor for the newly empty unit, since the

1 barber shop had vacated the premises.

2 And the applicant wanted to expand its operations
3 between the second floor and the first floor. So as such,
4 the applicant is now seeking to modify the existing special
5 exception to provide the therapeutic massage services between
6 both Unit 2 and Unit 1.

7 So currently, as you can see on this first screen,
8 the applicant's business on the second floor consists of four
9 treatment room, a bathroom, a small reception area, a storage
10 space, and it's accessible through an external staircase that
11 is on Fourteenth Street Northwest.

12 We submitted detailed architectural and structural
13 plans, but I wanted to highlight five of the more important
14 drawings in my presentation.

15 All of the other plans are part of the applicant's
16 file, but the five on your screen are kind of the five key
17 plans overarching this project. And so I'll describe them
18 in turn.

19 So Exhibit A, which is on your screen currently,
20 it shows an overview of the proposed changes to both Unit 1
21 and Unit 2.

22 So Mr. Machado, in working with his architectural
23 design firm, DBMC Designs LLC, proposes connecting Unit 1 and
24 Unit 2 by the internal staircase and adding three additional
25 treatment rooms to the first floor, which is Unit 1. If you

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1 could scroll to the next page, please.

2 So this is the proposed plan for Unit 1, the first
3 floor of the property. So the main entrance and reception
4 area will be moved from the second floor to the first floor.
5 You can see the drawing of the desk.

6 There will be three treatment rooms constructed
7 and an additional bathroom constructed in addition to the
8 existing bathroom that is already presently in Unit 1.

9 And then there will be a staff breakroom
10 constructed at the very back of the unit, as you can see, and
11 then there is an external egress door all the way in the
12 back.

13 So this is just overview of the first floor. And
14 then if you will scroll to the next page, this is an overview
15 of the changes to Unit 2 on the second floor.

16 There's minimal changes happening. The biggest
17 change being the internal staircase that will be constructed
18 at the front of the building, and then the reception area,
19 reception desk, will have been moved from this floor down to
20 the first floor.

21 The existing main entrance will remain as an
22 opening to the unit but will not be the main entrance
23 anymore. The main entrance, obviously, is moving to the
24 first floor. And then if you would please scroll to the next
25 page.

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1 So this is an overview of the external staircase.
2 You can see the detailed plans. It's like a wraparound
3 staircase starting on the first floor and up to the second
4 floor.

5 This is just a cross-section of the proposed
6 staircase for everybody to review. And then if you would
7 scroll up the final page, and this is an overview of the
8 building, all three stories as you can see.

9 It also shows the neighboring unit. So again, the
10 first floor will become the main entrance to the property and
11 to the business and will have the additional treatment rooms,
12 bathrooms, staff room.

13 The second floor, the only changes will be the
14 addition of the internal staircase. And then the third
15 floor, as represented, is the single residential unit and
16 it's Mr. Machado's personal residence.

17 And so those are the detailed plans, and then
18 obviously I want to go over how the proposed modification
19 meets the requirements of the zoning regulations.

20 So as we've explained this in detail in the
21 statement of the applicant, but the proposed modification is
22 consistent with Subtitle U of the D.C. zoning regulations,
23 specifically Section 513.1H and the general purposes of the
24 zoning regulations for the following reasons.

25 First, the modification is compatible with current

1 zoning and uses. It's ancillary with the existing business
2 and it's ancillary with the businesses in the surrounding
3 area.

4 So around the intersection of Fourteenth Street
5 and Spring Road Northwest, there are a variety of
6 neighborhood retail service businesses, but most notably,
7 several other beauty related businesses such as hair salons,
8 barber shops, and nail salons.

9 The applicant has been operating in Petworth since
10 2017 and has served the needs of Petworth residents and
11 residents of Ward 4 since then.

12 Other residents of Ward 4 would have to travel
13 about 1.4 miles north to access similar services within the
14 ward. Otherwise, they would have to travel south to other
15 neighborhoods including Columbia Heights, Adams Morgan,
16 Kalorama, and Dupont Circle to access similar services.

17 Second, the modification will not create increased
18 traffic or disturb the surrounding neighborhood. As has been
19 the case, the conduct of business currently and since it
20 opened, all noise is kept to a minimum. It would be
21 antithetical to the purpose of a spa for there to be
22 increased noise.

23 The applicant is located near a lot of bus stops
24 and two green line Metro stops, and many of its clients
25 arrive for appointments walking, biking, and via the Metro.

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1 The opening hours will not change if the
2 modification is approved, and then traffic in and out of the
3 premises is naturally limited due to the nature of the
4 business.

5 Services typically range from 30- to 90-minutes
6 and then the number of treatment rooms also limits how many
7 clients can be in the premises at one time.

8 And then third, there will be no adverse impact
9 on the residents of the community, local businesses, or
10 institutional facilities in the neighborhood.

11 Mr. Machado has gone to great lengths to maintain
12 the first class nature of its business, its decorum, ethics,
13 modesty, cleanliness, and professionalism, and all will
14 strictly follow the health, safety, and zoning regulations
15 if approved.

16 And then I've spoken to the ANC 4C04 and on March
17 13, Mr. Machado and I attended the March monthly ANC 4C
18 meeting. We had a short presentation to the ANC board and
19 to the community members present and described the proposed
20 modification.

21 We received no questions from the ANC board and
22 no questions from the community. And as reflected in the ANC
23 4C report on the record, the applicant received a unanimous
24 vote of support for its application.

25 I also contacted the Office of Planning and the

1 Department of Transportation in the monthly meeting after
2 this hearing to discuss the merits of the modification and
3 to answer any questions prior to this hearing today.

4 The Office of Planning and Development specialist
5 Crystal Myers did have some questions regarding the capacity
6 of the business, hours, and the mixed-use nature of the
7 property, and Mr. Machado and I answered questions as
8 reflected in the Office of Planning's report that has been
9 submitted to the record.

10 The Office of Planning has given the support for
11 this application. They say that the proposed modification
12 should not substantially disrupt the purpose or intent of the
13 design regulations and zoning maps, and the proposal will not
14 adversely affect the use of the neighboring property because
15 the surrounding properties are also mixed-use in nature with
16 a variety of neighborhood retail and service uses.

17 The DDOT associate director of the Planning and
18 Sustainability Division, Anna Chamberlin, communicated to us
19 via email that DDOT did not have any questions about this
20 application and they did not expect to file a report to the
21 board.

22 We and I remained available to Ms. Chamberlin and
23 anybody else at DDOT if they had any questions leading up to
24 this hearing, and we have not received any questions or
25 concerns from them to date.

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1 And lastly, regarding the neighborhood support,
2 we are very fortunate to receive at least five or six letters
3 of support from the community in support of this application.

4 The letter of support include neighbors, patrons,
5 and business owners from the surrounding neighborhood who
6 work or live nearby.

7 And so, in sum, we would request the approval of
8 the applicant's modification of its existing special
9 exception to permit additional therapeutic massage services
10 to Unit 1 pursuant to the existing board order, 19542.

11 If you have any questions, Mr. Machado and I are
12 here presently to answer any of them. Thank you.

13 VICE-CHAIR JOHN: Thank you. So does the board
14 have any questions for the application? So I'll go to the
15 Office of Planning. Ms. Myers?

16 MS. MYERS: Good morning. Crystal Myers with the
17 Office of Planning. The Office of Planning is recommending
18 approval of this case. And we can stand on the record staff
19 report, but are of course here for questions. Thank you.

20 VICE-CHAIR JOHN: Okay, thank you. Does the board
21 have any questions for the Office of Planning? Does the
22 applicant have any questions for the Office of Planning?

23 MR. BRADFORD: We do not.

24 VICE-CHAIR JOHN: Okay. So, Ms. Myers, I just
25 want to have one clarifying question. So the applicant at

1 one point stated that this was an application for a change
2 of plans.

3 But as I understand it, OP views this as I do,
4 which is a modification to or a new application to expand the
5 existing use to a new unit.

6 And looking at your analysis, I believe that's how
7 OP analyzed the request for relief. I mean, the correct
8 provisions are cited, it's just the way that the application
9 was discussed at some point as an expansion of plans.

10 And because the order is over two years, the plans
11 could not be expanded. The relief would have to be an
12 expansion of the use, which was previously approved into
13 another floor.

14 I just want to make sure that we are clear.

15 MS. MYERS: It's my understanding that this is a
16 modification of significance, which means that I believe it's
17 an expansion of the existing case, which is why it wasn't
18 given a new case number. It was just given an A at the end.

19 And we review it according to all of the criteria.
20 We have to do a full review of it because it's a significant
21 modification, not a minor modification.

22 VICE-CHAIR JOHN: Right, it's not just a change
23 of plans, it's an extension of the use. That's all I'm
24 trying to --

25 MS. MYERS: They're expanding their use, yes.

1 VICE-CHAIR JOHN: All right. So did I ask the
2 board if the board had any questions for either the applicant
3 or OP? Mr. Sakinejad, is there anyone signed up to testify?

4 MR. SAKINEJAD: No, ma'am.

5 VICE-CHAIR JOHN: Okay. And does the applicant
6 have any closing statements?

7 MR. BRADFORD: Sure, I'll make a short closing
8 statement. Again, yes, we are asking for a proposed
9 expansion for the use. I think I submitted the architectural
10 plans as just further support for what will be, what we are
11 proposing will occur in terms of connecting the two.

12 But again, we hope the board will kindly approve
13 the expansion of its use from the board order 19542 in
14 between Unit 2 and Unit 1. Thank you so much.

15 VICE-CHAIR JOHN: Okay, thank you. So I'm going
16 to thank you for your testimony and ask to have you excused
17 at this time.

18 MR. BRADFORD: Thank you very much.

19 VICE-CHAIR JOHN: You're welcome. Okay, I'm going
20 to close the record and the hearing. And are we ready to
21 deliberate? Does anyone want to start? Okay.

22 MEMBER BLAKE: I can start, Vice Chair. This
23 application is fairly straightforward and I do believe the
24 applicant has met the burden of proof, having demonstrated
25 that the proposed massage service would be compatible with

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1 the other areas and uses in the area.

2 They actually meet their extension of massage
3 service should not be objectionable. It is an effect on the
4 community. There have been no complaints.

5 The applicant is the owner and the only occupant
6 of the building. The Office of Planning's recommendation,
7 I agree with the report they provided and would give great
8 weight to the recommendation.

9 I also noted the ANC recommends approval of this
10 and has no issues or concerns stated. And I would also note
11 all the persons of support for the expansion of this project.

12 So I do believe that I would be in support of the
13 modification of significance.

14 VICE-CHAIR JOHN: Thank you, Mr. Blake.
15 Commissioner Stidham?

16 MS. BROOKS: Not much to add to Board Member
17 Blake. I agree with the statements that he made and am
18 prepared to support as well.

19 VICE-CHAIR JOHN: Thank you. Board Member Smith?

20 MEMBER SMITH: Our previous statements raised by
21 or the comments raised by Mr. Blake in how this project meets
22 the criteria under Subtitle U 513.1 special exception.

23 I will also add that the proposed use would not
24 have an adverse impact on any religious or educational
25 institutions or facilities in the general vicinity of the

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1 particular use, as stated by the Office of Planning.

2 They also note that the ANC is also in support of
3 the application, and I would support it as well given OP's
4 standing of great weight.

5 VICE-CHAIR JOHN: Okay. And I am also in support
6 of the application and I agree with all of the comments so
7 far. So, I will make a motion to approve application number
8 19542A as captioned and read by the secretary and ask for a
9 second, Mr. Blake.

10 MEMBER BLAKE: Second.

11 VICE-CHAIR JOHN: Madam Chair, Madam Secretary,
12 would you take a roll call?

13 MS. MEHLERT: Respond to the Vice Chair's motion
14 to approve the application. Vice Chair John?

15 VICE-CHAIR JOHN: Yes.

16 MS. MEHLERT: Smith?

17 MEMBER SMITH: Yes.

18 VICE-CHAIR JOHN: Yes.

19 MEMBER SMITH: Mr. Blake? And Commissioner
20 Stidham?

21 MEMBER STIDHAM: Yes.

22 MS. MEHLERT: Staff will record the vote as 4 to
23 0 to 1 to approve application for 19542A on the motion made
24 by Vice Chair John and seconded by Mr. Blake.

25 VICE-CHAIR JOHN: Okay, thank you. Okay, so when

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1 you're ready, please call the next application.

2 MS. MEHLERT: The next case is application number
3 21094 of Chari and Delwyn Voss. This is a self-certified
4 application pursuant to Subtitle X, Section 901.2, for a
5 special exception under Subtitle E Section 5201 from the lot
6 occupancy requirements of Subtitle E 210.1.

7 This is to construct a two-story rear addition to
8 an existing attached principle dwelling in the RF-1 Zone.
9 This is located at 235 Tenth Street Northeast, Square 964,
10 Lot 811.

11 VICE-CHAIR JOHN: Okay, thank you. Ms. Fowler,
12 would you introduce yourself for the record, please?

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

16 VICE-CHAIR JOHN: Okay. Can you tell us how the
17 application meets the criterial for relief?

18 MS. FOWLER: Sure. Okay. So we are requesting
19 your support for a rear addition that is exceeding the lot
20 occupancy. So we are requesting 67 percent occupancy.

21 There's a current two-story sunroom that is eight
22 feet deep beyond the original footprint and we're planning
23 to remove it and to rebuild with a 16-foot rear addition.

24 So the expansion is eight feet beyond the current
25 rear wall of the house. The addition does -- with the new

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1 addition, we will be aligning with the rear of 237 Tenth
2 Street, which is the house to the north.

3 And we will still be shy of 233 Tenth Street,
4 which is to the south. It's keeping the same building
5 height, just extending the existing roofline. So we won't
6 be kind of coming up above the current rooflines.

7 And we have support from the CHRS. We have
8 neighbor letters from both adjacent properties and the ANC.
9 So overall, relatively straightforward case. I'll leave it
10 open to questions. Thank you.

11 VICE-CHAIR JOHN: Thank you. Does the Board have
12 any questions? Okay, I'll go to the Office of Planning. Mr.
13 Barron, please introduce yourself. Is your mic on, Mr.
14 Barron? Yes, much better.

15 MR. BARRON: Okay, my apologies. I have two
16 separate mute buttons on this setup. So, for the record, my
17 name is Ron Barron, Development Review Specialist with the
18 D.C. Office of Planning.

19 The Office of Planning recommends approval to the
20 requested special exception. The proposed addition would be
21 in harmony with the general purpose and intent of the RF-1
22 zone and again unlikely to affect adversely the use and
23 privacy of neighboring properties.

24 The Office of Planning is content to rest on our
25 report, which was submitted to the record as Exhibit 18. And

1 I am able to answer any questions you may have. Thank you
2 very much for your time.

3 VICE-CHAIR JOHN: Thank you. Does the board have
4 any questions for the Office of Planning? Does the applicant
5 have any questions for the Office of Planning?

6 MS. FOWLER: No, I do not. Thank you.

7 VICE-CHAIR JOHN: Thank you. Is anyone signed up
8 to testify, Mr. Sakinejad?

9 MR. SAKINEJAD: We do not.

10 VICE-CHAIR JOHN: Okay. Ms. Fowler, do you have
11 any closing statements?

12 MS. FOWLER: No, I don't. Thank you very much.

13 VICE-CHAIR JOHN: Thank you. So I'm going to
14 excuse you at this time, Ms. Fowler, and thank you for your
15 presentation. And I'm going to also close the record and the
16 hearing.

17 Okay, so I thought this was -- I'll start the
18 discussion. I thought this was a fairly straightforward
19 application for lot occupancy relief.

20 The applicant is only proposing an addition of
21 eight feet, and that extension would match the length of the
22 property to the north.

23 So I don't believe there should be any potential
24 adverse impact from that extension on either the neighbors,
25 either of the neighbors, and both adjacent neighbors are also

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1 in support.

2 CHRS approves, is in support of the application.

3 And I should also note that there are no windows on either
4 side, only at the rear of the addition.

5 So I'll give great weight to the Office of
6 Planning's analysis of how the application meets the
7 criteria. Does anybody else have something to add?

8 MEMBER BLAKE: I would add only that the proposed
9 addition would have no impact on the height on the side or
10 the subject property from Tenth Street.

11 So there wouldn't be any impact, adverse impact,
12 on the visual intrusion issues resulting from this as well.
13 I would definitely be in support of the application as well,
14 and I believe that it supports in harmony with the zoning
15 regulations and maps.

16 Give great weight to the Office of Planning's
17 recommendation for approval. DDOT has no objection and ANC
18 6A is in support, no issues or concerns.

19 And I too would note the support from Capitol Hill
20 Restoration and the neighbors.

21 VICE-CHAIR JOHN: Thank you.

22 MEMBER BLAKE: I'll be voting in favor of the
23 application.

24 VICE-CHAIR JOHN: Thank you, Board Member Blake.
25 Commissioner Stidham?

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1 MEMBER STIDHAM: It's so nice going after Board
2 Member Blake. Really, I have nothing to add. I think it's
3 very straightforward and I'm prepared to support.

4 VICE-CHAIR JOHN: Thank you. Board Member Smith?

5 MEMBER SMITH: In addition to issues of privacy
6 being addressed, the way that this addition is located, the
7 properties to the north and the south already have doglegs,
8 so they have an opportunity for light and air to still access
9 the adjacent neighbors' properties, which may contribute to
10 the reasons why they are in support of this application.

11 So, I stand on everything that Mr. Blake said and
12 I give great weight to OP's staff report and will also
13 support the application.

14 I do feel that is a very straightforward
15 application.

16 VICE-CHAIR JOHN: Thank you, Board Member Smith.
17 And so, I will make a motion, then, to approve application
18 number 21094 as captioned and read by the secretary and ask
19 for a second, Mr. Blake.

20 MEMBER BLAKE: Second.

21 VICE-CHAIR JOHN: Madam Secretary, would you
22 please take the roll?

23 MS. MEHLERT: Please respond to the Vice Chair's
24 motion to approve the application. Vice Chair John?

25 VICE-CHAIR JOHN: Yes.

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1 MS. MEHLERT: Smith?

2 MEMBER SMITH: Yes.

3 MS. MEHLERT: Blake? And Commissioner Stidham?

4 MEMBER STIDHAM: Yes.

5 MS. MEHLERT: Staff will record the vote as 4-0-1
6 to approve application 21094 on the motion made by Vice Chair
7 John and seconded by Mr. Blake with one board member not
8 participating.

9 VICE-CHAIR JOHN: Thank you. And let's move on
10 to the next application, which I believe is number 21098.

11 MS. MEHLERT: Yes. Yes, next case is application
12 number 21098 of Jon Giesecke and Jonathan Schmidt. It is a
13 self-certified application pursuant to Subtitle X 1002 for
14 an area variance from the alley lot development standards of
15 Subtitle E 5100.1(a).

16 This is a partial second-story addition to an
17 existing one-story building on an alley lot for use as a
18 principal dwelling in the RF-1 zone.

19 It's located at 633 Rear East Street Southeast,
20 Square 877, Lot 8888. As a preliminary matter, the applicant
21 has requested to postpone the hearing.

22 VICE-CHAIR JOHN: Thank you, Madam Secretary. I
23 see Ms. Wilson has joined us. Would you please introduce
24 yourself for the record, Ms. Wilson?

25 MS. WILSON: So, Alexandra Wilson from Sullivan

1 and Barros on behalf of the applicant in this case.

2 VICE-CHAIR JOHN: Thank you. And you requested
3 a postponement. Can you talk to why you would need a
4 postponement?

5 MS. WILSON: Absolutely. Given OP's report and
6 some of the neighbor comments, which came in I believe
7 yesterday, we are seeking additional time to address any of
8 those items.

9 We have already been to the ANC so we requested
10 a June 12 hearing date, as that should give us enough time
11 for us to report to the board in terms of their schedule.

12 VICE-CHAIR JOHN: Okay. So I'm not opposed to the
13 request for postponement. Does any board member have any
14 comments? And Ms. Wilson, what date did you request?

15 MS. WILSON: We requested June 12.

16 VICE-CHAIR JOHN: Okay. Ms. Mehlert, would that
17 date work with your schedule?

18 MS. MEHLERT: I was actually going to recommend
19 July 3. It's just a very busy June right now with the
20 schedule.

21 VICE-CHAIR JOHN: So, Ms. Wilson, I'm going to go
22 with July 3. And just having looked at that application, you
23 might need that time.

24 MS. WILSON: Yes, thank you. That's fine.

25 VICE-CHAIR JOHN: Okay. All right. Thank you.

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1 MS. WILSON: Thank you so much. Have a great day.

2 VICE-CHAIR JOHN: Thank you. So I think all
3 that's left, Ms. Mehlert, is the appeal, right?

4 MS. MEHLERT: Correct, yes, and it sounds like
5 DOB, as you recall, there was a conflict last week of the
6 morning, but it sounds like they should be ready around
7 12:30.

8 VICE-CHAIR JOHN: Okay.

9 MS. MEHLERT: If you'd like to take a break.

10 VICE-CHAIR JOHN: Okay. Does the board want to
11 resume at 12:30 or 12:45?

12 MEMBER STIDHAM: Maybe 12:45 to give some time to
13 get on.

14 VICE-CHAIR JOHN: Okay, 12:45 it is. So I'll see
15 you back here at 12:45 for the appeal.

16 MEMBER STIDHAM: Great. Thank you.

17 VICE-CHAIR JOHN: Thank you. Thank you.

18 (Whereupon, the above-entitled matter went off the
19 record at 11:51 a.m. and resumed at 12:50 a.m.)

20 MS. MEHLERT: Yes, the Board has returned from its
21 lunch break, and the last case in today's hearing session is
22 appeal number 20149 of Gernot Brodnig and Alison Schafer.

23 This is an appeal from a decision made on August
24 11, 2023, by the Department of Buildings Zoning Administrator
25 to issue Building Permit Number B2305113.

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1 It's located in the R-3 DG Zone at 2716 O Street
2 Northwest, Square 1239, Lot 143. And the hearing was
3 postponed last week at the request of the appellant and the
4 merits have not been heard yet.

5 VICE-CHAIR JOHN: Okay, thank you. Will you let
6 all the parties in? I see Mr. Cox, Mr. Fuller, Zoning
7 Administrator Beeton and Mr. Sullivan and Mr. Brodnig. I
8 think we're all here.

9 So, let's start with the appellant. Mr. Brodnig?

10 MR. BRODNIG: Yes.

11 VICE-CHAIR JOHN: Yes, introduce yourself, please.

12 MR. BRODNIG: Yes, my name is Gernot Brodnig. I'm
13 one of the two appellants. And I am a neighbor to the
14 property 2716 O Street, to which the special exception and
15 building permit was issued.

16 VICE-CHAIR JOHN: Okay, thank you. Is the other
17 appellant here, Ms. Schafer, I believe? No. All right, let
18 me go to DOB. Mr. Fuller, are you representing DOB today?

19 MR. BRODNIG: Madam Chair, yes, I will be
20 representing the Department of Buildings.

21 VICE-CHAIR JOHN: Okay, and who do you have with
22 you today?

23 MR. BRODNIG: And with me today is the Zoning
24 Administrator, Kathleen Beeton, and Deputy General Counsel,
25 Erik Cox, is on the hearing as well.

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1 VICE-CHAIR JOHN: Okay, thank you. Mr. Sullivan,
2 will you introduce yourself?

3 MR. SULLIVAN: Thank you, Madam Chair. Marty
4 Sullivan with Sullivan and Barros, and I'm here on behalf of
5 the property owner.

6 VICE-CHAIR JOHN: Okay, thank you. And do we have
7 the ANC here today? I don't think so. Okay, we can get
8 started then. Mr. Brodnig, would you like to give us your
9 statement?

10 MR. BRODNIG: Yes, please, Madam Chair if I may.
11 I will try to keep it short. I just want to maybe highlight
12 a couple of arguments that we had already stated in the
13 supplementary appeal.

14 We basically make two points, why we believe that
15 this permit was issued in error. We have argued that the
16 special exception that was issued by this board did not vest,
17 that it's no longer valid, and that as a result, the building
18 permit should be revoked.

19 We have argued that the special exceptions are not
20 really ends in themselves, but authorized applications, and
21 we have made reference to the BZA order, the boilerplate
22 language that mentions that special exceptions are really
23 there to secure building permits.

24 And then we refer to argue that in our case, the
25 fact that the previous permit was declared null and void,

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1 therefore, also, the prior special exemption authorizing it
2 of its validity.

3 And we also argue that the new owners, the fact
4 that the new owners filed a couple of days before the
5 two-year deadline and not a permit application is also
6 irrelevant because again, if you look at the language, the
7 boilerplate language in the BZA order, it clearly refers to
8 applicants with a special exception. Those are the ones that
9 benefit from this two-year period.

10 DOB has argued that we don't really provide a
11 legal basis for this argument. We of course say yes, we do,
12 because we primarily look at the text of the order, and which
13 presumably is some sort of authoritative interpretation of
14 the zoning regulations.

15 And we also think that the regulator has provided
16 permit orders the opportunity and responsibility to transfer
17 their approved permits according to 105.5.3 of the building
18 code. If that had been done in this case, of course,
19 the authorizing special exemption, which I've also
20 transferred over, it would have vested and I guess as it's
21 usually referred to, running with the land.

22 So that's really a summary of what's primarily a
23 fairly narrow legal argument. I don't think anybody has any
24 issues here among the parties with the facts. So I think it
25 boils down to legal interpretation of this issue of the

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1 two-year validity.

2 I just want to make a final quick note because DOB
3 in its pre-hearing statement with residual argument saying
4 that we had introduced new material, new arguments, in our
5 supplemental statement.

6 But I think what we intended to do was to really
7 elaborate on the very bare bones statement that we had
8 submitted at the onset of this case and provide our argument.

9 So I don't think we really introduced anything new
10 here. So thank you, Madam Chair, I'll leave it at that.

11 VICE-CHAIR JOHN: Thank you. Mr. Fuller, do you
12 have any cross at this time?

13 MR. FULLER: Just I think one question for Mr.
14 Brodnig. Mr. Brodnig, you agree that the current property
15 owner timely filed the permit application for permit B2305113
16 pursuant to 11 Y DCMR 702.3 correct?

17 MR. BRODNIG: Yes.

18 MR. FULLER: Okay. I just wanted to verify that
19 that's no longer an issues for purposes of this appeal. And
20 is that correct?

21 MR. BRODNIG: Yes, it actually never has been, Mr.
22 Fuller. I think maybe it was not clear from our statement,
23 but we never questioned that preservation D.C. filed three
24 days before the two-year deadline. Yes.

25 MR. FULLER: That's all. That's all the questions

1 that I have, Madam Chair.

2 VICE-CHAIR JOHN: Thank you. Mr. Sullivan?

3 MR. SULLIVAN: No questions, thank you.

4 VICE-CHAIR JOHN: Thank you. Does anyone from the
5 board have questions of the appellant? Okay. Mr. Fuller,
6 would you like to give your statement?

7 MR. FULLER: Yes, Madam Chair, and thank you. And
8 also I just wanted to say thank you for accommodating the
9 afternoon start time today as well. So we appreciate that.

10 So, and sort of, I guess as a preliminary issue,
11 I would just point out that in the initial statement of
12 appeal filed by Mr. Brodnig and Ms. Schafer, the basis for
13 the appeal was specifically stated as the permit was issued
14 without a valid special exception from the rear yard
15 requirement.

16 The special exception issued by BZA decision in
17 Order 19548 to the previous owners of the property on
18 November 15, 2018, had expired by the time the permit
19 application in accordance with 11 DCMR Y 702.1.

20 That was the entire basis for the appeal and
21 effectively why we're here today. And Mr. Brodnig just
22 acknowledged that the timeliness of the filing of the
23 building permit in relation to special exception, the special
24 exception order at issue, they are no longer challenging that
25 issue.

1 So effectively, that should end the appeal and the
2 BZA's analysis today. 11 Y DCMR 302.12 specifies an appeal
3 may not be amended to add issues not identified in the
4 statement of the issues on appeal submitted in response to
5 Subtitle Y 302.12 G unless the appellee impeded the
6 appellant's ability to identify the new issues identified.

7 There's no indication or allegation that the DOB
8 or anyone else impeded the appellee's ability to address
9 these issue that they've now added as part of their
10 supplemental statement of appeal.

11 Mr. Brodnig just indicated that they sort of filed
12 a generic statement of issues and said that the intention of
13 providing additional information and supplementation.

14 That's just quite frankly not permitted from the
15 applicable BZA rules, and quite frankly, that should not be
16 before the BZA here today.

17 And so again, the one issue that is at issue in
18 this case, the appellants had already conceded. That being
19 said, and unless the board would like to end things there,
20 I'll continue to address the appellant's appeal farther.

21 VICE-CHAIR JOHN: Thank you, Mr. Fuller. So I did
22 read your response to those additional comments. And there
23 was no motion to strike. And so the board will hear your
24 response to those issues.

25 MR. FULLER: Understood, and thank you. And

1 again, Madam Chair, we're here today because the appellants,
2 Gernot Brodnig and Alison Schafer, they are challenging the
3 DOB's issuance of building permit B2305113 related to 2716
4 O Street Northwest.

5 Although, somewhat unclear, even based on the
6 supplemental statement that was filed by the appellees in
7 this case.

8 The appeal seems to be based on three mistaken
9 premises. First, that a BZA special exception order expired
10 before the subject permit application was filed, and that's
11 just not the case. And it's basically, that actually has
12 been acknowledged by the appellants at this point.

13 Two, that the BZA order only applied to the prior
14 owner of the property. And the third mistaken bases or basis
15 for their appeal is unsupported assertion that the BZA order
16 became null and void when a prior building permit associated
17 with the property became null and void by statute.

18 In this case, there's no dispute that building
19 permit B2305113 and the permit application was timely filed
20 relative to BZA order pursuant to 11 Y DCMR 702.3.

21 That's clear. And again, appellants admit same.
22 Furthermore, the law in the District of Columbia is clear
23 that a special exception runs with the land as opposed to the
24 property owner.

25 And therefore, the fact that a new property owner

1 applied for this subject permit has no bearing on the permit
2 application and the DOB's review process related to same.

3 Moreover, the appellants have provided absolutely
4 no legal support to enable the illogical leap that the prior
5 permit became null and void simply because an initial
6 building permit became null and void.

7 And it seems like the suggestion is somehow that
8 we void the special exception order. There's no, quite
9 frankly, legal or sensible basis for that argument.

10 And again, appellants haven't provided the same.
11 Relative, you know, regardless of any argument otherwise, the
12 facts of this case are one, the permit application was timely
13 filed in relation to the subject BZA order.

14 Two, the new owner was entitled to file the permit
15 application. That's clear. Again, the special exception
16 runs with the land.

17 And regardless of what happened with the prior
18 permit, the new owner would properly and rightfully submitted
19 a timely new application.

20 And again, as Mr. Brodnig said, the facts are
21 clear in this case. Nonetheless, DOB will address the
22 problems and supported contentions at the zoning
23 administrator's determination.

24 To process the permit application relative to the
25 BZA order, again, it was based upon a thorough review by the

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1 Department of Buildings. And upon careful consideration and
2 the correct application of the zoning regulations, that
3 building permit was issued.

4 In further support of the agency's position, I
5 would like to call Zoning Administrator Kathleen Beeton to
6 testify at this time.

7 VICE-CHAIR JOHN: Thank you.

8 MR. FULLER: And if we could, could we pull up the
9 DOB PowerPoint presentation? Ms. Beeton, could you just
10 again please state your name for the record?

11 VICE-CHAIR JOHN: You might be on mute, Ms.
12 Beeton. Can you hear me? Hello?

13 MR. FULLER: I think she can hear you. I just
14 think her mic must not be working.

15 VICE-CHAIR JOHN: Oh, okay. All right. I wasn't
16 sure if it was my mic or something. Okay.

17 MR. FULLER: I don't think so.

18 VICE-CHAIR JOHN: I'll give it a few minutes so
19 she can get online.

20 MR. FULLER Thank you. I know that there's a --
21 okay, I was going to mention that, Kathleen, I know that
22 there's I think a computer audio option and also potentially
23 a phone option, if she wants to try that way.

24 VICE-CHAIR JOHN: Or sometimes just signing out
25 and signing back in might resolve the issue.

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1 MR. FULLER: Sure. Thank you.

2 MS. BEETON: Okay, sorry about that. Can you hear
3 me now?

4 VICE-CHAIR JOHN: Yes.

5 MS. BEETON: All right. My apologies. I'm going
6 to try plugging this back into my power supply here. Let me
7 just, let me try this. Can you still hear me?

8 VICE-CHAIR JOHN: Yes.

9 MS. BEETON: Okay, good. Great. I can't see you,
10 but I'm sure I will soon. Sorry about that, my apologies.

11 VICE-CHAIR JOHN: That's fine.

12 MR. FULLER: Are we ready to proceed?

13 VICE-CHAIR JOHN: Yes, if you are.

14 MR. FULLER: Okay. I think so. Okay. Ms.
15 Beeton, could you just please state your name for the record?
16 Uh oh. Still no sound.

17 VICE-CHAIR JOHN: Maybe just try calling in. How
18 about if we take a five-minute break so the BZA can get over
19 these technical difficulties. So let's resume at 1:15.

20 MR. FULLER: Thank sounds great. Thank you.

21 VICE-CHAIR JOHN: Thank you.

22 (Whereupon, the above-entitled matter went off the
23 record at 1:10 p.m. and resumed at 1:15 p.m.)

24 VICE-CHAIR JOHN: So the hearing is back in
25 session. Mr. Fuller?

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1 MR. FULLER: Yes, thank you, and again, like Ms.
2 Beeton said, thanks for your patience. So, yes, Ms. Beeton,
3 we'll try this again. Could you just again state your name
4 for the record?

5 MS. BEETON: My name is Kathleen Beeton.

6 BY MR. FULLER:

7 Q And what is your position with Department of
8 Buildings?

9 A I am the zoning administrator.

10 Q And how long have you been in the position of
11 zoning administrator?

12 A For six months.

13 Q And you were the deputy zoning administrator at
14 some point prior to that, prior to this, correct?

15 A Yes, I was, for 12 years.

16 Q Okay. Just I guess quickly and generally, can you
17 describe your duties and responsibilities as zoning
18 administrator at Department of Buildings?

19 A Sure, I'm responsible for supervising the team
20 that primarily reviews building permit applications,
21 certificates of occupancy, occupation permits, and
22 subdivisions for compliance with the zoning regulations.

23 Q And could you describe briefly the Office of
24 Zoning Administrator's role in the process and approval of
25 a building permit?

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1 A Sure. We review building permit plans and
2 applications for compliance with the zoning regulations.

3 Q And here, and actually, could we move to the next
4 slide, please? And here, I guess I'm trying to say the
5 challenge of the determination that DOB made in the process
6 permit B2305113 relative to a BZA special exception order.

7 Is it your understanding that there was a BZA
8 special exception order granting a special exception related
9 to 2760 O Street Northwest?

10 A Yes.

11 Q Okay. Just for reference on the screen now is
12 part of the slide presentation is at least a portion of that
13 BZA order dated from 2017.

14 And could you please describe how a BZA special
15 exception order affects a zoning administrator permit review?

16 A Sure. So as part of the permit review process,
17 DOT's administration verifies if there's a Board of Zoning
18 adjustment or a zoning commission order associated with a
19 particular permit application.

20 And if there is, then we review the conditions of
21 that order to ensure that the plans and applications that
22 have been submitted comply with the conditions granted, that
23 was granted as part of the order.

24 Q And did the Office of the Zoning Administrator do
25 that in this case specific to the B2305113?

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1 A Yes, we did.

2 Q Okay, and can we move to the next slide, please?
3 And could you please describe the implications of 11 M DCRM
4 702.1 and 702.3 as it relates to a special exception order
5 and permit application pending at DOB?

6 A Okay. Yes, so Section 702.1 states an order that
7 grants special exception relief for two years, within which
8 time an application should be filed for the erection of the
9 structure that was approved pursuant to that order.

10 Y 702.3 states in the event of petition's review
11 and order, the BZA is filed with a D.C. Court of Appeals, the
12 time limit of that two years that's prescribed in Y 702.1 and
13 Y 702.2 begins on the date of the court of appeals final
14 determination of the appeal.

15 Q And could we move to the next slide, please? And
16 is it your understanding that in this case that Appellants
17 appealed the BZA 2017 special exception order to the D.C.
18 Court of Appeals?

19 A Yes, it is.

20 Q Okay. And just for reference, there's a portion
21 of that D.C. Court of Appeals opinion and decision dated
22 March 30, a decision dated March 30, 2021, on the DOB slides.

23 And is it further your understanding that the D.C.
24 Court of Appeals upheld the BZA decision by this decision
25 dated March 30, 2021?

1 A Yes, it is.

2 Q Okay, and can we go to the next slide, please?
3 And based on your review, or I should say based on the Zoning
4 Administrator's Office's review, and accounting for the March
5 30, 2021, Court of Appeal's decision, was the special
6 exception order at issue still valid when the permit
7 application was filed by this property owner on March 28,
8 2023?

9 A Yes, it was.

10 Q And just for reference, there's a bit of a
11 timeline included in the DOB slide presentation. I think
12 it's sort of been discussed to some extent already.

13 And the building permit at issue here is building,
14 again, permit B2305113, and that was issued on August 11,
15 2023, is that correct?

16 A Yes.

17 Q Okay. And can we actually move to the next slide,
18 please? And is this a copy of the building permit at issue?

19 A Yes, it is.

20 Q Can we actually move to the next slide, please?
21 Who according to regulation may actually submit a permit
22 application, I should say a building permit application, to
23 the Department of Buildings?

24 A So either the property owner or an agent
25 authorized to represent the owner, the property owner, may

1 apply.

2 Q Okay, and did the owner or an agent on behalf of
3 the owner of 2716 O Street Northwest properly submit the
4 application for building permit B2305113?

5 A Yes.

6 Q And that was submitted timely pursuant to 11 Y
7 DCMR 702.3, is that correct?

8 A That is correct.

9 Q Does it matter that the owner that submitted the
10 application was not the owner that had initially requested
11 the special exception relief?

12 A No, it does not matter.

13 Q And is it correct, and as appellant's have
14 effectively acknowledge in their supplemental statement of
15 appeal, that variances and special exceptions run with the
16 land in the District of Columbia?

17 A Yes, that is correct.

18 Q Is it your understanding based on a review that
19 there was a prior permit related to 2716 O Street Northwest,
20 Permit number B1907228, that became at some point null and
21 void by regulation?

22 A Yes, I'm aware of that permit.

23 Q Okay. And does the fact that that permit became
24 null and void by reg have any bearing on the zoning or review
25 related to building permit B2305113?

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1 A No, it does not.

2 Q And why not?

3 A Because the special exception that was granted by
4 the Board of Zoning Adjustment runs with the land.

5 Q And DOB and the Office of the Zoning
6 Administrator, it understood and was aware at the time of the
7 application that there was a BZA special exception order
8 related to the property and permit application?

9 A Yes, we were aware of that.

10 Q Okay, and could we actually jump ahead two slides,
11 please? And what is not in front of -- well, actually, Ms.
12 Beeton, let me just ask you, what is this that is now in
13 front of the board?

14 A Sure, so this is a modification form that we ask
15 applicants to submit if the property is subject to either a
16 board of zoning adjustment or a zoning commission order to
17 represent whether they're making any changes to the plans
18 that the BZA or the Zoning Commission reviewed and approved,
19 and this particular form is the one that relates to the
20 property in question.

21 Q Okay, and if we could -- I apologize, if we could
22 actually now go back one slide, the slide which should be
23 Slide 8.

24 You sort of just mentioned this, but what is the
25 purpose of the zoning modification review and form?

1 A Sure. So, again, the modification form is
2 something that applicants submit ideally when they apply for
3 their building permit.

4 Sometimes, they don't do that. They may not know
5 that they need to do it. It just depends on the level of
6 knowledge of the applicant.

7 But if it doesn't come in initially with the
8 building permit application, then the zoning technical who
9 is reviewing the application will request it and request that
10 they complete the form to identify if they're making any
11 changes that are different in the sense they're submitting
12 for our review and approval that are different than the plans
13 that the Board of Zoning Adjustment or the Zoning Commission
14 approved.

15 And so, as part of that review process, then the
16 zoning technician will review the plans, the permit
17 application, the order, the order condition, the exhibits,
18 and this form to ensure that there's compliance, again,
19 either that, in this case, compliance with the conditions of
20 the BZA order.

21 Q Good, and in short, at least in part, it's to
22 ensure, effectively to ensure compliance with a BZA special
23 exception order.

24 A Yes.

25 Q And again, that review was undertaken in this case

1 by Department of Buildings and the Office of the Zoning
2 Administrator?

3 A That's correct.

4 Q Okay. And the building permit at issue, B2305113,
5 was properly approved by the Office of the Zoning
6 Administrator. Is that correct?

7 A Yes, that's correct.

8 Q Madam Chair and Board, I don't have any further
9 questions for Ms. Beeton or presentation at this time.

10 VICE-CHAIR JOHN: Thank you. Does the Appellant
11 have any cross-examination?

12 MR. BRODNIG: Yes, Madam Chair, just a couple of
13 questions for Mr. Fuller. Mr. Fuller, you're obviously very
14 familiar with the language of BZA orders for special
15 exemptions.

16 And I'll just quote an excerpt. This order shall
17 not be valid for more than two years after it becomes
18 effective unless within such two-year period the applicant
19 files plans for the proposed structure with the Department
20 of Consumer and Regulatory Affairs for the purpose of
21 securing a building permit.

22 You are familiar with that language, no?

23 VICE-CHAIR JOHN: Mr. Fuller?

24 MR. FULLER: Oh, sorry. Mr. Brodnig, are you
25 asking questions of me or are you asking questions of Ms.

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1 Beeton?

2 MR. BRODNIG: You, Mr. Fuller.

3 MR. FULLER: Okay. I don't know that I'm
4 testifying here today. Ms. Beeton is testifying on behalf
5 of the Department of Buildings.

6 But if you want to I guess ask --

7 VICE-CHAIR JOHN: I'll redirect it. I'll redirect
8 it to Ms. Beeton. We are a little informal here, Mr. Fuller,
9 but let's redirect it to Ms. Beeton.

10 MS. BEETON: Okay. So let me take a stab and
11 answer the question. So, Mr. Brodnig, as I said earlier, the
12 approval that was granted by the Board of Zoning Adjustments,
13 there's discussion that it runs with the land.

14 So it's not tied to the previous applicant, the
15 person who actually applied for the BZA relief. It runs with
16 the land.

17 So if that person sells the property to some other
18 entity, and that happened in this case, that doesn't negate
19 the Board's approval of the order and the approval that went
20 with it.

21 MR. BRODNIG: Thank you very much, Ms. Beeton, but
22 my question was slightly different with, well, first, Mr.
23 Fuller, you are familiar with that language in the BZA order,
24 this boilerplate language.

25 MR. FULLER: So just to address Mr. Brodnig's

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1 question, I think Mr. Brodnig, and again, I guess we're being
2 a bit informal here, so describing, I think you're referring
3 to the specific language that was in the 2017 BZA order, sort
4 of on the last page. Is that what you're referencing?

5 MR. BRODNIG: Exactly, yes.

6 MR. FULLER: Okay. Yes. No, I mean, I think that
7 BZA order language speaks for itself.

8 MR. BRODNIG: Okay. Okay. So, and therefore, you
9 will agree that the applicant for this special -- or let me
10 rephrase it as a question.

11 Do you agree that the application for this
12 particular special exception were the previous owners?

13 MR. FULLER: So again, just to address this issue,
14 the -- and again, the BZA order speaks for itself. I also
15 think everybody's got I think a copy of that.

16 The owner that applied for the special exception
17 back in 2017 was not the same owner that applied for the
18 building permit B2305113.

19 We would agree with that if that's what you're I
20 guess asking.

21 MR. BRODNIG: Yes.

22 MR. FULLER: Yes. And thanks, Mr. Fuller. Do you
23 also agree that the previous owners which have received the
24 special exception did not secure a building permit once that
25 previous permit was declared null and void?

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1 VICE-CHAIR JOHN: Thank you, and that's for Ms.
2 Beeton.

3 MR. BRODNIG: Ms. Beeton, sorry.

4 VICE-CHAIR JOHN: Okay.

5 MS. BEETON: To my knowledge the previous owners
6 did not secure another building permit after the one that was
7 initially issued was rendered null and void.

8 MR. BRODNIG: And so either you, Ms. Beeton, or
9 Mr. Fuller, I'm not sure about the procedural correctness
10 here, would you say that this language in the orders, this
11 particular order here in general, this language, reflects the
12 zoning regulations and intent of the regulator?

13 MR. FULLER: So, Mr. Brodnig, just -- and I would
14 also direct the Board, just for its knowledge, this issue was
15 actually addressed at the, quite frankly, the DOB pre-hearing
16 statement.

17 It was sort of mentioned appellants believe that
18 the new owner does not have the benefit of the BZA order
19 because the BZA order refers to a permit field by the
20 applicant.

21 Quite frankly, I don't -- we didn't -- BZA wrote
22 that order. I don't know if the applicant was intended to
23 mean the applicant with special exceptions, the permit
24 applicant, I'm not sure.

25 But we also indicate the BZA order does not track

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1 the specific language of 11 DCMR Y 702.1. And the regulation
2 itself that is applicable here supports DOB's position and
3 the zoning administrator's determination in this case.

4 The reg does not specify that the BZA order only
5 applies to the special exception applicant. In fact, the
6 building regulations specify that an owner or owner's agent
7 can apply for a permit.

8 And as we've already clarified in this particular
9 case, special exception orders including the special
10 exception order in this case run with the land and therefore
11 the fact that a new owner applied for the current building
12 permit has no bearing on DOB's review and issuance of the
13 permit in this case.

14 VICE-CHAIR JOHN: Thank you. Mr. Brodnig?

15 MR. BRODNIG: Yes, thank you. I mean, it did not
16 really address my specific questions whether Mr. Fuller or
17 Ms. Beeton agree or that the boilerplate language in the
18 orders reflect the zoning regulations.

19 So, but I'll leave it at that. Thank you, Madam
20 Chair.

21 MR. FULLER: And I would say, and I would say, no.
22 I think that's what was sort of specified in that answer, was
23 no, it doesn't track the specific language.

24 I think we also referenced in our pre-hearing
25 statement that it to some extent tracks the prior zoning reg

1 and then it refers to the submission of plans as opposed to
2 the submission of an application.

3 But otherwise, no, it doesn't. It doesn't track
4 the applicable reg. And again, we can't speak to
5 specifically the BZA language of the BZA order in general
6 because we didn't obviously prepare that BZA order.

7 But again, it has no bearing, regardless.

8 MR. BRODNIG: Okay, thank you. Thank you, Mr.
9 Fuller. Thank you, Ms. Beeton. Thank you, Madam Chair.

10 VICE-CHAIR JOHN: Thank you. Mr. Sullivan?

11 MR. SULLIVAN: I'll be very brief. Mr. Fuller's
12 given all the details, I think. This is an alleged violation
13 of 702.1. 702.1 is a requirement that says that an order
14 granting a special exception or variance with the
15 establishment or use is dependent upon the erection or
16 alteration of a structure, which this is, shall be valid for
17 a period of two years within which time an application, an
18 application, shall be filed for a building permit for the
19 erection or alteration approved.

20 So, regarding 702.1, there's two relevant facts.
21 There's the starting date of the two-year period and then
22 there's the ending date of that two-year period.

23 And the Appellant has stipulated as to those two
24 dates and that it falls within the two-year time period. So
25 the appeal ends there in my opinion, because the Appellant

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1 hasn't provided any information, any support, any regulation
2 that says anything other than that.

3 Even though he stipulates to the two dates, he
4 claims, to the extent I understand it, that the special
5 exception expired for some other reason other than 702.1, but
6 he never really articulates it.

7 So to the extent I'm responding to the Appellant,
8 I'm responding to what I think he's trying to say, because
9 I don't think he's articulated any claim, and I don't think
10 he's even come close to meeting his burden.

11 He's making statements that the special exception
12 has expired. Provided no support for that. And he seems to
13 be basing it on language in the order which uses the term the
14 Applicant.

15 The other thing that the Appellant stipulates to
16 is that BZA approvals run with the land. He actually
17 stipulates to that in his statement.

18 And there's no -- I don't think anybody disagrees
19 with that point. The large chunk of my cases, the Applicant
20 changes sometimes in the middle of the case, but very often
21 after the case.

22 The Applicant is the owner. The Applicant equals
23 the owner. So the Applicant, for purposes of this, is the
24 new owner, because the new owner steps into the shoes of the
25 Applicant for purposes of the BZA order.

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1 So there's nothing confusing about the fact that
2 the BZA order uses the term Applicant in regard to 702.1.

3 That's it. I don't really have anything else.
4 There's nothing. There's no regulation he's submitted, no
5 language in the regulations, nothing that he said supports
6 his conclusion that for some reason other than the time
7 period that this order went away.

8 So, if you have any questions for me, that's all
9 I have. Thank you.

10 VICE-CHAIR JOHN: Mr. Brodnig, do you have any
11 questions for Mr. Sullivan?

12 MR. BRODNIG: No, Madam Chair, thank you.

13 VICE-CHAIR JOHN: Mr. Fuller?

14 MR. FULLER: None for Mr. Sullivan on my end,
15 thank you.

16 VICE-CHAIR JOHN: Okay. Does the Board have any
17 questions? So, I'm going to go to closing arguments from Mr.
18 Brodnig. I assume there is no rebuttal. There's not much
19 to rebut.

20 MR. BRODNIG: No, no, thank you, Madam Chair.
21 Rather than a closing argument, I just have to basically
22 refer to the statement of appeal, the supplemental material
23 in my pre-hearing statement.

24 Both Mr. Fuller and Mr. Sullivan assert that there
25 is no legal basis for these arguments, that the special

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1 exception was no longer valid, but I have tried to show that
2 the legal basis for that lies in the very language of the BZA
3 orders which presumably reflect the zoning regulations and
4 the intent.

5 We laid out the reasoning for these arguments, so
6 there's very little else to say at this point. Thank you,
7 Madam Chair.

8 VICE-CHAIR JOHN: Thank you. Mr. Sullivan, any
9 closing arguments?

10 MR. SULLIVAN: Just to note that, thank you, Madam
11 Chair, that if, if what Mr. Brodnig is proposing here, which
12 is the first time I've ever heard this, is that if a property
13 is transferred after issuance of an order, then the approval
14 technically is expired, unless the property is transferred
15 back to the original owner and they file a building permit
16 and then they transfer the building permit.

17 So it's just, it doesn't make any sense. And he's
18 using the word Applicant and claiming it says what he wishes
19 it said or meant, but he's provided zero support for that
20 conclusion. Thank you.

21 VICE-CHAIR JOHN: Thank you. Mr. Fuller?

22 MR. FULLER: Thank you, again, Madam Chair. Just
23 really briefly. Again, the initial basis of Appellant's
24 appeal is articulated in their statement of appeal, has now
25 been effectively acknowledged by Appellant's being moot in

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1 this case.

2 Otherwise, we rely on our pre-hearing statement
3 and testimony today. The only other I guess point to address
4 is something that Mr. Brodnig just mentioned.

5 He indicated that Mr. Sullivan and myself were
6 sort of asserting that there's no legal basis for Appellant's
7 claim. Here, it's not, quite frankly, it's Appellant's
8 burden to provide some sort of legal or factual basis for
9 their claim, and they have failed to do so.

10 So what we're really asserting is, true, there's
11 no legal basis, but there's been no legal basis articulated
12 by the Appellant in this case, and their appeal just clearly
13 lacks merit.

14 And otherwise, thank you very much for your time.

15 VICE-CHAIR JOHN: Thank you, Mr. Fuller. Does the
16 Board have questions for anyone? Mr. Smith? Mr. Blake?
17 Commissioner Stidham? Okay.

18 So I have no questions. And I want to thank
19 everyone for their testimony and their patience. And I'm
20 going to excuse everyone at this time and close the record
21 and the hearing. Thank you.

22 I'm so sorry, I've been muted all of this time.
23 So what I said was that my preference is to continue this
24 case for decision at a later time, and I asked for comments
25 on that proposal, and I asked Commissioner Stidham to start.

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1 MEMBER STIDHAM: Sure, I'm in support of delaying
2 the decision for another time.

3 VICE-CHAIR JOHN: Okay. Board Member Blake?

4 MEMBER BLAKE: That's fine, Madam Chair. I'm
5 comfortable with that as well.

6 VICE-CHAIR JOHN: Thank you. Board Member Smith?

7 MEMBER SMITH: I'm fine with rendering a decision
8 at a later date.

9 VICE-CHAIR JOHN: Thank you. Madam Secretary, do
10 we have a proposed date for decision?

11 MS. MEHLERT: How much time would you like to have
12 to review the record? I mean, we could do it on May 8 again.
13 I mean, next week you do have six decision cases but only
14 four hearing cases on May 1. I don't know if that's --

15 VICE-CHAIR JOHN: That May 1, six decision cases
16 and four hearing cases?

17 MS. MEHLERT: Right.

18 VICE-CHAIR JOHN: What about, did you say May 8?
19 What is the schedule like on that day?

20 MS. MEHLERT: So there's now three meeting cases
21 and seven hearing cases on May 8.

22 VICE-CHAIR JOHN: I think May 1, because we have
23 mostly decisions on that date, right? May 1 we have six
24 decisions and four hearing cases.

25 MS. MEHLERT: Right.

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1 VICE-CHAIR JOHN: Let's do it on May 1. Is that
2 okay with the rest of the Board? Okay. So we'll continue
3 this to May 1.

4 So that concludes everything on the agenda. And
5 thank you all for your support and your patience. See you
6 next time.

7 MEMBER SMITH: See you next time. Take care.

8 VICE-CHAIR JOHN: See you next time. Bye.

9 (Whereupon, the above-entitled matter went off the
10 record at 1:45 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 04-24-24

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