

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 17, 2024

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

RON BARRON
MICHAEL JURKOVIC
CRYSTAL MYERS

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

MARY NAGELHOUT, ESQ.

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The transcript constitutes the minutes from
the Regular Public Hearing held on July 17, 2024.

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

2 (10:46 a.m.)

3 CHAIRPERSON HILL: Okay, Madam Secretary, if
4 you want to call us back and then I'm going to disappear
5 again.

6 MS. MEHLERT: Okay the Board is back from a
7 quick break and is entering the Board's hearing session.
8 So Vice Chair John, would you like me to go ahead and call
9 the case?

10 VICE CHAIRPERSON JOHN: Sorry, I was muted.
11 Yes, please go ahead. Thank you.

12 MS. MEHLERT: This is Application No. 21133 of
13 Arel Properties, LLC. This is a self-certified
14 application pursuant to Subtitle X § 901.2 for special
15 exceptions under Subtitle D § 5201 from the side yard
16 requirement of Subtitle D § 208.3 and the lot occupancy
17 requirements of Subtitle D § 210.1.

18 This is for a new three-story semi-detached
19 principal dwelling located in the R-2 zone at 1119 48th
20 Place NE, Square 5158, Lot 10. The hearing began on June
21 26th and was continued to allow the applicant to
22 communicate with the neighbors to the south, Mr. Davis and
23 Ms. Kimbell.

24 Participating are Vice Chair John, Mr. Blake,
25 Mr. Smith, and Commissioner Stidham.

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1 VICE CHAIRPERSON JOHN: Thank you. Good
2 morning, Mr. Freeman.

3 MR. FREEMAN: Vice Chair John, Members of the
4 Board.

5 VICE CHAIRPERSON JOHN: Thank you. So are you
6 choosing not to use your video?

7 MR. FREEMAN: No, ma'am. Just trying to make
8 sure I get the button.

9 VICE CHAIRPERSON JOHN: Okay. There you are.
10 So please introduce yourself again and tell us what has
11 happened since we were last here.

12 MR. FREEMAN: Yes, my name is Mark Freeman. I
13 am the architect of record representing Mr. Rick Levy and
14 Arel Properties. My firm is Aggregate Architecture and
15 Design which is located at 1308 9th Street NW, Suite 200,
16 Washington, D.C.

17 We have since our previous meeting, we had a,
18 we attended an executive meeting with the ANC and Mr.
19 Davis and Ms. Campbell. Specifically Mr. Levy was at that
20 meeting where we discussed and where he discussed with the
21 neighbors the concerns of the project and discussed and
22 looked at more information.

23 Specifically the PowerPoint presentations which
24 we also uploaded into the record. From that meeting came
25 a request to relocate a willow tree that had been planted

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1 by their children.

2 Mr. Levy has agreed to that relocation. Then
3 after that executive meeting, we also had an additional
4 ANC meeting which was last Thursday I believe. At that
5 time, we discussed the additional information that was
6 presented to them which was the proposed survey.

7 And existing survey so that they could also see
8 further the differences between because last time during
9 the BZA hearing, excuse me, there was confusion about the
10 additional lot separation between us and the distance. So
11 we discussed that.

12 At that time, Ms. Campbell noted she would
13 provide support upon Mr. Levy agreeing to the relocation
14 and that is also what is put into the record by
15 Commissioner Holmes noting that support by Ms. Campbell
16 and, you know, based on that relocation and Mr. Levy's
17 continued discussion with them.

18 So we've uploaded all of our emails and
19 correspondence so that the Board can see the effort we've
20 put forth to contact Mr. Davis and Ms. Campbell and then
21 the ANC was able to help us and assist us with
22 communicating with Mr. Davis and Ms. Campbell.

23 And so we've had two additional meetings and
24 discussions via the ANC. One at the Executive Committee
25 and one at the ANC hearing.

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1 VICE CHAIRPERSON JOHN: Okay. Thank you very
2 much. Does the Board have any questions?

3 (No audible response)

4 VICE CHAIRPERSON JOHN: Okay. Is the ANC here?

5 (No audible response)

6 VICE CHAIRPERSON JOHN: Is Ms. Davis on the
7 line?

8 MS. DAVIS: Yes, but I'm not that Ms. Davis.
9 I'm with the applicant's team.

10 VICE CHAIRPERSON JOHN: Okay. Thank you.

11 MEMBER SMITH: All right so Mr. Freeman, again,
12 the -- just to remind me with the neighboring property
13 owners. You did reach out to them, they raised a concern
14 about the tree, but they haven't really been in contact
15 with you regarding potentially moving the tree or saving
16 the tree.

17 And their concern about the house being too
18 close, what is their concern? Is it about privacy?

19 MR. FREEMAN: So to clarify with the tree, the
20 tree is actually on our property, on the property owned by
21 Mr. Levy and Arel Properties. And so it was planted by
22 them and Mr. Levy has agreed to move it from our property
23 over to their property.

24 And so that discussion has occurred and that
25 agreement, it's not in writing, but it has been verbally

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1 discussed and it is within the record of the ANC meetings
2 that is proceeded.

3 So as of this hearing, there is nothing in
4 writing that notes it in stone, but it has been agreed to
5 in principle. Beyond that, the discussions that revolved
6 around the project in the Executive Committee was about
7 clarifying distance to their home to the side of the
8 house.

9 And the height of the structure, we were able
10 to clarify that the height of the structure, pro-structure
11 is within zoning regulations. We are not asking for any
12 special exception there.

13 We were able to illustrate the distance between
14 the side of our building and their side of the building
15 was the 13.66 feet not the 5 feet that was understood
16 during the BZA hearing. And then so that discussion
17 revolved around those items.

18 The privacy was touched upon, but was not
19 further, was not further pushed if I can use that word by
20 the neighbor and that discussion has not raised its head,
21 you know, did not come up during the actual ANC 7C
22 meeting, the follow up.

23 And during that meeting, Commissioner Holmes
24 asked Ms. Campbell if she would provide support and she
25 noted she would provide support upon movement or moving of

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1 the tree. And I think that is what is memorialized in
2 Commissioner Holmes's report which is the final, which is
3 the last exhibit in our case file.

4 VICE CHAIRPERSON JOHN: Okay. Thank you. Is
5 the Office of Planning here?

6 MR. JURKOVIC: Yes, this is Mike Jurkovic,
7 Development and Re-specialist with the Office of Planning.

8 VICE CHAIRPERSON JOHN: Good morning, Mr.
9 Jurkovic. Did you have a subsequent report?

10 MR. JURKOVIC: We do not have a subsequent
11 report or anything new to the record. We continue to
12 recommend approval.

13 VICE CHAIRPERSON JOHN: Okay.

14 MR. JURKOVIC: As per our report.

15 VICE CHAIRPERSON JOHN: Thank you very much.
16 Mr. Young, is there anybody signed up to testify?

17 MR. YOUNG: We do not.

18 VICE CHAIRPERSON JOHN: Okay. Did you have any
19 closing comments, Mr. Freeman?

20 MR. FREEMAN: Well based on our previous
21 hearing, we continue to reach out to the neighbor and
22 continue to show our willingness to cooperate with the
23 neighborhood with the Commission in I think in
24 understanding of the Zoning Commission or the Board of
25 Zoning's procedures and the zoning regulations.

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1 We were unable to finalize all support, but I
2 think the intent and what we all strived to be as good
3 neighbors and good participants within the District of
4 Columbia that I think this, our additional time we
5 attempted to do that and I think the record illustrates
6 that.

7 And so we hope that the Board of Zoning will
8 take into understanding and will support our request for
9 relief.

10 VICE CHAIRPERSON JOHN: Thank you, Mr. Freeman.
11 So with that, I'm going to excuse you for the moment and
12 close the record and the hearing. And thank you for your
13 testimony. Okay so I'll go ahead and start the
14 discussion.

15 And first I want to commend the applicant for
16 reaching out again to the neighbors to try to clarify any
17 confusion about the location of their property. There was
18 some misunderstanding about the distance between the two
19 properties.

20 The unimproved lot that's the subject of the
21 application and the neighbor's lot and so that would have
22 been very helpful to the neighbors in understanding
23 exactly what is being done. This is not a very
24 complicated case.

25 It's a request for side yard relief for a semi-

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1 detached dwelling. And the applicant is requesting three
2 and a half, 3'4" instead of 8 feet. And a question at the
3 hearing was whether or not there was sufficient light and
4 air or whether there would be any adverse impact on light
5 and air with respect to the neighbor to the south.

6 And whether there were any privacy concerns.
7 But apart from that, the application is really very
8 straightforward. I appreciated the applicant's exhibits
9 that showed the any potential impact on shadowing
10 especially to the neighbor to the south where the relief
11 is being requested for.

12 And I thought that those exhibits were really
13 very clear and very helpful. Again, this is a substandard
14 lot and the, what's normal in the neighborhood in the
15 regulation is 30 feet.

16 The applicant's lot is 20 feet and it's an
17 infill lot and so in order to have a usable building, the
18 applicant needs this additional relief. So I think that
19 the applicant meets the criteria for relief under
20 Subtitles 901.2 and D 5201.

21 And so I'm sorry, it's X 901.2 and D 5201. And
22 so I'm going to give great weight to the Office of
23 Planning's analysis and recommendations as to how the
24 application meets the criteria for relief.

25 I also want to commend the ANC support in

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1 bringing the parties together to clarify what's being
2 built and in coming to a resolution and, you know,
3 listening to the neighbors' concerns.

4 And the final report the ANC does not, does not
5 note that there are any issues and concerns remaining.
6 The, also DDOT has no objections. And so I am in support
7 of the application and I will hear from the other Board
8 Members starting with you, Mr. -- oh I'm sorry, Mr. Hill.

9 CHAIRPERSON HILL: Yes, Vice Chair John, I'm
10 sorry. I just realized my client from my job is trying to
11 reach out to me and I'm going to have to just pop off for
12 a few, it might be 20 minutes.

13 And so I apologize sincerely to everyone who's
14 here, but I have to make a living. So I'll be back.

15 VICE CHAIRPERSON JOHN: We'll carry --

16 CHAIRPERSON HILL: Okay, thank you.

17 VICE CHAIRPERSON JOHN: -- we'll carry on as
18 best we can, Chairman Hill.

19 CHAIRPERSON HILL: Okay, thank you. I'll come
20 back as soon as I can. Thank you.

21 VICE CHAIRPERSON JOHN: Okay, thank you. So
22 where was I? Okay. So, oh, I was going to ask, I did
23 ask, Board Member Blake to add any comments.

24 MEMBER BLAKE: Thank you very much, Madame Vice
25 Chair. I actually agree very much with the analysis you

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1 provided. I do believe that the applicant has met the
2 burden of proof. As we go through the testimony today,
3 it's a very straight forward case.

4 And the analysis provided by the Office of
5 Planning is very clear and certainly supports approval. I
6 was concerned with the outreach to the adjacent neighbors
7 before and I'm very pleased with the applicant's efforts
8 to contact them and to work with them.

9 And also the ANC's involvement to do that.
10 Unfortunately, what they've agree to do is not something
11 within the purview of the Board so we won't be able to
12 incorporate that in the order.

13 But I do think we could reference that there
14 was some discussions and an agreement made in reference to
15 the ANC letter in the last exhibit. Just so it's properly
16 and appropriately moralized.

17 Otherwise I do believe the applicant met the
18 burden of proof to be granted the relief and I will be
19 voting in support of the application.

20 VICE CHAIRPERSON JOHN: Thank you. Board
21 Member Smith?

22 MEMBER SMITH: I agree with the testimony that
23 was provided by you and Mr. Blake. Providing this
24 particular case of, you know, Department concern when we
25 first heard this was about a question about how close this

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1 would be to the Campbells and to Ms. Campbell and Mr.
2 Davis's property to the South.

3 And then I believe with Exhibit 31, I believe
4 it's 31, Exhibit 31, the Applicant has really showcased to
5 us how this offer to the propose building will sit
6 contextually adjacent to the property to the south and
7 there would still be a 3', 3.5', 3'4" setback to the
8 property line to the south.

9 And I believe that does allow for enough light
10 and air to the adjacent property especially given that we,
11 the house to the south, the Davis's and -- Mr. Davis and
12 Ms. Campbell's property is an additional 13' further to
13 the south of that.

14 So that does allow for sufficient light and air
15 to access -- to their neighboring property. Kudos as
16 you've stated to Mr. Holmes and the ANC both in their work
17 for continuing to facilitate a dialogue between applicant
18 and those two particular property owners.

19 It seems that the property owners hadn't really
20 followed up with many of these some of the discussions
21 that were had at the, at the last hearing. But there is
22 some type of agreement to move their daughter's tree.

23 And I agree with Mr. Blake, this is not
24 something that the Board can enforce being that that's not
25 necessarily a zoning concern, but in spirit I'll be a good

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1 neighbor and follow up on the agreements that they have
2 stated.

3 I do welcome Mr. Blake's approach to in some
4 way, shape or form memorialize the ANC's letter in that
5 particular agreement, something in some shape or form
6 within the order. Otherwise, I feel like this is a, as
7 you stated, is a fairly straightforward application.

8 I do believe they met to standards for us to
9 grant the special exception given that with the three
10 fully pour and setback in the 13 feet, it should not tend
11 to adversely affect the neighboring properties which I
12 think is the primary special exception consideration under
13 the, under Subtitle X § 901 for us to consider with this
14 particular type of application.

15 And it is in harmony with the general purpose
16 and intent of the zoning regulations. This particular
17 zone does allow for this type of dwelling unit and because
18 as Ms. Blake, I mean Ms. Blake, Ms. John, as you stated
19 this is a substandard lot given the width of the lot, it
20 would be, they would be able to construct a fairly small,
21 attached home that would be no more than about 12' and
22 some change wide.

23 This does, with the special exception, does
24 allow them to construct a reasonably sized dwelling on
25 this side. So with that, I do believe they've met the

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1 standards for us to approve it and I give OB Staff Report
2 great weight noting that the ANC is in support of it and
3 we should memorialize that lot.

4 VICE CHAIRPERSON JOHN: Thank you, Board Member
5 Smith for those additional comments. Board Member Blake?

6 MEMBER BLAKE: I already shared my comment.

7 VICE CHAIRPERSON JOHN: Oh, okay. My
8 apologies. Commissioner Stidham?

9 COMMISSIONER STIDHAM: I agree with what has
10 already been said and don't really feel the need to repeat
11 any of it. And am prepared to reach support.

12 VICE CHAIRPERSON JOHN: Thank you. So with
13 that, I'll make a motion to approve Application No. 21133
14 and ask for a second, Mr. Blake?

15 MEMBER BLAKE: Second.

16 VICE CHAIRPERSON JOHN: Ms. Mehlert, will you
17 please take the roll call?

18 MS. MEHLERT: Please respond to the Vice
19 Chair's motion to approve the application. Vice Chair
20 John?

21 VICE CHAIRPERSON JOHN: Yes.

22 MS. MEHLERT: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MS. MEHLERT: Mr. Blake?

25 MEMBER BLAKE: Yes.

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1 MS. MEHLERT: Commissioner Stidham? Did I hear
2 Commissioner Stidham. Sorry?

3 COMMISSIONER STIDHAM: Mute, sorry. Yes.

4 MS. MEHLERT: Oh, no worries.

5 COMMISSIONER STIDHAM: Sorry.

6 MS. MEHLERT: Staff would record the vote as
7 four to zero to one to approve Application 21133 on the
8 motion made by Vice Chair John and seconded by Mr. Blake
9 with one Board Member not participating.

10 VICE CHAIRPERSON JOHN: Thank you, Ms. Mehlert.
11 So I believe the next application is 21145?

12 MS. MEHLERT: Yes.

13 VICE CHAIRPERSON JOHN: Okay. Please give me a
14 minute to get my self-organized and I'll be right back.
15 Okay, Ms. Mehlert, please call the next case when you're
16 ready.

17 MS. MEHLERT: Yes, the next application in the
18 Board's hearing session is Application No. 21145 Danielle
19 Ritterpusch. This is a self-certified application
20 pursuant to Subtitle X § 901.2 for a special exception
21 under Subtitle U § 301.1(e) for use of an accessory
22 building constructed after January 1st, 2013. That's a
23 dwelling.

24 This is to construct a new two-story accessory
25 structure with a garage on the first floor and dwelling on

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1 the second floor in the rear yard of an existing attached
2 principal dwelling. It's located in the RF-1 zone at 813
3 7th Street NE, Square 889, Lot 19.

4 VICE CHAIRPERSON JOHN: Good morning, Mr.
5 Teran. Could you please introduce yourself for the
6 record?

7 MR. TERAN: Good morning. My name is Eric
8 Teran. I'm the architect for this application.

9 VICE CHAIRPERSON JOHN: Okay. Thank you. Is
10 the ANC here?

11 (No audible response)

12 VICE CHAIRPERSON JOHN: No. Okay, Mr. Teran.
13 Please describe your project and explain how it meets the
14 criteria for relief.

15 MR. TERAN: Okay. Mr. Young, if you can pull
16 up the Exhibit, I think it was 24 or 22 please. While
17 he's doing that, it's basically a single-family residence
18 or a house. Next page please. So this is existing house
19 on the back with the stairs.

20 And the picture at the right where you see the
21 cars and the concrete pad, that is where we're proposing
22 to add the accessory structure. On the first floor, it
23 will be a garage and on the second floor is where we are
24 proposing that additional dwelling unit. Everything is by
25 rights.

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1 The only difference is we're just asking for
2 that additional dwelling unit to be allowed to a dwelling
3 unit before the five-year planning period. Next slide
4 please. Just more photos of the rear yard. Next slide.

5 Looking from the alley you see the concrete pad
6 then the house at the back. Next slide please. Next
7 slide. And so there is the site plan where you could see
8 just the house and the detached structure at the alley.
9 Next slide please.

10 And here are the floor plans on the right
11 that's just going to be a, yes, on the right that will be
12 a one-car garage and on the left that will be the
13 additional units, one bedroom, one bath. Next slide
14 please. Just the roof plan.

15 Next slide. And the elevations. Once again,
16 everything is by rights. We're not asking for any
17 additional relief. Next slide please. Just the slide
18 elevations along the property lines. Next slide please.
19 Just some sections.

20 Next slide. Next slide please. And these are
21 some 3D elevations or images like you see with the house
22 on the back. Next slide. Looking from the alley. Next
23 slide please. And just one more view. And I think that's
24 it.

25 Is there one more slide? Oh, there you go.

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1 Looking from the rear yard to that accessory structure.
2 We are preparing a shadow or privacy studies because like
3 I said, everything is by right.

4 The only difference is we're just asking for
5 that space above to be deemed a dwelling unit right off
6 the bat. I look forward to any questions. Thank you.

7 VICE CHAIRPERSON JOHN: Thank you. Does the
8 Board have any questions?

9 (No audible response)

10 VICE CHAIRPERSON JOHN: Thank you. Is the
11 Office of Planning here?

12 MR. BRADFORD: Vice Chair John, Commissioners,
13 Philip Bradford Development Review Specialist with the
14 Office of Planning. The Office of Planning recommends
15 approval of the requested special exception relief.

16 And it finds it meets the criteria in Subtitle
17 D § 301 and X § 901 and we stand on the record of the
18 report in Exhibit 21. I'm available for any questions.

19 VICE CHAIRPERSON JOHN: Thank you. Does the
20 Board have any questions for the Office of Planning?

21 (No audible response)

22 VICE CHAIRPERSON JOHN: Thank you. Ms.
23 Mehlert, is the ANC here?

24 MS. MEHLERT: I don't believe either ANC is
25 here.

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1 VICE CHAIRPERSON JOHN: Thank you. And Mr.
2 Young, has anyone signed up to testify?

3 (No audible response)

4 VICE CHAIRPERSON JOHN: Thank you. And Mr.
5 Teran, do you have closing comments?

6 MR. TERAN: No, just thank you for your time
7 and we look forward to your support.

8 VICE CHAIRPERSON JOHN: Thank you. Have a good
9 day. So I'm going to close the record and the hearing.
10 So this is, again, another straightforward case. This is
11 an application for a rear, I'm sorry, an accessory
12 structure in a required rear yard.

13 And the applicant also needs relief because the
14 accessory structure was constructed as, was constructed
15 after January 1, 2013 within the required set back and
16 cannot be used as a dwelling unless the Board approves the
17 dwelling under special exception.

18 And based on the analysis provided by the
19 Office of Planning, I believe that the application meets
20 the criteria for relief. The rear yard is currently 65'
21 approximately.

22 And after the garage, the new accessory
23 structure is constructed, there will be 33 or 34'
24 approximately between the principal building and the
25 accessory structure. And so, I believe in terms of live

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1 and air, there should not be any adverse impact.

2 In terms of privacy, there are windows on the
3 front and the rear, but nothing, no windows on the sides
4 of the accessory structure and other than that, that's,
5 it's within the accessory structure meets all of the
6 development standards in terms of height and width and lot
7 occupancy and set back.

8 So I also think that there, I agree with the
9 Office of Planning that the, that the structure would be
10 consistent with what's in the alley and will not, in other
11 words, it would not -- what's the word I'm looking for?

12 It's consistent with the structures that are in
13 the alley. And so I think that I'm in support of the
14 application. I would like to hear what other Board
15 Members think and I'll go to Board Member Blake to begin.

16 MEMBER BLAKE: All right, thank you, Madame
17 Vice Chair. The only thing I add is in looking at
18 Subtitle U § 301.1(g), the only issues that I see is that
19 the accessory building would have access to an unproved
20 alley with the 16.17'.

21 The minimum is a 15' required so there will be
22 no roof deck which is fine and, again, the properties of
23 an army of the, what the -- is a completely within the
24 zoning regulations from matter of right requirements.

25 And putting accessory building with a dwelling

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1 unit above the garage is anticipated by the regulations so
2 it's in harmony and, of course, there are no windows that
3 are going to be facing even properties and the building
4 will meet all development standards therefore and adverse
5 impact on neighboring properties is probably not
6 anticipated.

7 So I would also give great weight to the Office
8 of Planning's Report, also give great weight to ANC six-
9 page report which is in support with no issues or concerns
10 stated and I'll also point out that ANC 6C had made some
11 issues about their notification.

12 But I understand that the Office of Zoning had,
13 in fact, notified them of different meeting criteria and I
14 also give great weight to the, and I also note that both
15 adjacent neighbors are in support of the application.
16 I'll be voting in favor.

17 VICE CHAIRPERSON JOHN: Okay, thank you. And
18 to clarify, did you say Board Member Blake that it was ANC
19 6C that had concerns?

20 MEMBER BLAKE: This property is in ANC 6A, but
21 it's adjacent to ANC 6C.

22 VICE CHAIRPERSON JOHN: Okay.

23 MEMBER BLAKE: And the requirements for ANC 6C
24 to be notified by the Office of Zoning which I understand
25 was done.

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1 VICE CHAIRPERSON JOHN: Okay. Thank you for
2 the clarification. Board Member Smith?

3 MEMBER SMITH: Honestly I have nothing to add
4 more than what both you and the split have stated and I
5 agree with all the statements that were provided and I
6 will also be in support of that.

7 VICE CHAIRPERSON JOHN: Thank you.
8 Commissioner Stidham?

9 COMMISSIONER STIDHAM: I agree with the
10 comments that have already been made. I believe that this
11 can be implemented without any adverse effects to any of
12 the neighboring properties and am prepared to support.

13 VICE CHAIRPERSON JOHN: Thank you. And with
14 that, I will make a motion to approve Application no.
15 21145 as captioned and read by the secretary and ask for a
16 second, Mr. Blake.

17 MEMBER BLAKE: Second.

18 VICE CHAIRPERSON JOHN: Ms. Mehlert, will you
19 please take the roll call?

20 MS. MEHLERT: Vice Chair's motion to approve
21 the application. Vice Chair John?

22 VICE CHAIRPERSON JOHN: Yes.

23 MS. MEHLERT: Mr. Smith?

24 MEMBER SMITH: (No audible response)

25 MS. MEHLERT: Mr. Blake?

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1 MEMBER BLAKE: Yes.

2 MS. MEHLERT: And Commissioner Stidham?

3 COMMISSIONER STIDHAM: Yes.

4 MS. MEHLERT: Staff would record the vote as
5 four to zero to one to approve Application 21145 on the
6 motion made by Vice Chair John and seconded by Mr. Blake
7 with one Board Member not participating.

8 VICE CHAIRPERSON JOHN: Thank you. And welcome
9 back, Chairman Hill.

10 CHAIRPERSON HILL: Okay. Madame Secretary, you
11 may call our next when you get a moment.

12 MS. MEHLERT: Next is Application No. 21146 of
13 Hesuk Chun. This is a self-certified application pursuant
14 to Subtitle X § 901.2 for special exceptions under
15 Subtitle E § 207.5 to allow a rear wall of a row building
16 to extend further than 10' beyond the farthest rear wall
17 of any adjoining principle residential building on any
18 adjacent property.

19 And under Subtitle U § 320.2 to allow the
20 conversion of an existing residential building to an
21 apartment house. This project is to construct a third
22 story with roof deck and three story rear addition to an
23 existing attachments, dwelling and conversion to a three-
24 unit apartment house.

25 It is located in the RF-1 zone at 1331 Randolph

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1 Street NW, Square 2824, Lot 84. And I think that's all I
2 have for you right now.

3 CHAIRPERSON HILL: Okay, great. Thank you. If
4 the applicant can hear me, could they introduce themselves
5 for the record?

6 MR. TERAN: Good morning Council Members. My
7 name is Eric Teran and I'm back from the last one. I'm
8 the architect for this project as well. And I'm happy to
9 do the presentation when you're ready.

10 CHAIRPERSON HILL: Great. All right, Mr.
11 Teran. You can go ahead and walk us through your client's
12 application and why you believe they're meeting the
13 criteria for us to grant the relief requested.

14 I see there is a presentation in the record.
15 Mr. Young, if you could bring that up and, Mr. Teran, you
16 can begin whenever you'd like.

17 MR. TERAN: Thank you. So we're requesting the
18 two reliefs to have three units in the RF-1 lot and for
19 the second and third story to be further than the ten feet
20 past the adjacent properties. Next slide please.

21 And so this is just where all the photos are
22 taken if you just want to get your bearings. Next slide.
23 So that's the property there in the middle. Most of the
24 houses along the street have the same façade. And our
25 third floor will be pushed back. Next slide please.

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1 Just some more photos. Next slide. That's
2 just looking up from the roof and looking at the
3 neighborhood. The one on the right is to the alley and
4 the one to the left is to Randolph Street. Next slide
5 please.

6 That's looking down into the rear area and
7 where we're pushing back to. Next slide please. And here
8 you can see we are the green house in the back. You can
9 see on the right that is an existing covered deck. And
10 our addition is basically going to be lining up with that.

11 So our cellar and first floor will line up with
12 that and then the second and third floor will also line up
13 with that, but as you'll see that's past the second floor
14 of both the yellow and the white house on the left. Next
15 slide please. I'm just looking down the alley. Next
16 slide.

17 And looking down Randolph. As you can see on
18 the right side, there's other third floor additions.
19 There's also I think about six properties on Randolph
20 Street on this block that actually already have three
21 units.

22 So it's a common thing that people are getting
23 on the Street. The next slide please. And that's just
24 looking to the right. The right photo is the neighbor to
25 the west with the covered patio, a covered deck and then

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1 the one on the left is the house to the east.

2 And we're probably, I think we were four or
3 five feet past that façade. Next slide please. So that's
4 the proposed addition where infilling the dog leg and
5 pushing it back. Next slide please. And so these are the
6 demo plans.

7 It's a full gut. Next slide please. And just
8 the second floor demo plan. Next slide. And here are
9 your floor plans so the seller, Unit A will be one unit
10 and then the first floor Unit B will be the second unit.
11 Next slide please.

12 And the Unit C will be the second and third
13 floor units. I mean to see on level two there, the dash
14 or diagonal hatch. You can see the adjacent residence.
15 And how far we push back or pass it.

16 That's why level two the adjacent residence on
17 the bottom of the sheet where I guess has 18 feet so
18 that's where we go past the house on the second level.
19 Next slide please. Just the roof with the roof deck and
20 solar panels.

21 Next slide. And then just some elevations. We
22 have 3D images as well so we could look at those a little
23 bit more. Next slide. I'm looking to that west and you
24 can see that dash line. Even the house to the east of us
25 their roof façade basically lines up to where we are.

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1 And next slide please. This is the house to
2 the west looking east. Next slide please. And just the
3 section. Next slide please. And another section. Next
4 slide please. And so here are just some shadow studies.
5 The one on the right is a matter of right.

6 And the one on the left is what's proposed. So
7 you can see there's a little bit at 9:00 a.m. in the
8 summer. A little bit more shadow on the property to the
9 west. Next slide please. At 12:00 p.m. there's no
10 difference.

11 These two adjacent properties. Next slide
12 please. And at 3:00 p.m. there's a little bit additional
13 shadowing. Next slide please. In the winter, there's
14 really no difference. Next slide please.

15 At 12:00 p.m., just a little bit, you can see
16 at the top left there to the property to the west. Next
17 slide please. And here the same thing just a little bit
18 to the east, on the property to the east.

19 We did speak to both neighbors. They actually
20 met with them and they both signed letters of support.
21 The one on the left is actually looking to do something
22 similar. So maybe I'll be back here with that project
23 hopefully. Next slide please. These are the angles for
24 the 3D images.

25 Next slide please. And there's your 3D front

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1 view. So just basically leave it intact, just fixing it
2 up, paint it. You see the third floor addition pushed
3 further back. Next slide please. Just different angle.

4 Next slide please. And that's from the rear.
5 Next slide please. And that's from the angle so you get
6 an idea. The white box there on the front is that covered
7 deck. Next slide please. And then looking from the other
8 side as well. And I think that's it. Mr. Young, is there
9 any more?

10 I don't think there's any more. So we had ANC.
11 We had full support and like I said, both neighbors gave
12 us their support as well. And I'm happy to answer any
13 questions. Thank you, Mr. Teran. I see Mr. Blake has his
14 hand up.

15 MEMBER BLAKE: Real quick question for the
16 architect. Is there in the removal, the infill for the L,
17 could you talk about that? Is there any line of sight
18 issues between windows between that building and the one
19 and what's the distance between that remaining in there?

20 MR. TERAN: Yes, if Mr. Young wants to go back
21 to one of the floor plans. I think it might have been
22 like the fifth or sixth page. We do have windows. So we
23 kept the dog leg in the basement and the first floor. And
24 so that has windows. There you go.

25 I'm on the cellar level and the first floor.

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1 So there's both bedroom too and the bathroom have high
2 windows. That would be looking into the side yard.

3 MEMBER BLAKE: And what would be the distance
4 between and them? There would be no direct line of sight
5 instead of the building. Correct?

6 MR. TERAN: You'd be able to see other
7 buildings, but I think it's five feet. I don't know if
8 Mr. Young, can you zoom in on the cellar level? There's
9 dimension there for the property line to the wall.

10 Okay, it is about four and a half, five feet.
11 But that would be, you know, like a typical dogleg
12 windows.

13 MEMBER BLAKE: Okay, but with no direct line of
14 sight views into the other windows. Correct?

15 MR. TERAN: Oh, to the other, yes, there's
16 other direct sight into the neighboring property. We
17 would just see their wall.

18 MEMBER BLAKE: Okay, thank you.

19 CHAIRPERSON HILL: Thank you. Does anyone else
20 have any questions?

21 (No audible response)

22 CHAIRPERSON HILL: Okay, could I hear from the
23 Office of Planning please?

24 MR. BARRON: Good afternoon, Commissioners. My
25 name for the record is Ron Barron, Development Review

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1 Specialist for the D.C. Office of Planning. The Office of
2 Planning recommends approval of the requested special
3 exceptions.

4 And we're happy to rest on our report in the
5 record and I'm available to answer any questions you may
6 have. Thank you.

7 CHAIRPERSON HILL: Thank you. Does anyone have
8 any questions for the Office of Planning?

9 (No audible response)

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

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay, Mr. Teran, do you have
14 anything to add at the end?

15 MR. TERAN: No, thank you. Just thank you for
16 your time. I look forward to your support.

17 CHAIRPERSON HILL: Thank you. Thank you, Mr.
18 Teran. I am going to close the hearing and the record.
19 Mr. Young, if you will please excuse Mr. Teran. Okay.
20 These 10' extensions I always really take a hard look at
21 as we have over the years because -- to see how they're
22 affecting in particular the immediate adjacent neighbors.

23 I'm comfortable with this particular design and
24 also comfortable that both adjacent neighbors are actually
25 signing off. They're the ones that tend to be the most

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1 affected.

2 It is good to see that the ANC is in support
3 and the Office of Planning. I've read through the Office
4 of Planning's recommendation and the record and I would
5 also agree with their analysis.

6 I will be voting in favor of this application.
7 Mr. Smith, do you have anything you would like to add?

8 MEMBER SMITH: The testimony and the
9 presentation provided by the applicant as well as the
10 analysis provided by the Office of Planning, I will also
11 support the application.

12 CHAIRPERSON HILL: Thank you. Mr. Blake?

13 MEMBER BLAKE: Mr. Chairman, I fully support
14 the application. I do believe the applicant has met the
15 criteria for both the conversion and the property is built
16 in 1919 as ample with -- 3,031 feet amply meets the 900
17 square foot requirement.

18 They said the shadow study addressed possible
19 concerns about shading. And we talked about privacy and
20 obviously there was some modest impact, but not for
21 available undue and, you know, the front has preserved the
22 design, preserved the look and integrity of the front.

23 So the, with the streetscape and as well as the
24 alley scape so I will be voting in favor of the
25 application.

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1 CHAIRPERSON HILL: Thank you. Commissioner
2 Stidham?

3 COMMISSIONER STIDHAM: I agree with what has
4 already been noted. I don't see any issues with the
5 neighbors. And am willing to support.

6 CHAIRPERSON HILL: Thank you. Vice Chair John?

7 VICE CHAIRPERSON JOHN: Thank you, Mr.
8 Chairman. I mean, like you, I'm always troubled by these
9 conversions and the relief under the 10' rule, but this
10 application is 18 feet which is reasonable.

11 Eighteen feet beyond the rear wall of the
12 adjacent neighbor and it's not as extensive as some of the
13 others that have come before us. There's also 6' rear
14 yard remaining which should allow plenty of light and air
15 to the neighbors who, as you said, are in support of the
16 application.

17 And as Board Member Blake said, the addition in
18 the front maintains the mansard roof which makes it more
19 closely aligned with the architecture and the front of the
20 other buildings, other houses.

21 And even though the building is slightly taller
22 than the surrounding buildings, because it's pushed back
23 from the front, the impact should be minimized. And I was
24 a bit concerned about the neighbors, about the windows as
25 well, but I believe the architect explained that.

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1 And also, I want to commend the architect for
2 those shadow studies that showed the matter of right and
3 what's proposed and then the clarification of the
4 shadowing and really pointing that out so the Board can
5 easily grasp what is happening. And so I'm in support of
6 the applications.

7 CHAIRPERSON HILL: Thank you. All right, I'm
8 going to make a motion to approve Application No. 21146 as
9 caption read by the secretary and ask for second. Ms.
10 John?

11 VICE CHAIRPERSON JOHN: Second.

12 CHAIRPERSON HILL: Motion made and seconded.
13 Madame Secretary, will you take a roll call please?

14 MS. MEHLERT: Please respond to the Chair's
15 motion to approve the application. Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MS. MEHLERT: Vice Chair John?

18 VICE CHAIRPERSON JOHN: Yes.

19 MS. MEHLERT: Mr. Smith?

20 MEMBER SMITH: (No audible response)

21 MS. MEHLERT: Mr. Blake?

22 MEMBER BLAKE: Yes.

23 MS. MEHLERT: Commissioner Stidham?

24 COMMISSIONER STIDHAM: Yes.

25 MS. MEHLERT: Staff would record the vote as

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1 five to zero to zero to approve Application 21146 on the
2 motion made by Chairman Hill and seconded by Vice Chair
3 John.

4 CHAIRPERSON HILL: Okay, wonderful. Thank you.
5 All right, you may call our next one when you have an
6 opportunity.

7 MS. MEHLERT: Next case is Application No.
8 21150 of Sreeja Nair and Alexander Cohen. As amended this
9 is a self-certified application pursuant to Subtitle X §
10 901.2 for a special exception under Subtitle D § 5201 and
11 the side yard requirements of Subtitle D § 208.2.

12 This is construct front and side additions to
13 an existing detached two-story principal dwelling. It is
14 located in the R-1B zone at 4450 Alton Place NW, Square
15 1591, Lot 18.

16 CHAIRPERSON HILL: Great, thank you. If the
17 applicant could hear me, if they could please introduce
18 themselves for the record.

19 MR. MORGAN: Good morning, my name is Craig
20 Morgan and I live at 534 6th Street SE. I am the
21 architect that the homeowners have hired to help them with
22 their desire to increase the size of their house because
23 their house is the one house on the block that doesn't
24 have a door that you can see from the street.

25 They said we'd love to have a house that had a

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1 door that people could see as they walk by. I found that
2 to be a very intriguing problem and I'd love to show you
3 some drawings. If I could, Mr. Young, it's Exhibit 34.
4 Great.

5 Thank you very much. So Alton Place is in
6 northwest and you can see on the map the Tenleytown Metro
7 is to the east. From the three dimensional interactive
8 D.C. zoning map of the city, I added the proposed
9 addition.

10 The front yard is going to allow that because
11 the house is set back to begin with from the property line
12 to allow for modest addition in the front. You can see
13 the picture on the right. You can see the house and its
14 neighbors. Next slide please.

15 So here's the existing façade on the left. The
16 house was built in 1938 and so we're proposing to have a
17 two-story addition made in the same materials as the
18 existing house brick basically and a front door and steps
19 that go up.

20 And then a room to the left that kind of
21 although enclosed, gives the idea of the classic kind of
22 front porch appearance to the house. Next slide please.
23 Here's the property plat and you can see, this has slipped
24 so north is to the bottom.

25 But both houses on either side of this house

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1 are quite a ways off relatively speaking distance wise.
2 And so you can see we're asking for a special exemption
3 for relief from the side yard setback.

4 We've stepped in a little bit on the right or
5 which would be the east side of the house, I'm sorry, the
6 west side of the house. And we would maintain a 3'1" and
7 ask for 4'10.5" of relief.

8 And similarly, but to a lesser degree, we're
9 following the line of the existing house which is
10 nonconforming for the side yard setback to the left in
11 this drawing or to the east as well. Next slide please.

12 So here are some pictures to give the Board
13 some context of the house. The first two are pictures
14 taken from the sidewalk. Well there really isn't a
15 sidewalk on that side of the street, but from the curb.

16 And then the lower ones you can see where the
17 existing entrance is to the door. You kind of go past the
18 house along the fence there and see the steps. And then,
19 the final picture on the lower right is from the backyard
20 diagonally taken towards the west side of the house.

21 Next slide please. Floor plan wise, here you
22 can see the proposed addition extends eleven feet out from
23 the existing face of the house, steps and then doorway and
24 then into the house and then upstairs a new bedroom for
25 the house.

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1 And, let's see, next slide please. So here are
2 the three sides, here are the two side views as well
3 towards the adjacent properties maintaining the existing
4 roofline and materials and kind of it's for the most part
5 the same sense of fenestration as the existing house.

6 And let's see. Last slide please. And so just
7 to conclude with our request for a special exemption, a
8 rendering that I did to show the owners what kind of a new
9 entrance to their house can be.

10 So thank you for that and we have one of the
11 owners also present who would kind of fill the Board in on
12 how the community has responded to our proposal.

13 CHAIRPERSON HILL: Great, Mr. Cohen. Can you
14 hear me?

15 MR. COHEN: (No audible response)

16 CHAIRPERSON HILL: Yes, you want to introduce
17 yourself for the record.

18 MR. COHEN: Thank you. I'm Alex Cohen. I'm
19 one of the homeowners or one of the owners of the
20 property.

21 CHAIRPERSON HILL: Okay, Mr. Cohen, you want to
22 give us your testimony.

23 MR. COHEN: Yes. No, we love the neighborhood.
24 We love the community we're in. You know, Janney is a
25 wonderful school. We're a little tired of the neighbors

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1 referring to our house as the sideways house.

2 Because the front door is kind of on the side
3 of it instead of in the front. We're really hoping that
4 you'll approve us for having a front door. Both neighbors
5 at either side have signed saying that they're in support
6 of this.

7 That's kind of it. I really appreciate your
8 time and your consideration.

9 CHAIRPERSON HILL: Okay, thanks, Mr. Cohen.

10 MR. COHEN: Thank you.

11 CHAIRPERSON HILL: Before I turn to my Board
12 Members, can I hear from the Office of Planning?

13 MS. MYERS: Hello, Crystal Myers with the
14 Office of Planning. The Office of Planning is in support
15 of this request and we can stand on the record of the
16 Staff Report, but of course, always here for questions.
17 Thank you.

18 CHAIRPERSON HILL: Great. Does my Board have
19 any questions for the applicant, the homeowner and/or the
20 Office of Planning?

21 (No audible response)

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

24 (No audible response)

25 CHAIRPERSON HILL: Okay, Mr. Morgan, do you

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1 have anything you would like to add at the end?

2 MR. MORGAN: Certainly thanks to the Board for
3 considering our case.

4 CHAIRPERSON HILL: Great. Thank you. All
5 right, Mr. Young. I'm going to close the hearing and the
6 record. If you would please excuse everyone. Okay.
7 Thank you. I didn't have any issues with this particular
8 case.

9 I think that the relief being asked for is
10 relatively minor. I think that since both neighbors
11 really I don't think would be even affected by the side
12 yard issue concerning light or air.

13 And I think that the fact that they have
14 actually signed off is beneficial as well as that of the
15 support of the ANC and I've reviewed OP's record, I'm
16 sorry, report and would agree with their analysis.

17 And then DDOT then also didn't have any
18 objection to this. I'm going to be voting in favor of
19 this application. Mr. Smith, is there anything you would
20 like to add?

21 MEMBER SMITH: Chairman Hill, regarding this
22 particular case I do believe that it meets the general
23 purpose of intent. The zoning regulations to me I agree
24 that it shouldn't have a detrimental effect on the
25 adjacent property owners.

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1 If anything, to me, this brings it more into,
2 currently with the adjacent properties because the
3 adjacent properties are closer to the street. So this is,
4 you know, pulling the building -- not only is it including
5 the interest on the front of the building, but also
6 pulling it closer to the street.

7 To me, the more prominent the applicant is more
8 talking about this entrance, the more prominent and
9 interesting aspect of this addition is not so the
10 entrance, that's great, but they're adding some fairly
11 substantial amount of square footage getting an additional
12 bedroom and also an additional living space on the first
13 floor.

14 So I believe it's more in, I do believe that it
15 meets the standard for us to grant a special exception.
16 The neighbors are in support, the ANC is in support and I
17 will be in support as well.

18 CHAIRPERSON HILL: Thank you. Mr. Blake?

19 MEMBER BLAKE: Yes, Mr. Chairman, I'm in favor
20 of support of the application as well. I do believe this
21 meets criteria as additionally pointed out in here as
22 well. I would actually argue that the proposed addition
23 and moving the front entrance to the front actually
24 improved the privacy between neighbors.

25 And I think that it is a very good and

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1 attractive addition so I'll be voting in favor of the
2 application giving great weight to the Office of
3 Planning's recommendation for approval noting that DDOT
4 has no objection and that ANC 3E is in support, no issues
5 and concerns stated.

6 And again, also, acknowledging the support of
7 the neighborhood properties.

8 CHAIRPERSON HILL: Thank you. Commissioner
9 Stidham?

10 COMMISSIONER STIDHAM: I also agree. It's
11 fairly straightforward and supported by the neighbors and
12 the ANC. Therefore, I'm voting in support.

13 CHAIRPERSON HILL: Thank you. Vice Chair John?

14 VICE CHAIRPERSON JOHN: Thank you, Mr.
15 Chairman. I'm also in support of the application and I
16 agree with all of the comments so far.

17 CHAIRPERSON HILL: Wonderful. All right, thank
18 you, everyone for your help. I'm going to go ahead and
19 make a motion to approve Application No. 21150 as caption
20 read by the secretary and ask for a second, Ms. John.

21 VICE CHAIRPERSON JOHN: Second.

22 CHAIRPERSON HILL: Motion made and seconded.
23 If we take a roll call, Madame Secretary.

24 MS. MEHLERT: Respond to the Chair's motion to
25 approve the application. Chairman Hill?

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1 CHAIRPERSON HILL: Yes.

2 MS. MEHLERT: Vice Chair John?

3 VICE CHAIRPERSON JOHN: Yes.

4 MS. MEHLERT: Mr. Smith?

5 MEMBER SMITH: Yes.

6 MS. MEHLERT: Mr. Blake?

7 MEMBER BLAKE: (No audible response)

8 MS. MEHLERT: Commissioner Stidham?

9 COMMISSIONER STIDHAM: Yes.

10 MS. MEHLERT: Staff would record the vote as
11 five to zero to zero to approve Application 21150 on the
12 motion made by Chairman Hill and seconded by Vice Chair
13 John.

14 CHAIRPERSON HILL: My fellow Board Members, if
15 I might make a suggestion, we'll go ahead and do this next
16 case and then we'll take lunch and then we'll come back or
17 the appeal if that sounds appropriate. And Madame
18 Secretary, if you want to go ahead and call our next case.

19 MS. MEHLERT: Next is Application No. 21152 of
20 Baldwin House Cooperative Association. This is a self-
21 certified application pursuant to Subtitle X § 901.2 for a
22 special exception under Subtitle U § 320.1(b) to allow a
23 community service center.

24 This is for a new community service center on
25 the ground floor of an existing three-story apartment

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1 house with six units currently and eight units are
2 planned. It's located in the RF-1 zone at 2570 Sherman
3 Avenue NW, Square 2864, Lot 831.

4 And I'll just note for the Board that ANC 1E is
5 an affected ANC across the street and they were not sent
6 notice so the Board can hear the case today, but cannot
7 take a vote. We can settle for a continued hearing at a
8 later date.

9 CHAIRPERSON HILL: Okay, thank you, Ms.
10 Mehlert. Let's see. If the applicant could hear me if
11 they could please introduce themselves for the record.

12 MR. WALLACE: Good day to the Members of the
13 Board. This is Derick Wallace with Goolstein and Skewers
14 and I'm joined here today with my colleague, Cary Kadlecek
15 and I'm here on behalf of the applicant Baldwin House
16 Cooperative Association.

17 CHAIRPERSON HILL: Great. Thanks, Mr. Wallace.
18 So Mr. Wallace, unfortunately, there's been a little bit
19 of a glitch with ANC 1E getting notification and so what I
20 think we're going to do is, you know, rather than postpone
21 this hearing, we'll go ahead and have the hearing because
22 everyone is here.

23 And then we'll allow the ANC their time and
24 then we'll come back if we need to bring, if we need to
25 bring everybody back because of what we might hear from

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1 the ANC or what have you, we'll see what goes on at that
2 point.

3 But if you want to go ahead and walk us through
4 your client's application and why you believe they're
5 meeting the criteria for us to grant the relief and I will
6 let you begin whenever you like.

7 MR. WALLACE: Great. That sounds good to us.
8 Today we are here to request special exception relief for
9 a community service center use in the RF-1 zone. The
10 request will facilitate the conversion of the cellar floor
11 of an existing apartment house into a community service
12 center in the Columbia Heights neighborhood.

13 Before going into how the application satisfy
14 the standards of relief, I would like to introduce Natasha
15 Knapper and Mandy Lee both of whom will provide background
16 on Baldwin House Cooperative Association and the proposed
17 programing for the community service center.

18 Oh, I'm sorry. It's actually going to be Abi
19 Shakur instead of Natasha. Mr. Young, if you could pull
20 up the presentation. Thank you.

21 CHAIRPERSON HILL: Whoever speaks next, if they
22 could just introduce themselves for the record also.

23 MR. SHAKUR: Hello everyone. My name is Abi
24 Shakur. I am a tenant and organizer of Baldwin House so
25 I'm here to just talk a little bit, ground us in kind of

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1 the vision of the project and where we're at so far.

2 So as a tenant and organizer, I've been a big
3 part of, you know, this project since 2021. Baldwin House
4 came together as a group of organizers who originally were
5 doing mutual aid work and a community support work taking
6 care of each other during the pandemic in Ward 1.

7 And then in 2021, we were able to rally to
8 begin a long like process of fundraising to purchase our
9 building finally in 2023. This photo here was taken
10 during one community event that we had a couple of months
11 ago where we were sourcing kind of from our neighbors and
12 community members.

13 It's like visions for how our community service
14 center was going to run. Thank you. Next slide please.
15 Thank you. So yes, we're located at 2570 Sherman Ave.
16 Our goal is to establish a community resource, community
17 service center in Ward 1 that will serve our immediate
18 neighborhood.

19 We're pursuing a special exemption to establish
20 that. It will be on the cellar floor. Our vision and
21 like this process of putting this together has been
22 extremely like community focused. Again, as I mentioned
23 before, like we don't see this as, you know, our Baldwin
24 House like tenants and organizers just like putting what
25 we want in the community.

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1 We want the community itself to actually be a
2 part of creating this and envisioning for it and hearing
3 from them what they want to see in their neighborhood so
4 that we can then, you know, provide that, you know,
5 mutually.

6 So yes, I think our community focused
7 programming and resources will look like, you know, a lot
8 of educational events, social events for our immediate
9 neighbors. Thanks. And next slide I think.

10 Yes, so far what we've done, is a lot of like
11 neighborhood events. Some of these were taken, some of
12 these photos were taken at those events. One of those
13 Juneteenth celebration last year and also like community
14 event at Sankofa just around the corner.

15 We've also done some canvassing to our, in our
16 neighborhood to, you know, tell folks about the project to
17 let them know and to, yes, I think a lot of the support
18 has been extremely positive from our neighborhood as you
19 see, which is exciting for us.

20 Yes, we had a unanimous vote in support at the
21 ANC 1B Exhibiting meeting on June 17th and another one on
22 July 11th which we are very proud for. I'll think I'll be
23 passing it off to Many Lee for the next slide.

24 MS. LEE: My name is Mandy. I am a neighbor
25 who lives just a short block from Baldwin House and what

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1 we call a solidarity organizer, someone who has been
2 helping with the project who will be supporting this work
3 as we continue forward.

4 And I just wanted to share a little bit more
5 about our team so Abi introduced themselves as part of the
6 Baldwin House Cooperative Association. That is the owner
7 of the building.

8 They are registered General Cooperative
9 Association comprised of what we call tenant stewards who
10 are living in the building's nine units, six of which
11 already exist.

12 Three are being created now and then in
13 partnership with the cooperative association, we
14 established Baldwin House Community Collective back at the
15 beginning of this project which is pursuing 501(C)(3)
16 status.

17 And we'll be leasing space, is already leasing
18 space in the basement and will co-managing the programming
19 happening in the community service center if we're
20 approved. And then lastly, just wanted to name that this
21 effort really emerged out of organizers who have been part
22 of a mutual aid network in Ward 1.

23 But we work in partnership with a lot of
24 different groups including my Senior's Keepers, Hustlers
25 to Harvesters, Liberators, Ogema First and we have other

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1 partners that we expect will be developing even closer
2 relationships to support programming and be part of kind
3 of using and activating the community service center
4 including Vendadores Unidos and Housing Counseling
5 Services just as two examples.

6 We can go to the next slide please. So this is
7 just a snapshot of the floor plan of the basement just to
8 give you a sense of what we're proposing. There is kind
9 of two portions of the basement that you can see outlined
10 in two different colors.

11 One half that's outlined in green is continuing
12 to be reconfigured residential space controlled by the
13 cooperative association that includes a large community
14 room, laundry bathroom. The space that we're talking
15 about today is outlined in purple.

16 This is the space that's being leased. That
17 will include room for events and classes, a community
18 kitchen and other uses that we're continuing the design
19 process to finalize. And we can go to the next slide
20 please.

21 Just to give you a sense of what we're talking
22 about when we're saying programming, we expect that we'll
23 be hosting both indoor and outdoor activities that are
24 open by public invitation to our neighbors.

25 At the most frequent, that might look like us

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1 being outside doing urban vegetable gardening every week.
2 Distributing free clothing and supplies a few times a
3 month for a few hours at a time, offering classes by
4 Baldwin House Members or partner organizations a couple of
5 times a month, distributing groceries and meals monthly,
6 creating art projects, doing movies screenings, cookouts
7 and larger gatherings a couple of times a year.

8 We also expect to offer some semi-public
9 offerings that, which means that they won't necessarily be
10 highly publicized, but folks that are aware of it won't be
11 refused. These include a tool library with supplies like
12 art supplies, household materials, carpentry supplies,
13 small industrial tools that people can use onsite as well
14 as some small household tools that can be borrowed and
15 returned.

16 And a community room which I mentioned before
17 which would offer space for meetings, resting and other
18 events. For both of these, we will have kind of the
19 cooperative association and the community collective
20 supervising and kind of developing a regular schedule a
21 couple of days a week for a few hours at a time.

22 And then lastly, we expect to have some outdoor
23 resources available 24/7 so a kind of protected pantry and
24 book library. Next slide please. And lastly, we just
25 wanted to touch on some of the things that we've been

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1 thinking about in terms of how to be good stewards of this
2 property and good neighbors.

3 And in particular, thinking about how we ensure
4 that this project is creating as many positive impacts as
5 possible especially through a community driven planning
6 process and as few negative impacts or no negative
7 impacts.

8 So that includes looking like being conscious
9 about noise, ensuring that we're always ending events at a
10 reasonable hour, always before 10:00 p.m., notifying
11 neighbors if we're doing larger special events or
12 something like a movie screening that might be starting
13 later in the evening.

14 We also have been thinking about how to reduce
15 the need for parking and ensuring that there's not parking
16 congestion created by the programming that we're doing.
17 We do have parking spaces behind the building that we will
18 be maintaining adding additional short-term bike parking
19 in addition to what's already available in front of the
20 building.

21 And encouraging public transit, walking, biking
22 and as many alternatives to personal vehicles as possible.
23 We've also had a practice of offering our own carpooling
24 assistance when we have capacity to do so.

25 And on the right-hand side of the slide, you

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1 can see just a couple of examples of the types of
2 communications that we'll be using in our event promotion
3 to encourage other alternatives to cars. I think that
4 might be it for our slides so I will pass it back to you,
5 Derick.

6 MR. WALLACE: Thank you Members of the Board
7 and thank you to Abi and Mandy for the community service
8 center's background and proposed programming. Now I will
9 explain how the application meets the standards of relief
10 in this case.

11 Generally the applicant must meet the general
12 special exception requirements pursuant to Subtitle X §
13 901.2 to establish a community service center use in a RF-
14 1 zone. Additionally, the applicant must meet the
15 criteria outlined in Subtitle U § 320.1(b).

16 Here the community service center is in harmony
17 with general purpose and intent of the zoning regulations
18 because of community service center is permitted in the
19 RF-1 zone district via special exception, so it's presumed
20 to be compatible with the mix of uses in the RF-1 zone.

21 Moreover, the CSC will provide space for local
22 nonprofits to offer skill sharing classes, meal
23 distributions, and other resources for neighborhood
24 residents that's benefitting the surrounding community and
25 offering uses that are consistent with the intended

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1 character and purpose of the RF-1 zone district.

2 Further, the proposed CSC will not tend to
3 adversely affect neighboring properties and it is not
4 likely to become objectionable to neighboring properties
5 because of noises or other objectionable conditions.

6 First, the proposed use which only requires an
7 internal reconfiguration is modest in scope and located in
8 the basement to reduce noise. Generally, the CSC will be
9 open between 9:00 a.m. and 9:00 p.m. Monday through
10 Saturday and occasionally there will be special events
11 that end at 10:00 p.m.

12 The use of outside spaces will be limited and
13 the applicant will encourage users to use non-automobile
14 forms of transportation to limit parking influx in the
15 neighborhood. An example of this promotional language is
16 included in Mandy's portion of the presentation.

17 Lastly, the main user for the space are
18 nonprofits with small staff and low traffic, all of whom
19 plan to serve the surrounding neighborhood further
20 limiting impacts. The use is reasonably necessary to the
21 neighborhood because post-COVID-19, local nonprofits
22 recognize the need to offer services both in person and
23 remotely.

24 Generally these services will include classes,
25 recreational activities and research distributions.

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1 Specially, tenants in the space will host events, provide
2 services and offer programs that can be found at Exhibit
3 22 in the record especially given Columbia Heights
4 confluence of different socioeconomic and ethnic groups,
5 this is an ideal neighborhood to situate a community
6 resource hub.

7 Finally, the CSC will not be organized for
8 profit. Instead, the rent will be used to subsidize
9 overhead costs including rent, utilities, grounds
10 maintenance and property management.

11 Any surplus will be used to subsidize
12 affordable housing units owned by the Baldwin House
13 Cooperative Association which is not a private shareholder
14 or individual. Before closing, I want to note that we
15 have a letter in support from ANC 1B and approval from OP
16 which can be found in the record at Exhibits 26 and 23
17 respectively.

18 As well as several letters in support and a
19 signed petition at Exhibit 20. This concludes our formal
20 presentation. The applicant and I are available to answer
21 any questions from the Board and we thank you, again, for
22 your time.

23 CHAIRPERSON HILL: Thank you, Mr. Wallace.
24 Let's see, may I hear from the Office of Planning first
25 before I turn to my Board?

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1 MR. JURKOVIC: Good afternoon, Chairman and
2 Members of the Board. This is Mike Jurkovic, Development
3 Review Specialist with the Office of Planning. OP
4 recommends approval of the requested special exception for
5 community services center use with the conditions that are
6 in our report and stand on the record of our report. Here
7 to answer any questions. Thank you.

8 CHAIRPERSON HILL: Thank you. Does my Board
9 have any questions of the applicant and/or the Office of
10 Planning? Go ahead, Mr. Smith.

11 MEMBER SMITH: Mr. Jurkovic, what was
12 previously in the space that commercial cellar space in
13 the past? Is it vacant now?

14 MR. JURKOVIC: To my knowledge, it's vacant I
15 believe it was a dentist office, but the applicant would
16 know more information.

17 MEMBER SMITH: It was a dentist office? I'm
18 saying to the applicant.

19 MS. LEE: Yes, that's correct. After the
20 building was built, it's had different medical uses
21 including like a pediatrician's office and dentist's
22 office. It's been vacant I think for at least five or six
23 years.

24 MEMBER SMITH: Okay, thank you for that. And
25 back to the Office of Planning. This condition that you

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1 recommend, the hours of operation, these special events,
2 could you speak to the reason why OP recommended including
3 that particular condition?

4 Does that advance or mitigate some type of an
5 impacts related to this particular use?

6 MR. JURKOVIC: The idea would be to limit any
7 potential impacts that this use might have as it continues
8 to finalize its programming. And I would note that these
9 are generally what was proposed by the applicant in their
10 submittals.

11 MEMBER SMITH: Okay. I'm just trying to really
12 grasp what did OP consider were the potential adverse
13 impacts that may occur beyond these special events that
14 they specifically proposed?

15 This is very specific so I just want to, was
16 there any contemplation as to impacts beyond these
17 particular type of four, five uses that you're attempting
18 to mitigate with this particular condition?

19 MR. JURKOVIC: In other words, the hours of
20 operations or the frequency of special events?

21 MEMBER SMITH: The frequency of the special
22 events and specificity of those special events?

23 MR. JURKOVIC: So those are the special events
24 that were specified by the applicant. In my communication
25 with the applicant's representative, those were the

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1 primary things that both the application submitted might
2 be special events and, you know, generally how many they
3 may have per month.

4 Generally speaking, given the limited size of
5 the space and I think the rotating services that may be
6 provided, limiting the special events and their impact to
7 the neighbors I think would be best in this case.

8 But these are only, these are the only events
9 that were mentioned by the applicant in their submittals
10 so we haven't given the opportunity to review potential
11 impacts of any other events as we were not notified of
12 those.

13 MEMBER SMITH: And is it the intent of the
14 Office of Planning to tie them to these particular events
15 or do you mean may include free store cookouts and the
16 evolution or are you specifically trying to limit them to
17 those just as clarification?

18 MR. JUROVIC: I see that, you know, maybe the
19 wording might be limited, but if the applicant has other
20 events that they might want to hold past these I don't
21 think on balance would be in opposition to it.

22 I just -- OP's concerns are more so due to the
23 overarching review of this use and how its future impacts
24 that might not be foreseeable now as the space continues
25 to grow in the services that it provides to the area

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1 setting some sort of cap on how many special events might
2 be occurring over the course of any given month could help
3 limit those potential impacts to the neighbors.

4 MEMBER SMITH: And just another question. This
5 may be hypothetical, but what is the Office of Planning
6 usually consider a special event?

7 MR. JURKVIC: I mean really in this case, it
8 would be as the applicant said, the things that would, you
9 know, might occur outside their hours of operation, things
10 that might produce, you know, loud noise. They mentioned
11 outdoor movie screenings.

12 Things like that which wouldn't be typical for
13 just the community services center where someone goes to
14 seek advice or some sort of service.

15 MEMBER SMITH: This still seems a little open-
16 ended, but representative of the Baldwin House, could you
17 provide some additional detail on what you consider a
18 special event that you may have that's a part of the
19 operation of issues? Mr. Kadlecek?

20 MR. WALLACE: Yes, I'm happy to add a little
21 more context and then pass it over to Baldwin House.
22 Generally it's exactly what OP has mentioned. Events that
23 are kind of outdoors or expected to draw larger than
24 normal crowds and cause noise and potentially some impact
25 to the neighboring properties.

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1 So in the presentation we mentioned some of the
2 promotional materials that would give neighbors advance
3 notice and it also inferred it can be to be mindful of
4 neighbor impacts. I can pass on that the Baldwin House
5 hosts how specific events, but generally those that are
6 the outdoors and draw a larger than normal crowd.

7 MS. LEE: Yes, not much to add. I'll just
8 provide an example, but that Abi mentioned of our
9 Juneteenth celebration where there's a larger group
10 outside of the building, food being cooked, music being
11 played. That has been an event we've done once a year.

12 And as we mentioned in the presentation, is
13 something that we expect to do a few times a year.

14 MEMBER SMITH: Okay, all of these special
15 events will be outdoors. Okay, but yes, I think we
16 probably as to the Office of Planning, we probably want to
17 switch up this wording.

18 And it's just outdoor events. They probably
19 taught us then or make this a little bit, but give it some
20 more teeth to be able to regulate, but okay, thank you.
21 You know, speaking of probably, thank you for the
22 explanation. Thank you. No more questions, sir.

23 CHAIRPERSON HILL: Thanks Mr. Smith. Mr.
24 Blake?

25 MEMBER BLAKE: Yes, I appreciate that. I was

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1 also looking at Condition 6 and 7. Maybe you could
2 explain a little bit why Condition 6, the mitigating
3 activity there and also talk about the flexibility
4 required in No. 7.

5 MR. WALLACE: Is that a question for the
6 applicant or OP?

7 MEMBER BLAKE: Office of Planning.

8 MR. JURKOVIC: Sorry, our report only has the
9 two conditions specifically to be conditions of the relief
10 in that those at the start of our report and that's the
11 hours of operation with the caveat of the special events
12 and the overall frequency of the special events.

13 The other information included in the
14 application and brief section is just general information
15 that was provided by the applicant that we thought was
16 pertinent to the report.

17 MEMBER BLAKE: Yes, I see. Thank you very
18 much. I appreciate it. Thank you.

19 CHAIRPERSON HILL: Okay, thank you. Anyone
20 else?

21 (No audible response)

22 CHAIRPERSON HILL: Mr. Young, is there anyone
23 here wishing to speak?

24 MR. YOUNG: We do not.

25 CHAIRPERSON HILL: Okay. So as I mentioned

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1 before, we still need to give an opportunity for ANC 1E to
2 participate and so we're not going to be able to
3 deliberate today. And so probably what we're going to do
4 is we're going to set this for decision after there's a
5 chance and I'll talk to the secretary about when that
6 might happen.

7 And I'm going to leave everybody here as we
8 kind of do this, but also I wanted to give an opportunity
9 to my fellow Board Members. If these conditions, again,
10 like just to talk with the applicant here so we don't have
11 to, you know, worry about not having them with us the next
12 time, I mean you guy and I don't know who -- you all heard
13 all about these conditions. Right?

14 So I think some of the question about the
15 conditions of the Office of Planning and I don't know, Mr.
16 Wallace, who would be -- is it Mr. Shakur? Like who --
17 are you guys in agreement to these conditions?

18 MR. WALLACE: The Office of Planning to
19 elaborate on updated conditions? Add a little more
20 specific?

21 CHAIRPERSON HILL: Yes, that's okay. We're
22 going to, I mean we're going to be the ones I guess to
23 have to do that right now and here. So I'm just saying,
24 in general, are you guys in support of these conditions?

25 MR. WALLACE: Yes, I'll defer to the Baldwin

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1 House.

2 MS. LEE: Yes, and I think we tried to, I think
3 what we've been trying to say is part of this presentation
4 too is that our intention is to create something that
5 serves our community really well.

6 CHAIRPERSON HILL: No, Ms. Lee, we got it. So
7 you all are the ones that propose these conditions.
8 Correct?

9 MS. LEE: With the encouragement of OP, yes.

10 CHAIRPERSON HILL: Okay. So I think part of
11 what my fellow Board is trying to figure out again is
12 like, you know, what exactly is a special event? And, you
13 know, you understanding that you couldn't exceed two per
14 month. Right?

15 And so I guess what one of my Board Members is
16 suggesting is it would be, you know, special outdoor
17 events. I mean that would be kind of the criteria.
18 Right? So then you could have events inside more than and
19 it wouldn't count towards your two. Right?

20

21 And it seems like the Office of Planning if I'm
22 understanding you correctly, and so it's this kind of a
23 question for the Office of Planning, that would still then
24 quell any concerns that you have.

25 Like it's just kind of the outdoor special

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1 events and if they had a special event inside, that
2 wouldn't count against their two per month. Correct
3 Office of Planning?

4 MR. JURKOVIC: We would be agreeable to that,
5 yes.

6 CHAIRPERSON HILL: Okay. So that's the way
7 that I guess when we come back unless my Board Members,
8 you know, that's how I thank you. Thank you, Mr. Smith
9 for all of your hard work and effort on that discussion.

10 But I'm just -- that's what, you know, the
11 standard hours of operation on the seller levels would be
12 9:00 a.m. to 9:00 p.m. Monday through Saturday with some
13 special events ending at 10:00 p.m.

14 In addition to that, there would be special
15 events which special outdoor events could not exceed more
16 than two per months. Those seem to be the conditions that
17 we're speaking about and I see everyone kind of nodding
18 their head.

19 If anybody had any comments about what I just
20 said, please raise your hand.

21 MEMBER SMITH: And they would end at 10:00 p.m.
22 I'm assuming. And you're fine with the special outdoor
23 events ending at 10 o'clock?

24 CHAIRPERSON HILL: That's the Baldwin House.

25 MEMBER SMITH: Okay. Mr. Shakur? Or, I'm

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1 sorry, they already answered. Okay. All right.

2 CHAIRPERSON HILL: Okay. One second. Okay
3 these outdoor events would end no later than 10:00 p.m.
4 And this is in general, Ms. Lee, Mr. Shakur, what you guys
5 have kind of spoken to with the ANC. Correct?

6 Okay, you're both shaking yes for the record.
7 Okay. All right, I don't have any further questions for
8 anyone. Does My Board have any further questions for
9 anyone before I try to find a date?

10 (No audible response)

11 CHAIRPERSON HILL: Okay, Madame Secretary, do
12 you have a date for us where we can come back after when
13 you think ANC, when you might have an opportunity?

14 MS. MEHLERT: Oh, I was going to propose
15 September 18th because that's really the best day in
16 September to come back although I know ANC normally meets
17 I believe next Wednesday.

18 So if they did want to meet with the applicant
19 or have them come to a meeting, I'm not sure if that's
20 enough time assuming they have an August recess. So but,
21 you know, we could put it on the 18th and if the ANC needs
22 some more time, we could --

23 CHAIRPERSON HILL: Okay. Mr. Shakur, Ms. Lee,
24 would the 18th of September, we're on recess in August so
25 does that work with your timeline?

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1 MS. LEE: We can definitely make that work. We
2 were hoping to move forward sooner than that and that's,
3 you know, --

4 CHAIRPERSON HILL: That's fine.

5 MS. LEE: -- that's just what it is.

6 CHAIRPERSON HILL: No, no. By the way, I think
7 what you guys are trying to do is wonderful and I think
8 the fact that I'm not old, but I ain't as young as you
9 all. The fact that, you know, young people are trying to
10 do something that, you know, I didn't do when I was young,
11 you know, good for you guys. So do you think you can get
12 to ANC 1E?

13 I'm looking at Mr. Shakur and Ms. Lee. So
14 we're out on, if you think you can get back here -- if we
15 hear from ANC 1E by the 31st, that's our last meeting.
16 I'm happy to put this on decision for the 31st. Do you
17 all know if you can get to them before then?

18 MS. MEHLERT: We can't put it on the 31st
19 because it needs to be noticed for at least 40 days.

20 CHAIRPERSON HILL: Okay.

21 MS. MEHLERT: To the ANC.

22 CHAIRPERSON HILL: So then, sorry. So then the
23 18th then is that, Madame Secretary, the earliest date we
24 can get back here? Like we're not back into the -- the
25 11th is our first day back. Right?

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1 MS. MEHLERT: Correct. I mean you could do it
2 on the 11th if you would like. Either the 11th or 18th
3 are sort of similar.

4 CHAIRPERSON HILL: That's okay, your hesitation
5 through is because what? The ANC would have more time by
6 the 18th?

7 MS. MEHLERT: Yes, there might be some more
8 movement on the 18th's cases, but it --

9 CHAIRPERSON HILL: Okay. You guys one more
10 week I don't think is going to bother you all one way or
11 the other. Correct?

12 (No audible response)

13 CHAIRPERSON HILL: And you're nodding yes. At
14 least one of you is. So I'm going to go ahead and put you
15 on for the 18th and then if you can get something from ANC
16 1E to us by the 18th, then we can go ahead and put this on
17 the for a vote.

18 And Commissioner Stidham, you know, if you want
19 to join us for that or submit by absentee, that's up to
20 you.

21 MR. KADLECEK: I have a question. If they just
22 say they're declining to participate, is that something
23 that we can represent then to the record? Because I don't
24 know if they're going to actually want to go through
25 submitting something.

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1 So I just want to make sure it doesn't delay
2 anything further if they just say we got your, you know,
3 we got it, but we're not interested in participating.

4 CHAIRPERSON HILL: I got it, Mr. Kadlecek. I
5 don't know, Madame Secretary, it's more a timing thing.
6 Right?

7 MS. MEHLERT: Right. I mean the ANC needs to
8 at least be noticed for the 40-day notice period. But
9 it's --

10 MR. KADLECEK: No, I understand that. I'm just
11 saying go by the --

12 MS. MEHLERT: So, yes.

13 MR. KADLECEK: -- 18th of September, if we
14 connected with them before then and they just say we're
15 not interested, is that just, is that sufficient in so far
16 as if there's nothing in the record is what I'm asking.

17 CHAIRPERSON HILL: I don't know the particular
18 answer to that. And I don't even know if our, Ms.
19 Mehlert, do you know if like can the Board waive that time
20 requirement?

21 MS. MEHLERT: There's no, there's no, I think
22 he's stopped saying, you know, if the ANC gets noticed, --

23 CHAIRPERSON HILL: Yes.

24 MS. MEHLERT: -- and they decide they don't
25 want to hear the, bring the applicant before them, can the

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1 applicant just submit something saying as much or even the
2 ANC just submitting like an email or something like that?

3 CHAIRPERSON HILL: No, I understand. And I'm
4 saying would that then meet the regulations and we don't
5 have to worry about the 40 days? Well I'm --

6 MS. MEHLERT: You still have to meet the 40
7 days. Like it --

8 CHAIRPERSON HILL: So the -- right. That's
9 okay. So the 40 days doesn't happen until like in August
10 sometime. Correct?

11 MS. MEHLERT: Correct. So it's, I mean it
12 still needs to be scheduled in September.

13 CHAIRPERSON HILL: Right. So Mr. Kadlecek, the
14 40 days is the problem here.

15 MR. KADLECEK: All right. No, I understand
16 that. I think what I'm trying to just understand is if
17 the Board will, if we in between now and September 18th we
18 communicate with that ANC and they say we received what
19 you filed, we got the notice, we're not interested in
20 participating in the case, is that sufficient for the
21 Board? Or are they looking for something else that ANC
22 actually files?

23 CHAIRPERSON HILL: I think that's sufficient
24 for the Board in this case.

25 MR. KADLECEK: Okay.

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1 CHAIRPERSON HILL: I'm just keeping it --

2 MR. KADLECEK: I'm just saying, it may come
3 from us to say we connected with them on X date, they said
4 no thanks.

5 CHAIRPERSON HILL: Yes, I mean if I guess I
6 will ask my fellow, you know, they can raise their hand if
7 -- like I'm comfortable with that. Like if the ANC gives
8 us something or we have something in the record that the
9 applicant has reached out to the ANC and the ANC has
10 decided that they do not want to weigh in on this, then
11 again, that means that everything will have been tidied up
12 and I'm fine with that.

13 Does my fellow Board Members have any issues
14 with that and if so, please raise your hand? Okay. So
15 Mr. Kadlecek, yes. I mean, if you can get us on it, I
16 mean we wanted to make a decision on the 18th. Right?

17 And so we just need to hear and honestly, to be
18 quite honestly, the ANC didn't give us anything by the
19 18th, we would assume they don't want to participate.

20 MR. KADLECEK: Okay.

21 CHAIRPERSON HILL: Right?

22 MR KADLECEK: That's what I was really trying
23 to understand. Thank you.

24 CHAIRPERSON HILL: That's fine. So all right,
25 so we're going to come back for a decision on 9-18. Okay,

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1 does anybody have any final questions before I close the
2 hearing?

3 (No audible response)

4 CHAIRPERSON HILL: Okay, I'm going to close the
5 hearing and the record. Once again, Ms. Lee and Mr.
6 Shakur, good luck to you and, you know, good luck. That's
7 it. Okay, I'm going to close the hearing and the record.
8 Thank you.

9 Okay so we're going to take lunch. Right? And
10 I think we're going to at least do, let's at least do 30
11 minutes because I know there's somebody who has to take
12 care of something. So actually let's just say 1 o'clock.
13 Okay?

14 Okay? All right, we'll see you back here at 1
15 o'clock. Thank you.

16 (Whereupon, the above-entitled matter went off
17 the record at 12:21 p.m. and resumed at 1:09 p.m.)

18 MS. MEHLERT: Okay, the Board has returned from
19 its lunch break and the final case in today's hearing
20 agenda is Appeal No. 21100 of Friends of the Field and
21 Gladys Austin, Kenneth Elston, Claudia Russell, Sylvia
22 Tano, Terry Tano, Nancy Boisen and David Patton.

23 This is an appeal pursuant to Subtitle X § 1100
24 from the decision made November 27th, 2023 by the
25 Department of Buildings Zoning Administrator to issue

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1 Building Civil Permit No. BCIV 2300110.

2 And this would be for new athletic facilities
3 for a private school. It's located in the R1-B Zone at
4 5901 Utah Avenue NW, Square 2319, Lots 831 and 32. And
5 there are two preliminary matters.

6 Department of Buildings has submitted both a
7 motion to dismiss as well as a motion to strike the
8 appellant's recently filed exhibits.

9 CHAIRPERSON HILL: Okay, one second. Okay,
10 let's see. Could DOB introduce themselves for the record
11 please?

12 MR. COX: Good morning, Eric Cox, Deputy
13 General Counsel for the Department of Buildings. With me
14 are two colleagues. I'll let them introduce themselves.

15 CHAIRPERSON HILL: Okay, Mr. Fuller, want to go
16 next? Sorry.

17 MR. FULLER: Sure, good afternoon, Board.
18 Brent Fuller on behalf of the Department of Buildings.

19 CHAIRPERSON HILL: Zoning Administrator Beeton?

20 MS. BEETON: Good afternoon, everyone. My name
21 is Kathleen Beeton, I'm the Zoning Administrator,
22 Department of Buildings.

23 CHAIRPERSON HILL: Great, thank you.

24 MS. BEETON: Thank you.

25 CHAIRPERSON HILL: And I see I think the

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1 property owner. Is that Mr. Tummonds? A representative I
2 guess. You're on mute, Mr. Tummonds.

3 MR. TUMMONDS: On behalf of the lessee of the
4 property, the Maret School.

5 CHAIRPERSON HILL: Great. Is the appellant
6 here?

7 MR. PATTON: Hello, this is David Patton. I'm
8 one of the appellants. Three in a group --

9 CHAIRPERSON HILL: Okay.

10 MR. PATTON: -- and there are four of us
11 sharing two computers.

12 CHAIRPERSON HILL: Okay, Mr. Patton. That's
13 great. Are you, I'm sorry, could you introduce yourself
14 again, Mr. Patton?

15 MR. PATTON: Yes. Maybe with camera.

16 CHAIRPERSON HILL: It would be great if you
17 can.

18 MR. PATTON: I don't -- I think Mr. Young might
19 have to enable me. Oh no, here. Start video. Here we
20 are. My name is David Patton. I live at 6007 28th Street
21 NW across the street from the old project.

22 I've been here for 15 years. I work
23 professionally as a planner for Arlington County.

24 CHAIRPERSON HILL: Great. Mr. Patton, I guess
25 there seems to be like if there's more than one computer

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1 in your room, make sure that like the other one is muted.

2 MR. PATTON: Right.

3 CHAIRPERSON HILL: And then you unmute yours
4 and you speak. So then I think I see, is Mr. Axelrod, is
5 that another person there to introduce themselves?

6 MR. AXELROD: Yes, my name is Jonathan Axelrod.
7 And I will be presenting on behalf of the appellants. I'm
8 an attorney. My firm is Beins Axelrod and Keating.
9 Office address is 1717 K Street NW, Washington, D.C. My
10 residence is 2832 Rittenhouse Street NW, Washington, D.C.

11 CHAIRPERSON HILL: Okay. Great. Okay. Thanks
12 you guys for joining us today. All right so I think Mr.
13 Axelrod, you've probably seen the motions that are in the
14 record.

15 MR. AXELROD: Yes, sir.

16 CHAIRPERSON HILL: So we're going to go through
17 the motions first and then we'll see where we get and
18 what, any questions the Board may have. So what I'm going
19 to do first is I'm going to start with DOB and let them
20 make their motions.

21 Then I'm going to let the representative for
22 the applicant speak concerning those motions and then
23 we'll let the appellant speak to the motions. Let's see.
24 Go ahead, I know, Mr. Cox. He's going to speak about the
25 motions, but you can begin whenever you like.

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1 MR. FULLER: My name is Brent Fuller. We'll
2 take it from here. Good afternoon again, Chairperson Hill
3 and the Board. And thank you for your time this
4 afternoon. And then so, yes, as you indicated, Department
5 of Buildings has moved to dismiss this appeal of BCIV
6 permit 2300110.

7 If it's okay with the Board, I'll just address
8 the motion to dismiss first. And then we can see where
9 that gets us and then you can tell me what you want to do
10 concerning the motion to strike.

11 So just briefly, and again, if we focus on it's
12 really the appellant's appeal. In sort of the second page
13 of their appeal, their appeal information, they speak to
14 specifically what the scope of this appeal and it
15 specifically says in paragraph 2 of their appeal
16 information, the administrative decision appealed is
17 Permit BCIV 2300110 issued on November 27, 2023.

18 So the determination that they're appealing in
19 this appeal is DOB's issuance of that specific building
20 permit. So really DOB's motion to dismiss quite frankly
21 is not complicated.

22 It's really about the -- I think it's as
23 straightforward as you can get. The BCIV permits
24 generally speaking are issued to streamline reviews for
25 civil work requiring sister agency reviews like DDOT, DOEE

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1 and DC Water.

2 And typically they would include things like
3 grading, in-ground connections, landscaping, et cetera and
4 due to the nature of the BCIV permit generally and BCIV
5 permit 2300110 specifically, the DC, or I'm sorry, DOB
6 Offices are in administration did not review the BCIV
7 permit application specific to 2300110.

8 There was no need for it due to the scope of
9 that BCIV permit. The BCIV permit did not implicate nor
10 necessitate a review. Our application was under zoning
11 regulations. In short, the issuance of the BCIV permit
12 did not require a Zoning Administration determination.

13 And it's issuance was not based in whole or in
14 part upon any zoning regulation or map. 11 Y DCMR 100.4
15 sort of speaks to the jurisdiction of the BZA. And it
16 specifies that BZA's review is limited and since is where
17 a determination has been made in an application of the
18 zoning regulations.

19 No such determination has been made here or was
20 made here with respect to BCIV Permit 2300110. Moreover,
21 11 X DCMR 1100.3 says that the BZA has no jurisdiction to
22 hear and decide any appeal or portion of any appeal where
23 the determination was not based in whole or in part upon
24 any zoning regulation or map.

25 The BCIV permit again at issue and that's the

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1 scope of this appeal, did not implicate the application of
2 any zoning regulation or map. Therefore, under the clear
3 language, they put the regulations, quite frankly, just
4 the BZA doesn't have jurisdiction to hear an appeal of
5 this particular permit.

6 Moreover, permits, DoD issues permits under the
7 authority of 12 A DCMR which is the DC Building Code. The
8 DC Building Code it specifies again when, how and where to
9 appeal a permit.

10 And just to sort of really read the reg into
11 the record, 12 A DCMR 112.3 specifically states that the
12 applicant or holder of a permit or certificate or any
13 person directly affected or agreed that a materially
14 adverse manner by a final decision or order of the Zoning
15 Administrator including a revocation of a permit or
16 certificate may appeal those aspects of the final decision
17 or order that are based upon the zoning regulations to the
18 BZA.

19 Nothing here. One, this BCIV permit didn't
20 pass through DOB's office of zoning or Office of Zoning
21 Administration and there was simply no application of the
22 zoning regulations with respect to the issuance of this
23 permit.

24 So here and again, no aspect of the decision to
25 issue BCIV Permit 2300110 was based on the zoning

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1 regulations. And there's nothing that BZA has
2 jurisdiction to decide with respect to this permit and
3 with respect to this appeal because it didn't implicate
4 the zoning regulations nor did the BCIV permit undergo any
5 review by the Office of the Zoning Administration.

6 As a result, appellant's appeal of DOB's
7 issuance of the BCIV permit, it must be dismissed.
8 There's just no, just BZA doesn't quite frankly have
9 jurisdiction to hear it. And, Board, that sort of ends my
10 argument with respect to the motion to dismiss.

11 I don't know if it's necessary or maybe we can
12 sort of decide that depending on what the appellant has to
13 say. I do have Kathleen, Ms. Kathleen Beeton here. If
14 necessary, she can kind of speak just to verify the scope
15 of DOB's review of this particular permit.

16 And sort of clarify quite frankly that just the
17 Office of Zoning Administration didn't review it and
18 didn't need to review it because it didn't implicate the
19 zoning regulations.

20 But I don't know if there's a need necessarily
21 to, you know, hear that testimony and maybe the Board can
22 tell us if it would like to hear that or not depending on
23 the appellant's position.

24 CHAIRPERSON HILL: Okay, Mr. Fuller, let me do
25 this. Would you be able to speak to your motion to

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1 strike?

2 MR. FULLER: Absolutely. That's why --

3 CHAIRPERSON HILL: The reason I'm asking, Mr.
4 Fuller, give me a second. So I'm just looking to my
5 fellow Board Members because these are like two issues
6 that are kind of before us and I want to kind of make sure
7 we're thinking about them.

8 Again, the first one as you know now, is I'm
9 going to use the term I didn't know until right now, the
10 BCIV. You know, the BCIV permit. Right? So that's one
11 thing. Right? And then now the speaking about the motion
12 to strike.

13 And I'm going to let Mr. Fuller speak to that.
14 And then we'll move around the table as I had originally
15 set it. Go ahead, Mr. Fuller.

16 MR. FULLER: Absolutely and thanks again. And
17 I think Chairperson Hill, I think you know you indicated
18 that, you know, BCIV permit may be a bit of a essentially
19 a new term with respect to the Board.

20 I know that, I mean, that to DOB's knowledge,
21 this is the first sort of zoning appeal that somebody has
22 tried to appeal a BCIV permit so I think it is a bit
23 unique. I think there's a reason why.

24 As far as we know, there hasn't been an appeal
25 of a BCIV permit, again, because the scope doesn't

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1 implicate the zoning regulations which is sort of why we
2 filed the motion to dismiss.

3 But so subsequent to, you know, filing our
4 motion to dismiss, the appellant or the appellants, they
5 have now filed a supplemental statement of appeal on July
6 12th, 2024 or roughly.

7 I didn't do the math, but five to six months I
8 think after they filed this initial appeal of a BCIV
9 permit. They were also filed appellant's supplemental
10 appeal information. And according to the docket that was
11 filed on July 15, 2024, and just for the Board's
12 reference, those are docket entries 24 and 24A.

13 And they also filed what appeared to be new
14 exhibits on July 15, 2024. Quite frankly, I don't know if
15 they filed those exhibits because it wasn't really
16 specified. I don't know if they filed those exhibits sort
17 of as part of their opposition to our motion to dismiss or
18 as part of their appeal generally.

19 They appear to largely have been filed, you
20 know, as part of their appeal, you know, generally and to
21 the extent that that's the case, we'd move to strike those
22 exhibits quite frankly just because they don't comport
23 with the 21-day requirement that they be filed before the
24 21 days before this hearing.

25 And quite frankly, they're also outside of the

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1 scope of their initial appeal of the BCIV permit. I think
2 a lot of them apply to like a retaining wall permit and a
3 sheeting and shoring permit that you're not trying to sort
4 of I think add to this case.

5 So we'd move to strike, you know, all three of
6 those components, the exhibits, the appellant's
7 supplemental statement, the appellant's supplemental
8 appeal information, so and as the appellants sort of note,
9 sort of shows that they were aware of both the pending
10 issuance of these additional permits, but also aware that
11 they were approved and issued, they note that the
12 retaining wall, there was a retaining wall permit
13 applicable to this project that was issued by DOB on April
14 24, 2024.

15 And that's retaining wall permit 2400069. And
16 they also note that a sheeting and shoring permit was
17 issued by DOB on April 10, 2024 and that's permit SH
18 2400019. And appellants acknowledge in their filings that
19 they were aware of the anticipated issuance of those
20 permits as early as January 2024 because they effectively
21 reference the potential issuance of additional permits in
22 that filing.

23 And they indicate in their filings sort of
24 generically that we reserve the right to incorporate
25 additional permits, et cetera into this appeal. But they

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1 can't, so they've just sort of attempted to add these two
2 additional permits into this appeal by the as of the end
3 of last week or the first of this week.

4 They can't do that for two reasons. One, an
5 appellant must identify the issues on appeal at the time
6 of its filing pursuant to 11 Y DCMR 302.12G. And when
7 they initially filed this case and up until about three to
8 four days ago, the scope of this appeal was the BCIV
9 permit.

10 And so they can't now add, I mean they
11 certainly can't add new issues to the appeal. And they
12 certainly can't add additional permits to this appeal
13 three to four days before the hearing.

14 And quite frankly, even if they were to at this
15 point attempt to appeal the retaining wall permit and the
16 sheeting and shoring permit that they've now referenced,
17 those two, the appeal of those two permits are subject to
18 a dismissal because they would be on, be beyond the 60-day
19 time requirement to appeal the issuance of those permits
20 pursuant to I think it's 11 Y DCMR 302 point -- I think
21 302.2.

22 And again, they were required to supplement,
23 provide any supplemental documents in support of their
24 appeal about by or before June 26th, 2024. They didn't do
25 so and they can't do so now. But again, that's more

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1 specific to the issue on the additional exhibits as they,
2 that they've attempted to file.

3 CHAIRPERSON HILL: Mr. Fuller?

4 MR. FULLER: Yes.

5 CHAIRPERSON HILL: Mr. Fuller, I appreciate --
6 how are you getting June 26, 2024?

7 MR. FULLER: So that's the, that's sort of the
8 20 under 11 Y DCMR 302.16. It says no later than 21 days
9 before the date of the public hearing on the zoning
10 appeal, the appellant shall file with the Board any
11 supplemental documents.

12 CHAIRPERSON HILL: Okay. Okay, you're doing --
13 all right. So that's the 21 days. Okay.

14 MR. FULLER: Yes, and I -- my math may be off
15 of there too, but it's --

16 CHAIRPERSON HILL: Okay.

17 MR. FULLER: -- about that.

18 CHAIRPERSON HILL: I was more trying to work
19 back from another deadline about something. And so I just
20 was trying to understand which deadline you were using.

21 MR. FULLER: That's --

22 CHAIRPERSON HILL: Okay. I got you. Okay.
23 Mr. Fuller, give me a second then. Okay, let's see how
24 should we do this? Well, I guess my fellow Board Members
25 -- no, actually wait a minute.

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1 Let me go through all the testimony and then
2 I'll let everybody ask questions. Okay? That includes
3 the appellant and the applicant. Let's see, Mr. Tummonds,
4 do you have any feedback for the Board concerning the
5 motion to dismiss and the motion to strike?

6 MR. TUMMONDS: Yes, absolutely. Thank you very
7 much. First and foremost, the Maret School fully supports
8 the Department of Buildings' motions. And I think it
9 would be helpful just to remind the Board and especially
10 three of the Board Members sat on this case.

11 This special exception case 20643 back in 2022.
12 And just a reminder that the Friends of the Field was the
13 party in opposition in that case which was decided on
14 April 6th, 2022. And the written order approving Maret's
15 special exception use of this property was issued on April
16 12, 2023.

17 Subsequent to that, Friends of the Field
18 appealed this order to the DC Court of Appeals. Oral
19 arguments on that appeal was held on June 3rd of this
20 year. I think why all those dates are relevant is that it
21 showed that the Friends of the Field has been actively
22 aware of what's going on at this property.

23 They are aware of Maret's use of this property,
24 approved use of this property, and moving forward with
25 those approved uses pursuant to validly issued building

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1 permits. So I would also note just following up with Mr.
2 Fuller said, in this case the applicant has consistently
3 failed to meet the statutory deadlines in this case.

4 Just as Mr. Fuller noted, it did not appeal the
5 retaining wall permit or the sheeting and shoring permit
6 within the required 60 days. Also, just as Mr. Fuller
7 said, it did not file its supplemental information on June
8 26th, 21 days prior to today.

9 It has consistently filed information that is
10 wide-ranging, not focused and frankly not appropriate to
11 the BZA's ability to review actions of the Zoning
12 Administrator. And so with based on those facts, we fully
13 agree with the Department of Buildings' motion to dismiss
14 and motion to strike.

15 CHAIRPERSON HILL: Okay, thank you. All right,
16 Mr. Axelrod, can you hear me?

17 (No audible response)

18 CHAIRPERSON HILL: Okay, great. If you want to
19 go ahead and give us your thoughts on the two motions.

20 MR. AXELROD: Sure. First I would say that the
21 exhibits that we filed on the 15th of this month were
22 filed in support of the narrative or appeal and were not
23 in support of the other documents that Mr. Fuller is
24 challenging.

25 We received from your office instructions that

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1 said that anything we wanted to be considered had to be
2 filed by yesterday. And that was in an email from Mark
3 Hamala dated July 11.

4 So operating on the basis of that instruction
5 from the BZA, we filed our exhibits for consideration
6 today. But let me start with the basic appeal. The
7 statute says and the regulations say that decisions of the
8 Department of Buildings can be appealed to this agency.

9 The permit that we appealed was posted by the
10 Department or was required by the Department to be posted
11 at Maret. It was required to be posted so that persons
12 would know that the Government has approved what Maret was
13 planning to do.

14 We're now being told that the Department of
15 Buildings did not approve what Maret was planning to do.
16 And that had we wanted to appeal, we would have had to
17 appealed the actions of some other Government agency which
18 is still not identified.

19 So I mean, that's a structural problem. In
20 conjunction with the BCIV permit, Maret was required to
21 notify people within 200 feet of the property. And Maret
22 did that not because before the permit was approved, but
23 they did that on June 5th of this year.

24 And that notification was attached to our
25 supplemental papers that were filed this, I think, this

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1 month. So clearly, Maret did not file in advance so that
2 the community would know that the BCIV petition or
3 application was coming.

4 So the community was left unprotected at the
5 very beginning, was left unprotected when the Department
6 of Buildings now says we posted a permit, but we don't
7 stand by what's on the permit because we didn't do the
8 work.

9 Someone else did the work. Now, it's our
10 belief that if at the time the application was filed and
11 we don't know when the application was filed, but we do
12 have in evidence a permit drawings, so the drawings that
13 were filed in support of the BCIV.

14 If anyone had looked at those permits, they
15 would have seen that they involve zoning issues. As Mr.
16 Tummonds has indicated, the BZA has approved the concept
17 of what Maret plans to do to the field.

18 But as Mr. Tummonds conceded, that all depends
19 upon permits lawfully, construction permits, lawfully
20 issued by the city. So the permitting is a separate
21 problem from the concept and as Mr. Tummonds has
22 indicated, the concept is still in litigation.

23 But the permits now are in litigation also.
24 It's our view that the application documents would show
25 first that the lot numbers are wrong. If the street

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1 address which they use is 5901 Connecticut Avenue, if
2 that's the street -- I'm sorry, Utah Avenue. If the
3 street address is correct, then the drawings show that
4 there's no setbacks at all. It doesn't show much about
5 where the walls are going to be.

6 But it's important to note that the building
7 permit specifically says it's based upon the CIV permit.
8 And it's important to note that the shoring and sheeting
9 permit is based on drawings that are the same as the
10 drawings that were submitted in the BCIV permit.

11 So the drawings were ultimately reviewed, but
12 not at the time that they were first filed. It's clear
13 that the BCIV permit is the first in a series of
14 construction permits. It's clear and we'll have a witness
15 who will testify how we obtained some of these permits and
16 what work it took to get them. That they were not posted
17 when they were issued and it took repeated interaction
18 between appellant Claudia Russell and the city to actually
19 locate the permits.

20 When we got the permits and she'll testify that
21 we got the permits on May 24th, we're still within 60 days
22 of actually notice of the permits so worst comes to worst,
23 we could still file we believe appeals on those two
24 permits.

25 And if we have to do that, we would ask that

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1 the city or the BZA waive the new filing fees. But we've
2 also cited a case that came out of BZA and went to the
3 Court of Appeals that said that when there are multiple
4 permits issued and the multiple permits all relate to the
5 same project, the BZA can consider in the appeal that was
6 filed permits that were issued after the appeal was filed.

7 And that case we think still gives the BZA
8 jurisdiction to consider the subsequently filed permits as
9 part of the process that was initiated with the appeal of
10 the BCIV permit.

11 The city, the Department of Buildings contends
12 that because we now have the 2016 regulations, there's a
13 statutory or a regulatory 60-day appeal process. And
14 that's true, but that doesn't remove the jurisdiction or
15 the discretion that BZA was given in this Board of Appeals
16 case.

17 And in the BZA's own case to consider
18 subsequently filed material. So it would be our
19 contention that first the Department of Buildings issued a
20 permit. We have the right to appeal that permit because
21 it involves zoning.

22 The fact that they say it doesn't is not
23 accurate because if you look at the permits and, I'm
24 sorry, if you look at the drawings and the drawings are in
25 evidence or will be in evidence as Exhibit 2 to our merit

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1 appeal, you'll see that they don't include things that are
2 required by the building permit regulations.

3 And that should have put people on notice that
4 there was an issue, a zoning issue. It was clear from the
5 permit itself that it gave approval to the building of the
6 structure. The structure is a part of the zoning
7 regulations.

8 And the structure is an issue in the litigation
9 we've -- in the BZA's decisions and the Court of Appeals'
10 decisions on air and light and wind issues because of the
11 height of some of the walls that are being built.

12 And we cited the Economedes and Berome case so
13 that all of those issues were raised in conjunction with
14 and as part of the BCIV application, but were ignored by
15 the city when it considered the BCIV application.

16 That's essentially our position on the two
17 motions. And I know that there's this 21-day rule. It
18 would be our contention that Mr. -- I'm sorry, I'm not
19 good at names. Mr. Hamala's notice gave us additional
20 time and we met his requirement.

21 Well thank you very much for considering our
22 position and I'm obviously willing to take questions and
23 we're willing to put on a witness to discuss how and when
24 we obtain copies of the permits --

25 CHAIRPERSON HILL: Okay.

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1 MR. AXELROD: -- for the building, for the
2 wall, and for the shoring.

3 CHAIRPERSON HILL: All right, thanks Mr.
4 Axelrod. I mean, the information that you might have
5 gotten from Mr. Hamala was not in relationship to the 21-
6 day deadline, just to be clear on that. But I can ask
7 some more questions of you and point that out --

8 MR. AXELROD: Sure.

9 CHAIRPERSON HILL: -- in a moment. Let's see.
10 I'm looking at my fellow Board Members. I'm looking at my
11 fellow Board Members and then everyone is going to ask
12 questions of everybody. We've got two motions before us.
13 Okay?

14 The first one again is whether or not we're
15 going to dismiss this. Okay? And based upon whether or
16 not we think this is correctly before us and then it's
17 whether or not, you know, we're going to strike and
18 whether or not because of another deadline issue
19 concerning the change in what is being requested for the
20 appeal.

21 And so do my fellow Board Members have any
22 questions before I turn to Mr. Fuller and Mr. Tummonds for
23 their questions?

24 (No audible response)

25 CHAIRPERSON HILL: Okay, my fellow Board

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1 Members can ask questions whenever they like. Mr. Fuller,
2 do you have any questions of the appellant?

3 MR. FULLER: I don't actually I think I have
4 any questions of the appellant. I would like to, I don't
5 know if Mr. Cox is on here, Mr. Cox is welcome, if he has
6 any questions. I personally don't.

7 MR. COX: Thank you.

8 CHAIRPERSON HILL: Okay. Mr. Tummonds, do you
9 have any questions?

10 MR. TUMMONDS: No. I don't have a question,
11 but I think I just want to reiterate what you said, Mr.
12 Hill. When Mr. Hamala sends something to people
13 participating in the case, he's merely saying if you,
14 you're basically your PowerPoint presentation.

15 And that should be PowerPoint presentation
16 based on information that had previously been submitted
17 into the record based on that 21-day filing if you're the
18 applicant or the seven-day response period if you are DOB
19 or us in this case.

20 It didn't create this ability to say Section
21 302.16 no longer applies.

22 CHAIRPERSON HILL: Correct. Thank you, Mr.
23 Tummonds. Mr. Axelrod, do you have any questions of Mr.
24 Fuller or Mr. Tummonds?

25 MR. AXELROD: I'd like to know who reviewed the

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1 CIV permit. What city agencies reviewed it?

2 CHAIRPERSON HILL: You'd like to know who, give
3 me a second. You'd like to know who reviewed the CIV
4 permit. What city agent, what are the city agents, okay,
5 Mr. Fuller, do you know who reviews the CIV permit?

6 MR. FULLER: So, sure. And I think that quite
7 frankly there's a bit of confusion on the appellant's part
8 I suppose with respect to the review of the BCIV permit.
9 So Mr. Axelrod is asking what other agencies reviewed the
10 BCIV permit.

11 And that his confusion I guess may be a result
12 of our indication of sort of the definition of a BCIV
13 permit which sort of says that those are, we sort of
14 designated things as a BCIV permit when they might involve
15 sort of our relationship with the sister agency like DOE,
16 DDOT, et cetera.

17 But we, DOB reviewed the BCIV permit. DOB
18 issued the BCIV permit. We're the agency that issued that
19 permit and that reviewed that permit. But the BCIV permit
20 application, it wasn't subject to a review by the DOB
21 Office of Zoning Administration.

22 It didn't go through DOB Office of Zoning
23 Administration review because there wasn't a necessity to
24 do that. It doesn't involve a sort of zoning component.
25 I would also tell the Board and also quite frankly, the

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1 appellants that there's a publicly, quickly, there's a
2 publicly available resource called Scout.

3 And if you go onto this thing called Scout, you
4 can sort of see what disciplines of DOB that a permit
5 application has gone through. And I actually looked at it
6 before this hearing just to verify. Mostly we discussed
7 it internally.

8 But it sort of specifies, you know, through
9 different layers of review, but because of the nature of a
10 BCIV permit, that permit it just didn't undergo a zoning
11 review and it didn't, there was no need to apply or to
12 assess that permit relative to the zoning regulation.

13 So to answer Mr. Axelrod's question, the agency
14 that reviewed and issued that BCIV permit was DOB. But it
15 didn't go through the Office of Zoning Administration. I
16 would tell and we say this just to clarify, we say this in
17 our motion to so I think it's in our motion to dismiss.

18 It's also in our sort of limited prehearing
19 statement that we filed in this case. The retaining wall
20 permit did go through zoning review because there are
21 zoning components of that retaining wall permit.

22 And it does implicate zoning regulations. But
23 the appellants in this case have not, in this appeal,
24 appealed 21100. They have not appealed and did not appeal
25 the retaining wall permit.

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1 CHAIRPERSON HILL: Yes, Mr. Fuller, give me a
2 second. You've kind of gone a little bit off of the
3 track.

4 MR. FULLER: Okay.

5 CHAIRPERSON HILL: So I think I understand who
6 issues the BCIV permit.

7 MR. FULLER: Yes.

8 CHAIRPERSON HILL: And that was the question
9 that --

10 MR. FULLER: Yes.

11 CHAIRPERSON HILL: -- Mr. Axelrod had.

12 MR. FULLER: Sure.

13 CHAIRPERSON HILL: Right?

14 MR. FULLER: You're right. My apologies.

15 CHAIRPERSON HILL: It's all right. Mr.
16 Axelrod, do you have another question?

17 MR. AXELROD: I have a response. Mr. Fuller
18 mentioned Scout; when the city reorganized and the
19 Department of Buildings became a separate agency, they
20 terminated Scout and created something called eRecords.

21 But they didn't tell people that the permits
22 were now being moved to eRecords. And the retaining wall
23 and shoring material was moved to eRecords. And as I
24 indicated, we'll have a witness who's prepared to testify
25 about how it was that we found out about eRecords and how

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1 we found the existence of the permits.

2 And that's important that -- I don't want to
3 say the city was concealing things, but the city didn't go
4 out of its way to make things available to the public and
5 that's, that hurt us.

6 It would have been easier to file what the city
7 calls a timely appeal if the permits were available on the
8 Government record system that they now say they're on.

9 CHAIRPERSON HILL: Okay. All right. Mr.
10 Axelrod, do you have any more questions?

11 MR. AXELROD: No.

12 CHAIRPERSON HILL: Okay.

13 MR. AXELROD: I would also note though that we
14 indicated in our opposition that the Department of
15 Buildings' motion should have been filed months before it
16 was.

17 CHAIRPERSON HILL: Why should it be filed
18 months before it was?

19 MR. AXELROD: Because technically, we have
20 until the close of business today or to midnight tonight
21 to oppose it and so we had seven days from when it was
22 filed.

23 CHAIRPERSON HILL: You mean the motion to
24 strike?

25 MR. AXELROD: The motion to dismiss. The

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1 motion to strike was actually filed later. That seven-day
2 period --

3 CHAIRPERSON HILL: The motion to dismiss --

4 MR. AXELROD: -- won't end until a couple of
5 days from now.

6 CHAIRPERSON HILL: The motion to -- so, so, I
7 love it. So OZLD, we might be talking in a minute because
8 I might want to talk to you guys about some deadlines and
9 I don't know who it is, but I've got somebody who's
10 nodding for me.

11 So, we might talk to OZLD and then we'll come
12 back, but before we go to OZLD, Zoning Administrator
13 Beeton, is what Mr. Fuller said in terms of the BCIV
14 permit correct? It doesn't go through your office?

15 MS. BEETON: That's correct. It was not
16 reviewed by the Office of Zoning Administration. It was
17 not brought in to us to review.

18 CHAIRPERSON HILL: Okay, fine. So all right so
19 I'm going to look for my Board Members then we're going to
20 go talk to legal. Okay? Because to me where we have this
21 is, again, is the BCIV permit something that is up for us?

22 And then, if not, is this something that the
23 appeal can be altered, meaning did they know, the deadline
24 is the deadline meaning like, you know, there's the 60
25 days and there's also the should have known part of the

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1 regulation.

2 Right? And so the should have known part is
3 where I'm not kind of clear on, but at the same time, I'm
4 very clear on the 60 days and I very strongly feel that
5 the 60 days is something that is important and I'll tell
6 you why and I want to tell you on the record.

7 Is that people that are doing and this is not
8 just for this appeal, this is all appeals and this is for
9 if this ends up going to a court and somebody starts to
10 read this again, the fact that we have appeals that come
11 in after the 60 days harms the applicant or people that
12 are trying to do work in the city or build things in the
13 city.

14 You need to know that you have 60 days to wait
15 and see whether an appeal actually happens. And then
16 after that, you can start to commit money. You can start
17 to commit resources. You can start to do things because
18 you've passed that timeline.

19 So I'm very, I feel very strongly about the 60
20 days. Okay? But there is a little bit of grey in there
21 that we can kind of talk through as a Board. Does the
22 Board have any questions of any of anybody before we go to
23 speak to legal?

24 MEMBER BLAKE: Mr. Fuller, very quick question.

25 CHAIRPERSON HILL: Go ahead, sir.

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1 MEMBER BLAKE: What venue should be used for
2 non-zoning related appeals of permits in DOB?

3 MR. FULLER: Sure and that's also, that is also
4 spoken to in 12 A DCMR in the building code. And so non-
5 zoning reviews of a permit or non-zoning related appeals
6 of a permit issued by DOB, those go to OAH.

7 If you give me a minute, I can probably point
8 you to the exact reg that says that, but otherwise I could
9 tell you. According to the building code, it specifies
10 that any, almost like any other decision of the code
11 official related to the issuance of a permit, those
12 appeals all go to OAH.

13 And the only permit-related appeals that go to
14 are subject to the jurisdiction of the BZA are things
15 where there's been a determination made by the zoning
16 administrator in the application of the zoning
17 regulations.

18 Those go to you guys sort of -- this is
19 generic, but sort of everything else related to the issues
20 of a permit should go to the OAH under the Building Code.
21 And if you want when you come back, I can look and point
22 you to the exact reg that says that.

23 MEMBER BLAKE: Okay, thank you very much.

24 CHAIRPERSON HILL: Okay, does my Board have any
25 questions? Whoever is in Ms. -- ma'am, the lady who's in

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1 Mr. Patton's square, can you just introduce yourself for
2 the record?

3 MS. RUSSELL: It's Claudia Russell. And I live
4 at 5860 Nebraska Avenue NW, Washington, D.C. My home
5 abuts the field.

6 CHAIRPERSON HILL: Okay.

7 MS. RUSSELL: I'm a retired registered
8 architect.

9 CHAIRPERSON HILL: Okay. Thanks, Ms. Russell.
10 I just, you were just sitting there in the square. I
11 wanted to make sure you got introduced. Okay? All right.
12 So let's see. So I'm going to read this. Okay?

13 As Chairperson of the Board of Adjustment for
14 the District of Columbia in accordance with 407 of the
15 District of Columbia Administrative Procedures Act, I move
16 that the Board of Zoning Adjustment hold a closed meeting
17 on July 17th, 2024 for the purposes of seeking legal
18 counsel on Case No. 21100.

19 And/or deliberate upon, but not vote on the
20 Case 21100 for the reasons cited in DC official code 2-
21 575(b)13. Is there a second, Mr. Blake?

22 (No audible response)

23 CHAIRPERSON HILL: Is there a second, Mr.
24 Smith?

25 MEMBER SMITH: Second.

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1 CHAIRPERSON HILL: Okay. The secretary, could
2 you now take a roll call?

3 MEMBER BLAKE: Second.

4 CHAIRPERSON HILL: Okay, great. Sorry, Mr.
5 Blake. Madame Secretary, could you take a roll call.

6 MS. MEHLERT: Please respond to the Chair's
7 motion to hold an emergency closed meeting with OZ legal.
8 Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MS. MEHLERT: Mr. Smith?

11 MEMBER SMITH: Yes.

12 MS. MEHLERT: Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MS. MEHLERT: And okay.

15 CHAIRPERSON HILL: Commissioner Stidham.

16 MS. MEHLERT: Oh, yes. Sorry I didn't see you,
17 Commissioner Stidham. Staff would record the vote as four
18 to zero to one to approve the motion to emergency closed
19 meeting in Application 21100 made by Chairman Hill and
20 seconded by Mr. Smith with one Board Member not
21 participating.

22 CHAIRPERSON HILL: Okay. You guys go, oh,
23 sorry Mr. Cox. You had, you were trying to say something?
24 I can't hear you, Mr. Cox. You're on mute.

25 MR. COX: Before you go, 12 A DCMR 112.2 is the

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1 vehicle under which a non-zoning issue permit can be
2 appealed directly to OAH. Anyone materially agreed by the
3 issuance of a CofO or permit, for example, has the right
4 under 12 A DCMR 112.2 to appeal to OAH full stop.

5 CHAIRPERSON HILL: Okay. All right thanks, Mr.
6 Cox. Okay let's see. We were all, we're going to another
7 room and we'll come back. Thank you.

8 (Whereupon, the above-entitled matter went off
9 the record at 1:55 p.m. and resumed at 2:18 p.m.)

10 CHAIRPERSON HILL: Okay, Madame Secretary, do
11 you want to call us back?

12 MS. MEHLERT: The Board has returned from its
13 closed meeting with OZ legal and is returning to Appeal
14 No. 21100.

15 CHAIRPERSON HILL: Okay. This is what I
16 propose. I want to go ahead and, well first I'm going to
17 see if my fellow Board Members have any further questions
18 and then what I'm going to do is I'm going to propose that
19 we excuse everyone and have an opportunity to deliberate
20 about the motions that are before us.

21 And if we, and then I'll see what happens. I
22 mean like if the motions fail, then we'll be back here
23 again with everyone. And if the motions pass, then we
24 won't continue on. So those are my thoughts. Does the,
25 my fellow Board Members, do they have any further

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1 questions of the parties?

2 (No audible response)

3 CHAIRPERSON HILL: Okay, everyone is shaking
4 their head no. All right. Mr. Axelrod, do you understand
5 everything I just said?

6 MR. AXELROD: I understand what you said. We
7 would like to put on a witness concerning the difficulty
8 in getting the subsequent documents, but I understand what
9 you've said.

10 CHAIRPERSON HILL: Okay, the subsequent
11 documents. Okay, the subsequent documents. Okay well I
12 don't want you to think that you don't have an opportunity
13 to say what you wanted to say. Who's the witness you want
14 to bring about the subsequent documents?

15

16 MR. AXELROD: Ms. Russell.

17 CHAIRPERSON HILL: Ms. Russell. Okay.

18 MR. AXELROD: Claudia Russell who is sitting.
19 There she is.

20 CHAIRPERSON HILL: Oh, got it. Okay so Ms.
21 Russell, what is it, before you do testify, Mr. Axelrod,
22 what is that you think your witness is going to be
23 testifying about?

24 MR. AXELROD: How difficult it was to find the
25 wall and sheeting/shoring permit and how it was not on

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1 Scout and how she found it.

2 CHAIRPERSON HILL: Got it. Okay. Go ahead
3 please. I'm sorry, I'm just --

4 MR. COX: Mr. Chairman, if I may interject
5 before. Those are not properly appealed before this Board
6 so DOB would object to taking testimony about something
7 that is not relevant to what's before us today.

8 CHAIRPERSON HILL: Okay, well now I'm looking
9 at my fellow Board Members because I don't, I just don't
10 want to be in a -- I mean, Ms. Nagelhout, do you have any
11 -- okay, first off, go ahead Mr. Smith. He seemed to have
12 something to say.

13 MEMBER SMITH: I agree with Mr. Cox. That's
14 not what's before us today. The discussion is about BCIV
15 permit so I don't want to take testimony about finding
16 other permits that are not subject to what we're deciding
17 today.

18 CHAIRPERSON HILL: Okay so what you're saying,
19 Mr. Smith is that we will first go through a discussion
20 about the BCIV permit and that first motion to dismiss.
21 If we get --

22 MEMBER SMITH: Correct.

23 CHAIRPERSON HILL: -- to the second motion,
24 then we can take testimony that would actually be about
25 that second motion. Is that what you're suggesting, Mr.

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1 Smith?

2 MEMBER SMITH: Yes, that's what I'm suggesting.

3 CHAIRPERSON HILL: That sounds reasonable to
4 me. Mr. Blake, does that sound reasonable to you?

5 MEMBER BLAKE: (No audible response)

6 CHAIRPERSON HILL: For the record, Mr. Blake is
7 nodding yes.

8 MEMBER BLAKE: Yes, sir.

9 CHAIRPERSON HILL: Commissioner Stidham?

10 COMMISSIONER STIDHAM: Yes, it does.

11 CHAIRPERSON HILL: Okay, great. Mr. Fuller, do
12 you understand what I am saying?

13 (No audible response)

14 CHAIRPERSON HILL: Okay, Mr. Tummonds, do you
15 understand what I'm saying?

16 MR. TUMMONDS: Yes.

17 CHAIRPERSON HILL: Mr. Axelrod, do you
18 understand what I'm saying?

19 MR. AXELROD: (No audible response)

20 CHAIRPERSON HILL: Okay. All right. So we're
21 going to go ahead and excuse all of you and we're going to
22 do the first item first which is the motion to dismiss
23 based upon the BCIV. Okay. Great.

24 So for the record, I was closing the hearing
25 and the record based on that one issue that is now before

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1 us which is the motion to dismiss. And I'm going to turn
2 it over to anybody who wants to start.

3 (No audible response)

4 CHAIRPERSON HILL: I'm happy to start. That's
5 fine. I'll go first. So I think it's pretty clear that
6 the BCIV permit is not before us. Right? Like I don't
7 think that that's something that it's not a zoning, it's
8 not a zoning issue.

9 So this appeal is not rightly before us because
10 the BCIV permit is not something that is before us. We
11 took testimony from the Department of Buildings that said
12 it's not something that the Zoning Administrator reviews.

13 And so what the appeals that come before the
14 Board of Zoning Adjustment are zoning issues that the
15 Zoning Administrator has reviewed. And so this is not
16 something that's there so I don't think this is properly
17 before us.

18 So I will be voting to dismiss the appeal. Mr.
19 Smith?

20 MEMBER SMITH: I agree with your statements,
21 Chairman Hill. What is strictly before us, what has
22 strictly been in the record within a timely manner is the
23 question about the BCIV permit.

24 And the BCIV permit, again, as you stated, is
25 not something that is reviewed, acted upon by the Office

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1 of Zoning Administrative, Office of Zoning Administration
2 within the Department of Buildings.

3 There is a relief valve that the applicants can
4 pursue through OAH for an appeal of a building permit that
5 does not have an action of the Zoning Administrator. So I
6 agree with your assessment of this that because this is
7 not a zoning, a permit that had a zoning determination,
8 this is not something that -- we should dismiss this
9 appeal as something that's not within the purview. So I
10 agree.

11 CHAIRPERSON HILL: Thank you. Commissioner
12 Stidham?

13 COMMISSIONER STIDHAM: I think you both said it
14 well. This is not properly before us and I agree to
15 dismiss as well.

16 CHAIRPERSON HILL: Thank you. Mr. Blake?

17 MEMBER BLAKE: I agree.

18 CHAIRPERSON HILL: Okay. All right. I will
19 refer also to Exhibit 21 that speaks to the motion to
20 dismiss and some of the background information that
21 Department of Buildings has put forward in their motion to
22 dismiss.

23 I'm going to make a motion to dismiss Appeal
24 No. 21101 based upon this is not properly before us and
25 within our jurisdiction and ask for a second, Mr. Blake.

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1 MEMBER BLAKE: Second.

2 CHAIRPERSON HILL: The motion being made and
3 seconded, Madame Secretary, if you will take a roll call?

4 MS. MEHLERT: Yeah -- appeal 21100.

5 CHAIRPERSON HILL: Yes, I don't know what I
6 said, by yes, Appeal No. -- I want to dismiss, I'm sorry.
7 I want to approve the motion to dismiss all about Appeal
8 No. 21110.

9 MS. MEHLERT: Please respond to the Chair's
10 motion to dismiss the appeal. Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MS. MEHLERT: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MS. MEHLERT: Mr. Blake?

15 MEMBER BLAKE: (No audible response)

16 MS. MEHLERT: Commissioner Stidham?

17 COMMISSIONER STIDHAM: Yes.

18 MS. MEHLERT: Staff will record the vote as
19 four to zero to one to dismiss appeal 21100 on the motion
20 made by Chairman Hill and seconded by Mr. Blake with one
21 Board Member not participating.

22 CHAIRPERSON HILL: Okay, thank you. All right
23 is that all that's before us today, Madame Secretary?

24 MS. MEHLERT: Yes.

25 CHAIRPERSON HILL: Okay, I appreciate

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1 everyone's time today. And you all have --

2 MS. NAGELHOUT: Did you want to deal with the
3 motion to strike?

4 CHAIRPERSON HILL: -- Motion to dismiss that
5 automatically made the motion to strike moot.

6 MS. NAGELHOUT: Okay well if that's your
7 decision, that's fine.

8 CHAIRPERSON HILL: Okay. I'm sorry. I will
9 clarify it for the record that the motion to dismiss makes
10 the motion to strike a moot point because there's nothing
11 to strike.

12 And I think that you would agree with me with
13 that, or I'm sorry, I'm going to ask for that motion or
14 that comment to be seconded and we're going to take a vote
15 again. The comment to be seconded --

16 MEMBER SMITH: I'll second.

17 CHAIRPERSON HILL: Okay, great. Mr. Smith has
18 seconded that the motion to strike is moot. This motion
19 is made and seconded. Madame Secretary, would you take a
20 roll call?

21 MS. MEHLERT: The Chair's motion about the
22 motion to strike is moot -- is that correct?

23 CHAIRPERSON HILL: Yes.

24 MS. MEHLERT: Okay. Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MS. MEHLERT: Mr. Smith?

2 MEMBER SMITH: Yes.

3 MS. MEHLERT: Mr. Blake?

4 MEMBER BLAKE: Yes.

5 MS. MEHLERT: And Commissioner Stidham?

6 COMMISSIONER STIDHAM: (No audible response)

7 MS. MEHLERT: Staff would record the vote as
8 four to zero to one to approve the motion that the motion
9 to strike is moot on the motion made by Chairman Hill and
10 seconded by Mr. Smith.

11 CHAIRPERSON HILL: Okay great. Thank you. All
12 right is there anything else before the Board, Madame
13 Secretary?

14 MS. MEHLERT: There is not.

15 CHAIRPERSON HILL: Okay. I hope you all have a
16 lovely afternoon and try to stay cool. Okay? Thank you.

17 MS. MEHLERT: Thank you.

18 CHAIRPERSON HILL: Bye-bye.

19 (Whereupon, the above-entitled matter went off
20 the record at 2:28 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 07-17-24

Place: teleconference

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